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**“Comparative Analysis of the Legislation
on Licensing and Taxation in the Gold Mining Sector
in the Kyrgyz Republic and Western Australia.”**

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TABLE OF CONTENTS

Introduction

CHAPTER I. General overview of the subsoil use legislation

§ 1 Geographical and geological description of the KR and its similarities with WA

§2 Statistics of the gold mining sector input to the economy and GDP

§3 Overview of the subsoil use legislation

Chapter II TAXATION AND LICENSING REGIMES OF THE KR AND WA

§ 1 General analysis of the Laws of the Kyrgyz Republic on licensing and taxation: Law on Subsoil and Tax Code

§2 Analysis of the special laws (Zakon KR “O koncessiyah i koncessionnyh predpriyatiyah”[Law on Concession and Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53, Zakon KR “O soglasheniyah o razdele produkci”[Law on the Production Sharing Agreements],Erkin-To, Apr.17, 2002, No 30)

§3 General analysis of the Laws of the Western Australia

Chapter III ANALYSIS OF THE LICENSING AND TAXATION LEGISLATION OF THE WESTERN AUSTRALIA

§1 Western Australian laws regulating licensing and taxation of gold mining companies

§2 Examples of the most effective and applicable laws of the Western Australian which could be applied in the KR

§3 Possibility of application of the selected Western Australian licensing and taxation practices in the Kyrgyz Republic in the gold mining sector

§4 Description of the possible consequences of the application of the liberal, transparent and stable legislation practices of the Western Australia in the Kyrgyz Republic

Conclusion

Bibliography

ABSTRACT

The thesis is devoted to the review of the legislation on licensing and taxation of gold mining companies in the Kyrgyz Republic and Western Australia. The thesis is important because the proceeds from the gold mining sector greatly contribute to the Kyrgyz Republic's GDP, its social and economic well-being and such contribution might have been even greater if more gold mines are developed. Currently, the gold mining is of high interest for the investors due to the existing geological potential of the Kyrgyz gold mines as well as the current rise of the gold prices in global market.

Despite of the substantial contribution of the mining industry proceeds to the GDP of the Kyrgyz Republic the budget of our country still faces deficit. The available gold deposits which must be produced and current favorable gold prices would lead to the development of the Republic's economy in gold mining sector. However, mining development requires the presence of the substantial capital which the Kyrgyz Republic does not have at the moment. Thus, in order to develop the gold mining sector we should attract foreign direct investments into our industry. One of the ways of attracting direct investments is development of friendly legal regime for the investors; in particular related to obtaining rights for mining and taxation of mining proceeds. In my research I will analyze the Kyrgyz Republic's existing legal regime on licensing and taxation issues in the gold mining sector through identifying both the strong and weak aspects from the investors' perspective.

Furthermore, for the purposes of this research concession and production sharing agreement legislation will be analyzed as well in order to identify the procedures how concession and PSAs are granted and how the companies are taxed under PSA and concession regimes. By analyzing Western Australian legislation, which is one of the most attractive legal systems in the gold mining sector, I am going to bring suggestions for legal

reforms in the Kyrgyz Republic on licensing and taxation in the gold mining sector in order to make it more attractive for investors whose investments will grow economy of the Kyrgyz Republic. I believe that transparent laws on licensing and taxation can improve the current legislation which will lead to improvement of the situation in the gold mining sector in the Kyrgyz Republic. I strongly believe that by this research I will identify existing problems in legislation on licensing and taxation in gold mining sector. I will try to find out possible solutions which will attract future investors and foster the development of mining sector as such.

LIST OF ABBREVIATIONS

PSA	Production Sharing Agreement
KR	Kyrgyz Republic
WA	Western Australia
FDI	Foreign Direct Investments
ASX	Australian Securities Exchange
VAT	Value Added Tax
GDP	Gross Domestic Product
GST	Goods and Services Tax

INTRODUCTION

The economic development of the Kyrgyz Republic is highly connected with the gold mining. The development of the gold mining strongly depends on the FDI inflow. The favorable conditions on the legislation of the Kyrgyz Republic in the gold mining will attract the investors to this particular sector, which will lead to the development of the gold mining, as well as the whole economy of the Kyrgyz Republic.

The main purpose of my work is to assess the licensing and taxation regimes applicable to gold mining companies and if necessary suggest the possible ways to improve the current legislation on licensing and taxation issues in the gold mining sector, by introducing legislative changes which shall lead to the attraction of the foreign direct investments into the Kyrgyz gold mining sector. As an example of such investor and mining friendly legal regimes I brought the Western Australian legislation practice, which regulates the leading mining sector in the world.

After adopting the new law on the regulation of subsoil use, which is Zakon KR “Onedrah”[The KR Subsoil law], Erkin-To, Aug.17, 2012, No 73-74, I was encouraged to analyze this law in order to know, whether these new changes were relevant and whether they will lead to the intensive development of the mining sector of the Kyrgyz Republic. My analysis demonstrates that after the latest modifications the Subsoil Law and related regulations indeed became more specific and consistent. Nevertheless, I have concluded that the current legislation on licensing and taxation of the gold mining sector still needs to be improved further.

In Chapter I of this paper the general information about the geological potential of the Kyrgyz mining sector and its importance for the economic development of the country are

described. The Chapter further indicates that the development of the gold mining sector will have positive effect to the economy of the Kyrgyz Republic. However in order to develop gold mining sector of the Kyrgyz Republic substantial investments are required, which are mostly come from abroad. And the most important criteria for foreigners to invest are the clear and transparent process of the obtaining license among with the stable and not too heavy tax burden.

Further in Chapter 2 the research is devoted to the description of the general subsoil use legislation of the Kyrgyz Republic with special attention paid to licensing and taxation regimes applicable to gold mining companies. Mining companies planning to invest in the Kyrgyz Republic primarily look into the following legal issues: licensing and taxation as well as the application processes for consents, licenses and permits (especially approval and refusal criteria, work program criteria, term inability, convertibility of exploration rights to mining rights, renewals and transfers), tax regimes, environmental requirements, foreign investment laws, import and export laws. Depending on the answers to these issues the companies either decide to invest or leave the country.

The results of the analysis of the Kyrgyz subsoil legislation demonstrates that although substantial reforms were undertaken, currently the legislation of the Kyrgyz Republic still require changes. Major concerns in the Kyrgyz mining sector for investors include: an adverse change to the legal system after an investment decision has been made (example of which is Kumtor).

Current situation in the mining sector shows that the foreign investors are not likely to invest in a market where the legal system, is unstable and mining is politicized. My research shows that the Kyrgyz Republic has ineffective and underdeveloped legislation, which is not allowing to grow further to the gold mining sector. Clear proof of this finding is the statement made by one of the leading business association in the Kyrgyz Republic IBC: “Kyrgyz

Subsoil Law do not comply with international standards and contain provisions which may lead to the expropriation of a deposit; complex and uncertain licensing system, completions and auctions.”¹

Further in Chapter III in attempt to find the best international example of legislation on licensing and taxation of the Western Australia has been reviewed. In contrast to our country, the Western Australia has a highly developed legislation and prosperous mining sector. It is one of the top ten world gold producers where majority of the world largest mining companies operate successfully. Australia is home to approximately 10 percent of the world economic gold resources and is ranked third after South Africa and USA. It is also the world largest producer of gold and about 60 percent of Australia's gold resources are located in Western Australia.²

The legislation of the Western Australia was recognized as one of the most mining friendly, transparent and stable in the world. In order to compare the Western Australian laws with the laws of the Kyrgyz Republic, the analyses of their legal system is needed due to the fact that WA is a common law based developed economy whereas the Kyrgyz Republic is only a developing country with civil law based legal system. Thus in order to understand the different interrelationship between pieces of legislation, case law and hierarchy of legislative provisions were also briefly described in Chapter III.

¹Mineral Resources Committee, IBC. "Practice of Kyrgyzstan and Comparison with Some Countries' Good Mining Practices." Accessed December 3, 2012.

http://www.google.kg/url?sa=t&rct=j&q=mining%20in%20kyrgyzstan&source=web&cd=12&ved=0CDIQFjA BOAo&url=http%3A%2F%2Fwww.eng.abc.kg%2Findex.php%2Fflaws%2Fitem%2Fdownload%2F244_bf3d24e62551ea7380d247527c0f8f04&ei=cjXIUKC3Gqv74QTXiYDoCw&usg=AFQjCNGjnOk-THzMXR-NAbcC_PP5ZYBI3w.pdf

² Michele, Leia. "GOLD MINING IN AUSTRALIA." Gold Investing News. Accessed February 5, 2013. <http://goldinvestingnews.com/world-class-gold-deposits/gold-mining-in-australia>.

