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LATINLAWYER Reference – MINING 2009

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DOMINICAN REPUBLIC

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1. Provide a overview of the mining industry in your country. What significance does the mining industry have as a component of the national economy?

As per information available at the internet sites of the Central Bank of the Dominican Republic, and the General Mining Directorate, mining activities in the Dominican Republic focus mainly on mining of ferronickel. The Dominican Republic has a very active mineral exploration sector, with the mining of minerals, both metallic and non-metallic, being an important aspect of the economy. The dominant producer is Falconbridge Dominicana, which mines nickel deposits in the Bonao area of central Dominican Republic as well as feasibility studies being carried out by Pueblo Viejo Dominican Corporation for the development of mineral reserves at the Pueblo Viejo mine in the Cotui area. The government sees the mining industry as representing one of the main sources for socio-economic development of the Dominican Republic. Government policy concerning said industry is geared towards the protection of the environment and the integration of affected communities to the mining projects. The major mining opportunities in the Dominican Republic are found in ferronickel, marble, salt and plaster, construction aggregates (such as limestone), gold and silver. From the official statistics published by the Central Bank, the mining industry represented for closing 2008, 0.48 per cent of the Gross Domestic Product. According to the Central Bank's available data, income from the mining industry totalled over 1.5 billion Dominican Republic pesos from the total Gross Domestic Product of 331 billion Dominican Republic pesos.

According to official publications, in the past 10 years the mining industry has experienced the following growth rates:

99/98	00/99	01/00	02/01	03/02	04/03	05/04	06/05	07/06	08/07
11.5%	16.1%	-13.5%	7.7%	8.8%	5.8%	-0.1%	11.0%	-1.4%	-30.3%

In its report of the Dominican economy for 2008, the Central Bank explains that the contraction of the aggregate value that the sector represents is mainly due to the registered decrease in the production of ferronickel and to a lesser degree in the decrease of production of construction aggregates such as sand and gravel (-5.3 per cent growth rate for 2008), as well as limestone (-37.5 per cent growth rate for 2008). The report explains that the decrease in production of ferronickel is due to the temporary closing of the company that processes it as a consequence of the decrease of its export price, whereas the