And the Conclusion of this research paper provides the brief summary of the results of my research and suggestions and recommendations for the improvement of the licensing and taxation regimes in the gold mining sector in the Kyrgyz Republic.

CHAPTER I. THE LEGISLATION ON LICENCING AND TAXATION IN THE KYRGYZ REPUBLIC NEEDS IMPROVEMENT

§ 1 Geographical and geological description of the KR and its similarities with WA

The Kyrgyz Republic is very rich in mineral resources, therefore in order to increase the economy we should develop the mining field and to support existing companies. It is important to mention geographical and geological description of the Kyrgyz Republic in order to see, how many gold deposits exist and what to do in order to develop them.

After the collapse of the Soviet Union system huge investments in the Kyrgyz Republic caused the exploration of a number of objects that are assorted as deposits or manifestation of minerals that registered by the State Cadastre. From all of them, there are deposits that are fully discussed and explored as Kumtor (a world- class gold deposit of 12 million ounces), Jerooy and Tabaldy-Bulak Levoberezhnyi (two medium –size reserves of gold deposits of 3 million ounces each), and a wide majority of deposits with reserves of over 1 million ounces of gold³

Despite the fact that the Kyrgyz Republic is a very small country, the gold mining sector is well developed, and at this point there are geographical and geological similarities

³ T. Honkonen, Environmental Security, Mining and Good Governance Mining Regulation in the Kyrgyz Republic. A Review WORKING PAPER August 2012 (Zoi Environment Network, University of Eastern Finland, Gaia Group Oy, 2012), PDF e-book, p. 5

with Western Australia. Western Australia is one of the richest gold producing countries and it is country with numerous amounts of mines.⁴

The majority of the Western Australia gold production comes from quarries. An Underground mining is used where the depth of ore below the surface makes an open way mining economically insufficient. In order to provide ventilation and transportation for the waste rock and ore to the out commonly used spiral tunnels and vertical shafts to transport people and equipment into and out of the mine. Deep expansions of reserves are mined by an open way methods and later on can be replaced by the underground way of mining beneath the old one, open way. The Western Australia's gold reserve deposits are placed by the greenstone belts that are located in the Yilgarn Craton. Generally, gold reserves are located by the north northwest trending structures, which hold gold in steeply dipping lenticular ore bodies that are similar to reserves in Zimbabwe, Tanzania and Ghana.⁵

While the geographical and geological similarities of these two countries can allow demonstrate that they are both have the potential, to be attractive for investors. The mines of Kyrgyz Republic are less attractive for investors than of the Western Australia.

§2 Statistics of the gold mining sector input to the economics and GDP

In order to prove that gold mining makes great input to the economics of the country and its influence to GDP we will analyze the statistics. First of all, the Kyrgyz Republic statistics, which show the development of the Kyrgyz Republic's economy.

The gold mining sector plays a huge role and strategically important for the Kyrgyz economy as a whole. Also, the mining sector makes a great contribution in formation of the Kyrgyz economy and it forms about 40% of the overall cost of production sector, 40.1% of

⁴ "Gold Mining in Australia," Accessed January 22, 2013, <http://goldinvestingnews.com/world-class-gold-deposits/gold-mining-in-australia>, p.1

⁵ T. Honkonen, Environmental Security, Mining and Good Governance Mining Regulation in the Kyrgyz Republic. A Review WORKING PAPER August 2012 (Zoi Environment Network, University of Eastern Finland, Gaia Group Oy, 2012), PDF e-book, p. 4

total export volume, 9.2% in the GDP share and 9% of tax revenue. As we can see from the following data mining sector brings economic development of the Kyrgyz Republic.⁶

For now 10,2% of GDP comes from mining sector, 2.5% of GDP – Kumtor gold and 8.2% increase in GDP due to higher world gold prices. According to data of Mining and Gold Governance Mining Regulation in the Kyrgyz Republic, we can observe a rapid increase in the GDP of the mining sector from 5% in 2005 to 12 % of GDP in 2010, 39 % of the value of all industrial output, 40 % of total exports by volume, and 12 % of tax Revenues in the same 2010 year. Despite the fact that Kyrgyzstan continues to dominate in the agricultural sector of the economy, mining industry still stays important for the Kyrgyz economy. Regarding to the data that was mentioned above mining industry plays a crucial and significant role for the development of economy and social issues for the Kyrgyz Republic. By now, mining sector became a basis of the industrial production of Kyrgyzstan.⁷

All over the world, gold is the best precious metal to invest, stable prices, rareness and expensiveness of this metal makes investors to rely on it. And the most of the investors all over the world would better invest their money to the gold then to other things. Real estate, cars and other assets are not so safety to invest as gold.

Besides iron ore, crude oil, alumina and LNG with a price of A\$4.4 billion, the gold was classified as fifth in the export operations list by Western Australia in 2008. In the same year the Western Australia produced over 4,200,000 ounces of gold or in other words 131.421 tones. By the way, Western Australian gold mining employed about 14,459 people

⁶ Strategia razvitiya strany na 2009-2011gg. (kratkoe izlozhenie) (Bishkek-2009), 14. Natzional'nyj strategicheskij komitet Kyrgyzskoi Respybliki. "Natzional'naya straniza svodnyh dannyh." Accessed February 15, 2013.

⁷ T. Honkonen, Environmental Security, Mining and Good Governance Mining Regulation in the Kyrgyz Republic. A Review WORKING PAPER August 2012 (Zoi Environment Network, University of Eastern Finland, Gaia Group Oy, 2012), PDF e-book, p.1

which in this case improved a labor force and made a positive and significant impact on development of the economy.⁸

Kyrgyz Republic has tremendous potential to be one of the greatest gold mining countries with not only high level of economic growth, but also one of the most attractive countries for the investors. The Kyrgyz Republic, with its gold deposits, can raise economy of the Kyrgyz Republic on a very high level in case of the development of the gold mining sector.

The integration of the mining industry into the world economy can be realized in two ways: firstly, through the sale of the output of mining and minerals companies and the purchase of materials and facilities for production; and secondly, through the development of deposits by attracting foreign investment. Because Kyrgyzstan does not have a developed processing industry, mineral raw materials make up a significant share of Kyrgyz exports.

After the fall of the USSR, Russia, Ukraine and Belarus remained the main consumers of Kyrgyz mineral production.⁹ There is a stable demand for rare-earth metals as gold produced by the Kyrgyz Republic. Therefore we have to develop this sector, and the only way to do this is to raise the amount of the long term investments to this field. In order to do this we need to improve the legislation which regulates this field. The biggest obstacle for the investors, who wants to invest money are taxation and licensing issues.

§3 Main threats to attractiveness of gold mining sector come from the not attractive taxation and licensing regimes

There is real threat to business, about which investors are aware. “The Kyrgyz government has more recently recognized problems that the mining industry faces due to the

⁸ “Western Australian 2008 Statistics Digest retrieved 2009-08-06,” Accessed February 11, 2013, <http://www.dmp.wa.gov.au/documents/000221.jemma.williams.pdf>, p. 3

⁹ T. Honkonen, Environmental Security, Mining and Good Governance Mining Regulation in the Kyrgyz Republic. A Review WORKING PAPER August 2012 (Zoi Environment Network, University of Eastern Finland, Gaia Group Oy, 2012), PDF e-book, p.1

inadequacy of mining legislation. From the industry view point, it is important to have a regulatory system that is stable, transparent and appropriate to the conditions of the country in terms of priorities, infrastructure and skills.” There is need in relevant, understandable and justified legal framework, which will be appropriate to the needs of businessmen and investors.

Taxation in my opinion is not clear and is not attractive for investments, because the taxation in Kyrgyz Republic is complicated and have high tax rates. Taxation should be more effective, for example lower taxation rates and simple formulas can attract investors and make gold mining in Kyrgyz Republic prosperous. Taxation of the mining companies is very strict, and not so strict taxation will encourage even internal investors to invest to the national production. The Table 1 demonstrates the level of attractiveness of the taxation in Kyrgyz Republic for the foreign investors. See *Annex I*

There is a substantial problem with investors and the Kyrgyz Government, as companies are not sure that there will be no threat from the local population, because usually government cannot control them, also government do not support companies. It is very important for investors to be protected and supported. What is bad for the Kyrgyz Republic is that government does not help companies, moreover government always tries to get as much as it can from the companies and even do not try to protect from the local communities who always makes obstacles for normal work of the company.

The process of licensing has been stopped for some uncertain period of time. Moreover, overall dissatisfaction of geological companies was growing throughout local communities. As a result, due to unresolved problems with local communities and land resources many of mining companies have been forced to suspend. The state authorities do not give any protection to companies, thus local communities have little belief in legislation and capacity of the state bodies. As a consequence, this forced the mining sector become stagnated that

was followed by instable situation in consulting and other services. If this situation with political, social and economic infirmness will go on it may lose many of its clients in the mining consulting services sphere.¹⁰See annex 2

¹⁰ T. Honkonen, Environmental Security, Mining and Good Governance Mining Regulation in the Kyrgyz Republic. A Review WORKING PAPER August 2012 (Zoi Environment Network, University of Eastern Finland, Gaia Group Oy, 2012), PDF e-book, p. 9

Chapter II TAXATION AND LICENSING REGIMES OF THE KR AND WA

§ 1 General analysis of the Laws of the Kyrgyz Republic on licensing and taxation issues which are Law on subsoil and Tax Code

Analyses of the Zakon KR “O nedrah”[The KR Subsoil law], Erkin-To, Aug.17, 2012, No 73-74, Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53 and Zakon KR “O soglasheniyah o razdele produkcii”[Law on the Production Sharing Agreements],Erkin-to, Apr.17, 2002, No 30.

Gold deposits have been explored and discovered in Kyrgyz Republic and the number of companies and individuals involved in the gold mining sector increase every year. The gold mining industry in Kyrgyz Republic is one of the most important sectors of economy of Kyrgyz Republic. There is a great potential for the development of the gold mining in case of the attraction of the investments to this sector.

The parliament of Kyrgyz Republic adopts the mining laws and regulations on a national level. Such laws and regulations are applicable throughout the country. The State Agency for Geology and Mineral Resources under the government is the main regulatory authority, which issues licenses and executes license agreements. The Agency is the main regulatory authority in the mining industry, which, inter alia, ensures the compliance of the companies with mining laws and regulations. Other agreements, such as concession and production sharing agreements are negotiated and executed by the government, the highest executive body. However, in the event of smaller-size investments and depending on a number of other conditions, concession and production sharing agreements can be concluded between the mining company and various

ministries, committees or agencies or local government authorities or require ratification by parliament.

The following principal laws regulate the mining industry:

- Zakon KR “O nedrah”[The KR Subsoil law], Erkinto, Aug.17, 2012, No 73-74
- Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53
- Zakon KR “O soglasheniyah o razdele produkcii”[Law on the Production Sharing Agreements],Erkin-to, Apr.17, 2002, No 30

The right to use subsoil may be granted by issuance of a license to use subsoil, by concession, and on the basis of an agreement on production sharing in subsoil use. Individual placer miners obtain mining rights through registration with local state administration authorities.

A license may be issued to an individual or legal entity of Kyrgyzstan or another country on a tender basis if the right to use a deposit of national importance is granted under it; for all other objects, licenses are issued by direct negotiations between the prospective licensee and the Agency.

There are exploration license, mining license and license for construction and operation of subsurface structures not related to mineral resources mining. The government grants concessions through competitions. The production sharing agreements are negotiated and executed by the government on the basis of outcomes of auctions and competitions.

There is no distinction between domestic and foreign parties while granting mining rights. There is no restriction for a company, registered in Kyrgyzstan but 100 per cent owned by a foreign entity or person to obtain mining rights. In practice there are joint Kyrgyzstan and foreign-owned mining projects as well as 100 per cent foreign-owned projects.

The mining laws provide for conclusive grounds for suspension or termination of mining

rights. In case of violation of their rights, mining companies have a right to apply to domestic courts as well as to domestic or international arbitration tribunals if there is an arbitration agreement between the parties. It should be noted that the government as well as ministries, state agencies or Kyrgyzstan companies avoid arbitration as a dispute resolution mechanism and reluctant to sign agreements referring disputes to local or international arbitration. However, foreign companies making substantial investments in the mining and other sectors of Kyrgyzstan's economy prefer arbitration to domestic courts due to a number of precedents where domestic courts misinterpreted or inconsistently applied legislation or lacked independence and impartiality.

Kyrgyzstan's mining laws provide for royalty and bonus payments. Currently, however, because of the absence of a payment mechanism, royalties and bonuses are not paid. Nevertheless, in addition to regular taxes mining companies extracting mineral resources shall make a payment to the state budget for reproduction of mineral resources reserves. The amount of the payment depends on the type of mineral resource.

Kyrgyzstan's investment laws provide for stabilization of a tax regime, which is applicable to the mining companies as well however, in practice, it might be difficult for a private mining company to exercise such stabilization right.

Both foreign and domestic companies pay without distinction similar amounts for the issuance of a license, royalties and bonus payments. However, companies with more than 20 per cent foreign ownership or controlled by a foreign company or individual are in some cases subject to higher payments for land use.

First of all, through analyzing new law on subsoil and Tax Code I will show the regulation of the licensing and taxation issues. Firstly, let me consider the Tax Law of the Kyrgyz Republic. The Tax Code was adopted in October 2008 and entered into force on 1 January 2009. The main goals of the reformed Tax Code are to develop a fair and reasonable tax

system, ease the tax burden on business, simplify tax procedures, encourage saving and investment and the economic development of the country. Several taxes should be paid by the investors under the new tax regime.

The main taxes applicable to investor activity are as follows:

- Tax withheld at the source of payment from the income of non-residents.
- Excise tax;
- Corporate income tax;
- Individual income tax;
- Value added tax;
- Land tax;
- Property tax;
- Subsoil use taxes (bonus and royalty);
- Sales tax;

Beside these taxes there are some other taxes, so called mining taxation. In order to pay these kinds of taxes, taxpayers have to be engaged in mining and sale of gold ore, concentrate, alloy and gold refining are liable to pay income tax.¹¹

Tax base for these kind of taxes will be the value of gold alloy and refining gold based on the sales price net of VAT and sales tax, or the cost of gold production in concentrates and other intermediate products containing gold, calculated using world prices according to the procedure established by the Government of the KR.

Tax will be counted by the tax rate which is the income tax rate varies according to changes to the gold price.

The payments and filings are indicated in the following table.

¹¹Nalogovyi Kodeks Kyrgyzkoi Respubliki[NK KR][Tax Code](KYRG.)

Price of gold per 1 troy ounce (USD)	Income tax rate (%)
1201 - 1300	1
1301 - 1400	3
1401 – 1500	5
1501 – 1600	7
1601 – 1700	9
1701 – 1800	11
1801 – 1900	13
1901 – 2000	14
2001 – 2100	15
2101 – 2200	16
2201 – 2300	17
2301 – 2400	18
2401 – 2500	19
2501 and above	20

12

Also there is a tax for the subsoil users, for those who hold licenses to participate in the exploration and development of subsoil in Kyrgyzstan. There is also bonus, which is a one-time payment made by a subsoil user for the right to prospect and exploit mineral deposits. The bonus applies to local companies, foreign companies and individual entrepreneurs, who hold a mining license in the Kyrgyz Republic. The basis for payment of the bonus is change to the share capital by 10% or more on the same footing as to obtain a new license.¹³

The object of bonus taxation can be found in the following list:

- development of mineral deposits
- mineral deposit exploration with estimated reserves
- mineral deposit research in areas with inferred and expected resources
- withdrawal (extract from the subsurface) of groundwater
- drilling of hydrogeological boreholes.

¹²“Tax and Investment Guide,” Accessed March 1, 2013, http://www.deloitte.com/assets/Dcom-Kazakhstan/Local%20Assets/Documents/T&L/En/Tax%20and%20Investment%20Guide_KG.pdf, p23

¹³Id. at 23.

There is also bonus have to be paid based on the volume of mineral reserves and expected resources according to the State cadaster on mineral deposits, and the drilling depth of hydrogeological boreholes. The amount of the bonus is set by the Government of the KR on all type of minerals, as well as for the gold. On mineral deposits put up for tender, the bonus rate is established separately by the Government of the Kyrgyz Republic for each field.¹⁴

Tax payments and filing returns Payers of the bonus are required to file an appropriate report and pay the corresponding amount due to the budget within 30 days of receiving the license for the exploration and development of subsoil in the KR.

The last tax is royalties, which are regular payments made by subsoil users for the right to prospect and exploit mineral deposits. Royalties apply to local companies, foreign companies and individual entrepreneurs, who execute:

- development of mineral deposits;
- withdrawal (extract from the subsurface) of groundwater;
- extraction of oil and gas during the process of test searching and prospecting for hydrocarbons;
- single mining for experimental-industrial testing and/or the prevention or elimination of emergency situations.¹⁵

The royalty tax base is:

- proceeds (less VAT and sales tax) received from the sale of minerals or products resulting from the processing of minerals;
- volume of products sold in bulk;

¹⁴“Tax and Investment Guide,” Accessed March 1, 2013, http://www.deloitte.com/assets/Dcom-Kazakhstan/Local%20Assets/Documents/T&L/En/Tax%20and%20Investment%20Guide_KG.pdf, p23

¹⁵ Id. At 23

- volume of water extractable from the subsurface by water meters, with the exception of specialized water supply organizations

Royalties are established from sales proceeds on the following minerals indicated on the table:

Minerals	Tax rate
Gold, silver and platinum	
• fields with reserves of more than 10 tons	5%
• fields with reserves of 3 – 10 tons	3%
• fields with reserves of less than 3 tons	1%

16

The license acquisition process is indicated in the following laws: Zakon KR “O nedrah”[The KR Subsoil law], Erkin-To, Aug.17, 2012, No 73-74, Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53 and Zakon KR “O soglasheniyah o razdele produkci”[Law on the Production Sharing Agreements],Erkin-to, Apr.17, 2002, No 30.

The licenses for subsoil use are issued by the State Geological Agency of the Kyrgyz Republic to national and foreign legal entities and individuals.

Licenses are given for terms of 5, 10 and 20 years with a possible prolongation if evidences can be showed as to, why the additional time is needed. However, the Subsoil law diversifies the subsoil use and issues licenses for: 1) geological exploration; 2) mining development; 3) construction of underground facilities. Three types of licenses are of special interest for subsoil-users:

¹⁶“Tax and Investment Guide,” Accessed March 1, 2013, http://www.deloitte.com/assets/Dcom-Kazakhstan/Local%20Assets/Documents/T&L/En/Tax%20and%20Investment%20Guide_KG.pdf, p25

License for geological search can be given for the term up to 5 years. The term can be prolonged, if the license agreement conditions are observed¹⁷

License for geological exploration can be given for the term up to 10 years. The term can be prolonged, if the license agreement conditions are observed. Licensee who discovered a deposit shall have a priority right to obtain license for mining that deposit.¹⁸

License for mining development can be given for the term up to 20 years. The term can be prolonged if the company will prove that more time is needed.¹⁹

There are three possible ways of acquiring a license – a competition, an auction and direct negotiations. A competition is held when the right to use a deposit – object of national importance is to be granted.²⁰

The objects of national importance are the large deposits, the list of deposits of national importance is approved by the Government of Kyrgyz Republic. Specially formed Commission on license issuance for subsoil use will have a panel discussion and upon its decision will release a protocol. If granted a license, the Licensing Agreement shall be negotiated and signed between the parties.²¹

The License shall contain the following: exact work program, with indication of force majeure circumstances, necessary data about license holder, end use of the work related to subsoil use, all types of payments and license duties on subsoil use, coordinates of the land, geological and/or mining lease, terms of application of exploration and mining technology, restoration of the environment.²²

The license may be terminated when it expires and in cases of completion of the geological research, depletion of reserves, liquidation of company/entrepreneur, usage of

¹⁷Zakon KR “O nedrah”[The KR Subsoil law], Erkin-To, Aug.17, 2012, No 73-74

¹⁸Id. at art. 22

¹⁹Id. at art. 22

²⁰Id. at art.34

²¹Id. at art.35

²²Id. at art.36

harmful technology, causing threat to the environment, failure to provide in specified time technical project, failure to negotiate with land owners about land use rights.

From the analyses of the licensing regime of the gold mining sector can be assumed that, the license may be pledged with prior consent of State Geological Agency of the Kyrgyz Republic. There are clear ways of getting license. The procedure is written in the law on subsoil. There was the old Law with huge amount of amendments, however now we have the new law in comparison with the old one gives for the investors more options for gaining license.²³

However there are still a lot of ineffective sides of legal regulation. For example: After receiving the license foreign legal entities and individuals shall register branch, subsidiary company, representative or independent affiliated legal entity in the Kyrgyz Republic in order to perform their mining and exploration activities. From this point it is hard for the foreign companies to feel confident, when they are entering the territory of the Kyrgyz Republic.

The laws on subsoil use described above regulate the same issue, but there is no single production sharing agreement concluded in the Kyrgyz Republic, and only one concession agreement. The reason of non-using these agreements is their inefficiency and excessive inapplicability for foreign investors.²⁴

These are the evidences of the ineffective legal regulation of the gold mining sector which leads to the unattractive investment climate with in the country. What we need is more attractive legislation for the foreign investors on the territory of the Kyrgyzstan the laws which will lead to the development of the mining sector in order to increase the economy of the Kyrgyz Republic.

²³Zakon KR “O nedrah”[The KR Subsoil law], Erkin-To, Aug.17, 2012, No 73-74

²⁴Id. at art 34

There can be some doubts about, that Law on Subsoil is new and that that a little period of time has gone, however those companies who works in the gold mining sector, have not noticed any single changes also the procedure of implementation is a very slow and there is not so significant changes in the law, which could lead to the developing of this sector, in my opinion in the new law any single way for corruption should not have stay, however this law have left a lot of ways for developing the corruption system in the gold mining sector.

§2 Analysis of the special laws (Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53, Zakon KR “O soglasheniyah o razdele produkci”[Law on the Production Sharing Agreements],Erkin-to, Apr.17, 2002, No 30)

Even though we have Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53, this Law is not attractive for the investors and the Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53 states that concession – is a certificate granted to the investors by the Government of the Kyrgyz Republic to perform certain types of entrepreneurial activities related to subsoil use. The Concession law provides a list of subjects under these laws, which are: concession bodies (Government of the Kyrgyz Republic, authorized or specially established bodies, local governmental administration, local Kenesh – “parliament”) and concessioners (foreign states, legal entities, citizens, joint enterprises). The objects of the Concession Agreement could be land, subsoil, property, certain types of economic activities and property of joint-stock companies, where the Government of the Kyrgyz Republic owns at least two-thirds of its shares in order to obtain a concession. The Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah”[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53, was analyzed for the particular taxation and licensing

issues.

The Concession Law the authorized state body prepares a list of the objects for concession. The preparation of objects includes demarcation of territory of the object, its property and with regard to the subsoil and natural resources the evaluation of their deposits. After announcing that the concession competition open, all interested investors may file an application form with all the required accompanying documentation. The list of required documentation is approved for each competition individually. If the applicant wins the competition, he is granted a right to conclude a Concession Agreement with the authorized state body.²⁵

However, before signing the Concession Agreement, it shall undergo a complex expertise. Depending on the amount of required investment, a Concession Agreement shall be concluded between the Concessioner and city or district governmental administration and respective Local Kenesh, if investments are not more than 0, 3 mill. USD or regional and Bishkek city administration and respective local Keneshs, if investments are no more than 0, 8 mill. USD or Government of the Kyrgyz Republic, if investments are over 0, 8 mill. USD. Any further modifications of the Concession Agreement can be made only upon assent of both parties.

Even though, the Concession law contains some provisions requiring Jogorku Kenesh's (national parliament) approval for concluding agreements, it does not cover the subsoil issues, but rather economic activities and joint stock companies. If the Concession Agreement not expired, it may be terminated upon one party discretion and after arbitral award was issued. The weakness of the Concession Agreements is that besides it, all the taxes (bonus, royalty, VAT, income, property and land taxes) indicated in the Tax Code there are

²⁵Zakon KR "O koncesiyah i koncesionnyh predpriyatiyah"[Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53

required direct (concession payment and the rent) and indirect payments (additional local investments, favorable loans, and other privileges for local businesses).

However, there are some advantages of the Concession Agreement, one is that the availability to conclude it for long period of time, as the term of an agreement according to article 13 of Concession law may be from 5 to 50 years.²⁶

The last law to analyze considering the ineffectiveness of the legal regulation on licensing and taxation issues in the gold mining sector is Zakon KR “O soglasheniyah o razdele produkci” [Law on the Production Sharing Agreements], Erkin-to, Apr.17, 2002, No 30) (further in text - “PSA”). A production sharing agreement is an agreement, between the Kyrgyz Republic and a subject of entrepreneurial activity, which grants the investor on a fee payable and limited-duration basis exclusive rights to explore and develop mineral deposits at his own cost and risk within the specified in the agreement area. The Government, or authorized state body, may act on behalf of the State and national or foreign legal entities and physical persons may be the second parties. The object of PSA is primarily the subsoil use of the Kyrgyz Republic.

A PSA Agreement may be concluded on the basis of competition or auction, which are prepared by the authorized by the Government bodies. However, when dealing with subsoil issues it is most likely that the Ministry of Natural Resources of the Kyrgyz Republic will be considered as the authorized state body, as it is the sole body that coordinates and regulates the sphere of exploration, research and development of the subsoil and land on the territory of Kyrgyz Republic. Upon the results of the competition /auction the winner will be announced. Conclusion of the Agreement is not due until six months from the day of the announcement of the results of competition. Within six months the draft of the Agreement is prepared by the special Commission consisting from the representatives of respective local

²⁶Zakon KR “O koncesiyah i koncesionnyh predpriyatiyah” [Law on Concession and Foreign Concessionary Enterprises], Erkin-To, Jul. 9, 1997, No 52-53

administrations, Ministry of Natural Resources and Jogorku Kenesh. The decision of signing the PSA Agreement is made by the Government of the Kyrgyz Republic or Ministry of Natural Resources if assigned so, though, if the investor is a foreigner, the agreement is a subject for Jogorku Kenesh's approval. After signing the agreement, a license to use subsoil shall be granted to the investor. The PSA Agreement may be terminated upon the expiry date indicated in the agreement or upon both parties consent before the expiration.

The Product Sharing Agreement might be concluded for a fairly long period of time, as an agreement may be formed up to 10 years. PSA provides investors with rights to enjoy stability and guarantees in cases, when newly adopted or amended laws worsen the economic or legal well-being of an investor. Moreover, the State when concluding a PSA with foreign investors may waive its immunities and guarantee the enforcement of court decisions.

The most obvious disadvantage is that the terms of an agreement could become burdensome for an investor, as he shall: grant local legal entities the priority right to participate in works; employ citizens of the Kyrgyz Republic to form a minimum of 80% of the entire company workforce; employ foreign personnel only during the initial phase of the works; buy all the equipment, hardware and materials required for exploration, development and processing from local businesses; buy new equipment and implement modern technology to support contractual work on the basis of a tender; prevent negative environmental impact of mining activities and eliminate the aftereffects of such impact; provide insurance against loss arising from accidents resulting in an adverse environmental impact; remove all facilities, equipment and other property on completion of contractual works. Besides, there is a risk that sharing production upon completion of mining activities will not bring the expected economic outcome.

§3 General analysis of the Laws of the Western Australia on licensing and taxation issues which are Law on subsoil and Tax Code

The gold mining is one of most important export sectors of the Western Australia which makes a significant economic and social contribution to the Australian economy.²⁷ The mineral and minerals processing sector has contributed over A\$500 billion to Australia's wealth over the past two decades, supporting more than 320,000 Australians in exploration, extraction and product manufacturing.²⁸

Western Australia currently has one of the largest and developed mining sector by value of production in the world.²⁹ The Western Australian mining industry has benefited from a global boom in demand for minerals in recent years.³⁰ Since Western Australia is one of the world's leading producers of gold. Along with the gold Western Australia also is in the top five producers of most of the world's key minerals, including iron ore, lead, bauxite, alumina, silver, diamonds, uranium, zinc and nickel. Also Western Australia is also a world leader in developing and exporting mining equipment, services and technologies.³¹

The Western Australian system is common law-based, which laws are based on a combination of legislation made by parliament and decisions made by an independent judicial system, which is case law.³² Laws are made and regulated by three tiers of government - federal, state and territory, and local government. The federal government (the Commonwealth) represents a federation of the six Australian states the Western Australia is one of them (New South Wales, South Australia, Queensland, Tasmania, Victoria and Western Australia) and the Commonwealth's territories (including the Northern Territory and Austral Capital Territory).³³

The Commonwealth has the power to make laws under the Australian Constitution. Due to

²⁷Livesley, Kym. "Australia." In *Mining*, 12-14. London: Richard Davey, 2008. p.12

²⁸ Id. at 12

²⁹ Id., at 12

³⁰ Id. at 12

³¹ Id. at 12

³² Id. at 12

³³ Id. at 12

the fact the Commonwealth has power to legislate in areas such as corporations, taxation, native title, overseas trade, trade practices, foreign investment and foreign affairs, it considers the tax burden will consider Western Australia as well³⁴. However the research is focused on licensing and taxation issues.

The state and territory governments are given broad legislative power under their respective constitutions. Areas such as mining, roads and traffic, environment, health and criminal law are regulated primarily by laws at this level.

Western Australia established by state or territory legislation. The laws of the Western Australia typically make and enforce regulations in relation to building and development, town planning, local amenities, environment and land use within their local government areas.³⁵

Western Australia has minerals and the mining industry is regulated at the Western Australia and at the territory level. Western Australia or territory has its own legislation relating to minerals found onshore and offshore within coastal waters.³⁶

Nevertheless, some laws of the Western Australia may affect the mining industry because the Commonwealth legislates over areas such as corporations, competition and trade practices, interstate and overseas trade, taxation, defense and foreign affairs. Mining companies listed on the Australian Securities Exchange (ASX) must also comply with the ASX Listing Rules.³⁷

Each state as well as Western Australia has a Mining Act and Mining Regulations (or equivalent), which regulate the ownership of minerals and operation of mining activity. The states have other laws dealing with areas such as mine operation, mine inspection, occupational health and safety, environment and planning. The government department administering mining law in each state administers and sets out guidelines and policy statements relating to state mining

³⁴Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.12

³⁵Id. at 12

³⁶Id. at 12

³⁷Id. at 12

legislation.³⁸

There is classification system which is the mining industry use for reporting mineral resources and mineral reserves. The Western Australian mining industry uses the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (the JORC Code) for public reporting (eg, annual reports and analyst reports). The JORC Code is published by the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Minerals Council of Australia.³⁹

The JORC Code is applicable to all solid minerals, including diamonds, other gemstones, industrial minerals and coal and which is the most important for my research is that JORC Code.⁴⁰ The JORC Code requires reporting on the company's mineral resources under quantities known as 'mineral resources' or 'ore reserves'. The classification of the mineral resource depends upon the quantity, distribution and quality of data available and the level of confidence that attaches to such data.

A 'gold deposit' is an occurrence of a mineral material of intrinsic economic interest that has reasonable prospects for eventual economic extraction. The location, quantity, grade, geological characteristics and continuity of a mineral resource must be known, estimated or interpreted from specific geological evidence and knowledge. Mineral resources are subdivided, in order of increasing geological confidence, into inferred, indicated and measured mineral resources.⁴¹

An 'ore reserve' is the economically mineable part of a measured or indicated mineral resource and is subdivided, in order of geological confidence, into a 'probable ore reserve' or a 'proved ore reserve'.

³⁸Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.12

³⁸Id. at 12

³⁹Id. at 12

⁴⁰Id. at 12

⁴¹Id. at 12

The JORC Code applies to the reporting of mineral resources and ore reserves by all public companies, as well as the ASX Listing Rules also expressly require any report by an ASX-listed company on its exploration results, mineral resources or mineral reserves to comply with the JORC Code.⁴²

In Western Australia as well as in whole Commonwealth the Crown owns all minerals in the land. Common law presumes that a landowner also owns all minerals on or beneath the surface of that land.⁴³

However, this principle has been virtually abolished by statute in Western Australia and all new grants of freehold titles in the Western Australia, which have provided that all minerals are reserved to the Crown. A very small percentage of the gold mines in the Western Australia are owned by those, who were granted titles to the land before enactment of relevant state legislation excluding mineral ownership.

Any mineral that is lawfully mined becomes the property of the person by or on behalf of whom it is mined at the time the material from which it is recovered is severed from the land from which it is mined. Until lawfully mined, minerals remain the property of the Crown.⁴⁴

There is Each department also offers the public access to mining information databases which allow the public to view mining reports, maps, surveys, geoscientific data, exploration and tenement information in that state.⁴⁵ A large number of articles and research papers on mining companies and the mining industry generally are published in industry journals, analyst reports or in other publications.

The gold deposits may obtain rights to conduct mining activities on unreserved Crown land or on private land where the permission of the landowner has been granted. The specific

⁴²Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.13

⁴² Id. at 13

⁴³ Id. at 13

⁴⁴ Id. at 13

⁴⁵ Id. at 13

mining rights that miners may acquire differ slightly in each state or territory, but the rights are based upon the three basic stages of development of a mine: initial exploration, further detailed exploration and assessment, and production.⁴⁶

Holders of mining rights may also have ancillary rights which relate to those mining activities, such as public road access, access to water and setting up crushing, sizing and grading facilities on the land surface.

Mining rights may be acquired from the applicable state department generally through an application process on a first-come, first-served basis, or in some instances, a tender-based process. Mining rights may also be acquired by entering into a contractual arrangement with the holder of the mining right. Rights to access the surface are regulated both by legislation and by private contract with landowners.

Mining right holders will generally have obligations such as payment of rent and royalties, compliance with work program, mine rehabilitation and reporting requirements (for example, exploration activities and mining expenditure).

There is no distinction between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties. However, a major acquisition of assets by a foreign company may require the approval of the Australian treasurer, through the Foreign Investment Review Board. The Foreign Investment Review Board has the power to block proposals that are required to be notified to it and which are determined to be 'contrary to the national interest'.

A proposed acquisition by a foreign company of an asset or company valued at over A\$100 million (a higher threshold of A\$913 million applies to acquisitions by US companies) must be notified to the Foreign Investment Review Board.

There are also notification requirements below this threshold if investment is in a prescribed

⁴⁶Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.13

sensitive sector; the extraction of (or the holding of rights to extract) uranium or plutonium is one such sector.

The legislation of the Western Australia prohibits prospecting or mining minerals otherwise than in accordance with the terms of a valid mining tenement. As a general rule, mining rights may not be granted to third parties over land which is subject to an existing mining tenement, unless the holder of the existing mining right gives consent.⁴⁷

These and other mining rights can be protected or enforced through an independent judicial system. A mining court or tribunal has been set up in each state or territory, and is given the jurisdiction to determine all suits concerning mining tenements and may exercise any other jurisdiction vested by the particular state and territory regulation. Mining rights obtained through contractual arrangements are also protected under contract law.⁴⁸

There is a general description of what surface rights private parties acquire, how these mining rights are acquired. A holder of mineral rights is generally given rights on the land surface to carry out mining purposes. These rights may be combined with the mining operation, and may include rights to access water and public roads; construct, maintain and use buildings, plants, roads and railways; and conduct primary treatment operations and other acts ancillary to mining.⁴⁹

If the holder is seeking to engage in these ancillary activities on private land, rights must be obtained from the private land owners by means of purchases, leases, easements, etc.⁵⁰ Also general laws of contract can be applied between private parties. Mining legislation of the Western Australia may also set out requirements for certain terms relating to access and compensation arrangements with landholders.⁵¹

⁴⁷Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.13

⁴⁸Id. at 13

⁴⁹Id. at 13

⁵⁰Id. at 13

⁵¹Id. at 13

The royalties are payable to the Crown on extraction of the minerals in the amount and calculation of such royalties vary from state to state and may include, for example, flat-rate royalties (eg, on a 'cost per tonne' basis), ad valorem royalties (based on a percentage of the total value of minerals recovered, ranging from 2 to 5 per cent) and profit-based royalties (applied in some states to all minerals, such as Tasmania and the Northern Territory, and applied in some states to only certain minerals, such as diamonds).⁵² The level and nature of royalties also varies depending on the type of commodity and its location within the Western Australia. The government of the Western Australia charge mining companies higher freight rates to carry minerals compared with other commodities than other Australian States.⁵³

There is private royalties which is payable, for example, in circumstances where the mining rights have been transferred between private parties subject to the payment of an ongoing private royalty.⁵⁴

And the general duties and taxes are payable in the same manner as any other business within Australia, such as local government rates and fees, stamp duty, goods and services tax, capital gains tax or income tax. The attractiveness of the Western Australia tax regime is that there is no general Australian government mining legislation or specific taxation of mining products.⁵⁵

There are broad-based goods and services tax (GST) applied at the rate of 10 percent has been in operation since 1 July 2000. The GST regime benefits industry, as GST-registered enterprises are typically able to recover the GST paid on their business inputs, which mining enterprises are not required to charge GST on goods they export to overseas customers (which account for the bulk of industry sales).⁵⁶ However, the GST is required where the enterprise supplies or receives certain financial supplies, including, among others, forward contracts, options to buy or sell foreign currency, commodity derivatives and security lending

⁵²Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.14.

⁵³Id. at 14

⁵⁴Id. at 14

⁵⁵Id. at 14

⁵⁶Id. at 14

arrangements as these transactions. There are also special GST rules for domestic sales of precious metals. Because of that GST, this is applicable to the profit gain of the companies.⁵⁷

There is also governmental assistance provided to the mining industry by the form of research and development via the CSIRO Institute of Minerals, Energy and Construction.⁵⁸ In addition, the Australian Geographical Survey Organization (part of the Department of Industry, Science and Resources) is undertaking national geoscientific mapping aimed at encouraging the sustainable management and development of the Western Australia's natural resources.⁵⁹ The government of the Western Australia does not assist directly in the form of export assistance and subsidies are minimal. There also some Regional Minerals Program which are designed to encourage a coordinated regional approach in the development of new mines and mineral processing, as well as to reduce industry costs and increase the scope for investment. Which is also the indicator of that Western Australia still wants to improve and develop their gold mining sector.

Although, there is no obvious distinction between specific mining taxes such as duties and royalties paid by domestic parties compared to those paid by foreign parties, parties must consider more general taxation matters such as withholding taxes, capitalization rules, double tax agreements and foreign tax credits.⁶⁰

⁵⁷Kym Livesley, "Australia," in *Mining* (London: Richard Davey, 2008), p.14.

⁵⁸*Id.* at 14

⁵⁹*Id.* at 14

⁶⁰*Id.* at 14

Chapter III ANALYSIS OF THE LICENSING AND TAXATION LEGISLATION OF THE WESTERN AUSTRALIA

§1 Western Australian laws regulating licensing and taxation of gold mining companies

In order to compare the laws of the Western Australia with the laws of the Kyrgyz Republic, the analyses of their legal system is needed. The legal system which is much different from our since Western Australia has common law system. Broadly, the laws of WA are a combination of Commonwealth legislation, WA legislation and the common law (case law).⁶¹ According to Parliamentary Counsel's Office guide there are two kinds of legislation: Acts and subsidiary legislation. Acts are the laws Parliament has enacted and Acts sometimes called 'Acts of Parliament' or 'primary legislation' in order to distinguish them from subsidiary legislation.⁶²

Since Western Australia has common law system there is a big difference between the laws of KR and their laws. Therefore in order to understand and two analyze their legislation in a right way. I have to make a distinction on interrelationship between legislation and case law. According to Parliamentary Counsel's Office guide there is also a case law, which is relevant to a particular question of statutory interpretation.⁶³

⁶¹Parliamentary Counsel's Office Western Australia, "How to read legislation, a beginner's guide."Government of Western Australia, Edition 1, May 2011, Accessed October 10,2012,http://www.department.dotag.wa.gov.au/_files/How_to_read_legislation.pdf, p. 2

⁶²Id.,at 2

⁶³ Id.,at 3

The meaning of legislation sometimes depends on what case law says.⁶⁴ Therefore in the case law system there is always a possibility of that one cases decision may be overruled or modified by a later case.

The legal system of the Kyrgyz Republic has another approach. The legal system of Kyrgyzstan is included into the Roman-German legal family, and also similar to legal systems of the CIS countries. The hierarchy of statutory acts is determined by the Zakon o normativno pravovyh actah Kyrgyzkoi Respubliki [Law on normative legal acts of the Kyrgyz Republic], Erkinto, Aug.7,2009, No 68-69.

Analyses of the legal systems of Western Australia and Kyrgyz Republic gave me an opportunity to go further. And after getting a clear distinction of legal systems of these two countries, comparative analyses of the particular laws and suggestion of them can be done.

There is a big difference in the law on licensing for gold mining activities in these two countries. The licensing issues of the gold mining sector in Western Australia are regulated by the Western Australia Mining Act 1978 Part I about Subject to this Act section 9 and Part IV about Mining tenements, which consist of six divisions. They are prospecting license, exploration license, mining lease, general purpose lease, miscellaneous licenses and Retention License.

The taxation is also big issue in the gold mining sector in Western Australia as well as in Kyrgyz Republic. Kyrgyz Republic has huge tax payments especially in gold mining sector, which is obviously a lead to the loss of investors. Taxation in our country is an obstacle to the development of gold mining sector. Because budget of our country comes from the tax payments our government always tries to increase the taxes. Such unfriendly tax policy makes it unattractive for investors the gold mining sector of the Kyrgyz Republic. It is important since the Kyrgyz Republic do not have enough money to develop gold mining

⁶⁴Parliamentary Counsel's Office Western Australia, "How to read legislation, a beginner's guide." Government of Western Australia, Edition 1, May 2011, Accessed October 10,2012,http://www.department.dotag.wa.gov.au/_files/How_to_read_legislation.pdf, p. 8

sector without outside help. And there will be outside help without FDI. Therefore in order to develop gold mining sector we need to attract investments. In order to attract investments good investment climate in the country is needed. The investment climate can be improved in case of the formation of friendly tax policy through minimization and stabilization of the taxation.

The taxation issues of the gold mining sector in Western Australia according to Taxation Administration Regulation 2012 Subordinate Legislation 2012 No. 134 made under the Taxation Administration Act 2001 are regulated by the list of the laws:

Debts Tax Assessment Act 2002 (West. Austl.)

Land Tax Act 2002 (West. Austl.)

Land Tax Assessment Act 2002 (West. Austl.)

Pay-roll Tax Act 2002 (West. Austl.)

Pay-roll Tax Assessment Act 2002 (West. Austl.)

Taxation Administration Act 2003 (West. Austl.)

§2 Examples of the most effective and applicable laws of the Western Australian which could be applied in the KR

We will now consider which laws of the Western Australia which attract investments to the gold mines of the Western Australia. Through analyzing the legislation of the Western Australia on licensing and taxation issues, it appear that the legislation of the Western Australia attracts investors by simplicity and stability. The investors are relying on the Western Australian legislation, due to correspondents to the international standards of the legislation on licensing and taxation in the gold mining and its simplicity and transparency. Definition of 'Transparency' in this particular research is: "Transparency helps to prevent the corruption that inevitably occurs when a select few have access to important information,

allowing them to use it for personal gain.”⁶⁵ In my opinion transparency, is the core requirement for the legislation of the Kyrgyz Republic. The big problem of our country is that our laws are complicated, we have numerous normative legal acts, decrees and regulations for the same issue, which makes our legislation not transparent even, not clear for ourselves and all of these numerous laws bring to the collisions and so on. In order get rid of such things, we need such laws which will be clear, stable and attractive for investors. It is hard to understand, however my paper is written to explain, that we have a weak legislation in the gold mining sector, and why the Western Australian laws are considered as one the most attractive.

As I wrote above, the Mining Laws of Western Australia are stable, even though they have numerous legal precedents. Case law only complements the Mining Acts and Subsidiary regulations. Western Australia has very old mining legislation. However there are several amendments to those Mining Acts. These mining acts and several amendments to them show the stability of the laws and bring the confidence to the mining companies and to the investors.

Also, the Mining Law of the Western Australia corresponds to the international standards, it is also one of the main reasons of that, why Western Australian laws are so attractive and highly evaluated by the foreign experts. From the book of the Michael W. Hunt called Mining Law in Western Australia, I have read that most of the amendments which were done to the Mining Acts, was done in order to comply with the international standards and correspond to the international agreements in which Western Australia participated. All of these actions lead to the current situation with the mining legislation in the Western Australia, which is one of the best mining countries.

⁶⁵ “Transparency,” Accessed January 14, 2013,
<http://www.investopedia.com/terms/t/transparency.asp#axzz2NAXovgD>, p.1

And the last one is the simplicity of the laws of the Western Australia in gold mining sector. By the simplicity I understand not only clearness, but also straightforwardness. If in the Mining Act the mining tenements are indicated only those tenements will be applicable and there no other tenements. All the gold mining licensing issues are indicated and regulated by the *Mining Act 1978* (West. Austl.) and *Mining Regulations 1981*(West. Austl.). The prove *Mining Act 1978* (West. Austl.) and *Mining Regulations 1981*(West. Austl.) us the simplicity, stableness and clearness of the mining legislation in the Western Australia. As I said above, there is no need to fully apply the Mining Legislation of the Western Australia to the mining legislation of the Kyrgyz Republic. First of all, Kyrgyz Republic has to apply the notion of stableness, transparency and attractiveness to the mining laws and then to apply the liberal, transparent and stable laws of the Western Australia.

In my opinion the following laws of the Western Australian are the most effective and applicable laws: *Debts Tax Assessment Act 2002* (West. Austl.), *Land Tax Act 2002* (West. Austl.) and *Pay-roll Tax Act 2002* (West. Austl.).

In order to improve taxation regime in the gold mining sector in the Kyrgyz Republic, there is also not necessary to apply all of them, however if we could change our taxation regime in a way they have done a long before it will bring more investments for the Kyrgyz Republic. Because the investors are not interested in production sharing taxes, bonus taxes and other taxes which Kyrgyzstan is offering. What the investors are interested in, are clear and not high taxes, which offers Western Australia. The investor which came to invest and the companies which came to work in the territory of the Western Australia, will pay offered taxes, because they are comparatively low and from their Tax Laws it is clear which tax you are paying for what and on which grounds.

Therefore, if the Kyrgyz Republic wants to develop its economy, wants to increase GDP and wants attract investments and my suggestion is to apply of the liberal, transparent and stable laws of the Western Australia.

§3 Possibility of application of the selected Western Australian licensing and taxation practices in the Kyrgyz Republic in the gold mining sector

An appropriate, clear and stable mineral taxation regime is needed. The Kyrgyz Republic have to think about consequences of making our taxation regime in the gold mining sector unclear, unstable and so heavily tax burdened.⁶⁶ Ideally the Kyrgyz Republic have to incorporate clear processes, stable laws and low tax burden within which possible future reviews of royalty or tax rates should take place, thus making them predictable and capable of being considered by investors before their decision as to whether to invest in the country.⁶⁷

As discussed in previous chapter that the main reason of no attractiveness of the gold mining sector comes from taxation and licensing regimes. The statistics also showed that the level of attractiveness for the investors depends in direct proportionality to level of

⁶⁶Guj, Pietro, "Mineral royalties and other mining specific taxes."

http://im4dc.org/wp-content/uploads/2012/01/UWA_1698_Paper-01_-Mineral-royalties-other-mining-specific-taxes1.pdf, p.5

⁶⁷ Ibid., p5

attractiveness of licensing and taxation regimes. It is hard to imagine how a country with a civil law legal system will apply the laws of the country with the common law legal system.

However, there is no need to fully apply their legislation, we can use the applicable, transparent and stable laws, which will as it is in KR the development and improvement of the gold mining sector. The statistics from Chapter I, and attached in the annex, show that the situation in gold mining sector in Western Australia is prosperous, which demonstrated that the Western Australia is one of the most attractive countries for the investors, and we can see from the table indicated above that Western Australia have one of the most attractive taxation and licensing regimes in the world. Therefore, such country as an Australia can be a good example for other countries as a country with one of the best mining legislation. It is not a secret that the legislation of the Kyrgyz Republic is CIS countries, however for the Kyrgyz Republic it is better to modify laws on such strategic sector as gold mining in a way that most of the prosperous countries do on this field.

§4 Description of the possible consequences of the application of the liberal, transparent and stable legislation practices of the Western Australia in the Kyrgyz Republic

I believe that application of the liberal, transparent and stable laws of the Western Australia will lead to the improvement of the current situation in the gold mining sector in the Kyrgyz Republic. All my work was devoted analyzing the legislation of two similar in geographical and geological forms and different legal forms.

If two countries with gold mines have completely different legislation, however one has succeed in attracting numerous investors to its territory and one is not so successful and lacks of the investors (investment starvation), it might mean, the ineffective legislation on gold mining sector.

The most important issues are licensing and taxation. The positive consequences of using the Western Australian legislative practice, instead of the current Kyrgyz Republic Laws are expected. There are several reasons for considering these changes, investors and companies who, were thinking, whether to invest or not, will be interested in new laws, which will possibly improve the legislation on licensing and taxation issue in the gold mining of the Kyrgyz Republic.

These laws can lead to the elimination of the corruption and of the corrupt ways. At least it will decrease the arising possibility. Also, the simplicity of the laws will make their application more popular than the one that Kyrgyz Republic has as well as Concession and Production Share Agreement.

CONCLUSION AND RECOMENDATIONS

My thesis research paper was based on the comparative analysis of the legislation on licensing and taxation in the gold mining sector between Kyrgyz Republic and Western Australia. The main purpose of the research was to review the applicable legislation, identify possible areas for improvement and problems in the Kyrgyz legislation and based on WA practice suggest possible solutions to the existing problems, how to reduce or avoid existing obstacles in attracting foreign investments into the Kyrgyz gold mining sector.

The general finding is that although the Kyrgyz Republic on several occasions, including in 2012 tried to improve legislation to increase foreign direct investments in to the gold mining sector there are still some room for improvement. The study on this thesis showed that the licensing legislation of the Kyrgyz Republic is very complex and might not work in practice. The Kyrgyz government still unable to implement the new auction and competition procedures. Formerly existing possibility of obtaining mining rights through direct negotiations still lead room to corruption and non-transparency.

As for the taxation regime applicable to gold mining companies, although the bonus and royalty rates perceived to be acceptable for mining companies the fact that taxation regime change constantly and tax authorities failure to apply the tax legislation properly cause many problems to mining companies.

I concluded that the laws of the Kyrgyz Republic on licensing and taxation in the gold mining sector are not effective and cannot be considered attractive for long term foreign investors. Application of the liberal, transparent and stable laws similar to the Western Australia's, will lead to the development of the gold mining sector and improvement of licensing and taxation regimes.

The overall recommendation of this research paper is to improve legislation on licensing and taxation in the gold mining sector of the Kyrgyz Republic which will have more friendly conditions for foreign investors in order to develop the gold mining sector of the Kyrgyz Republic especially taken into account other non-legislative problems in the mining sector such as local community protests against mining companies and instable political situation in the country.

Annex 1

Figure 9: Taxation regime

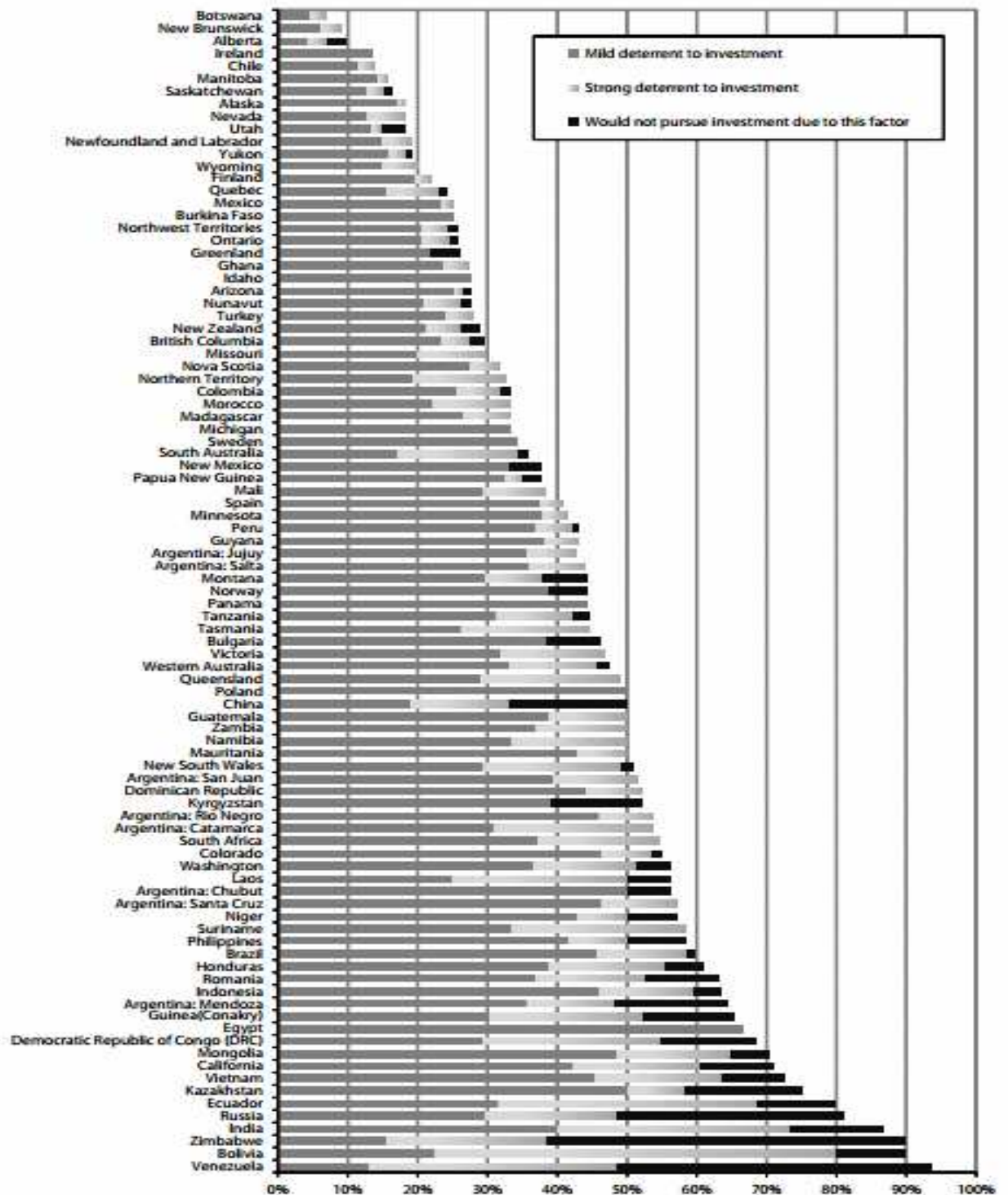
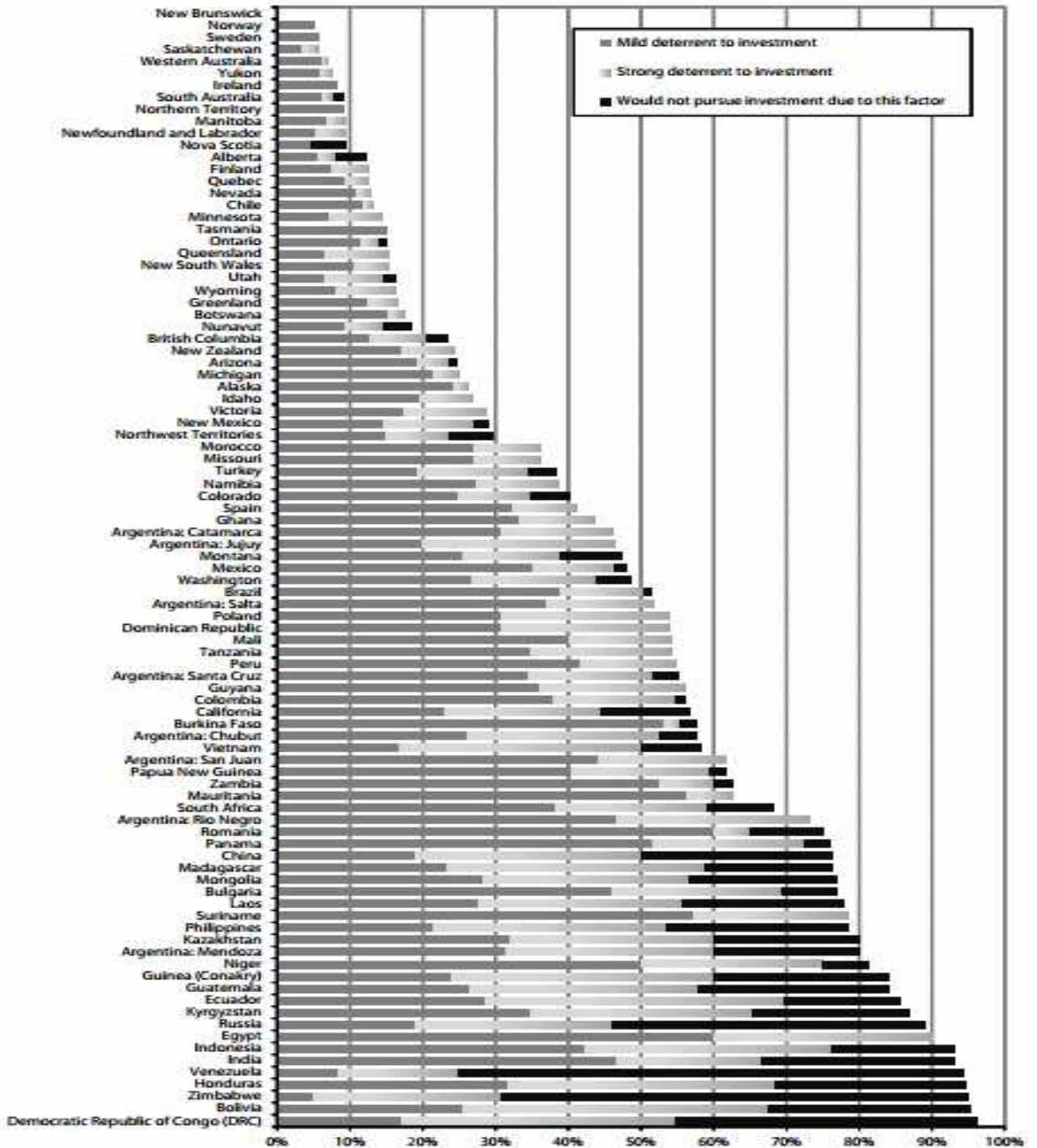


Figure 8: Legal processes that are fair, transparent, non-corrupt, timely, and efficiently administered



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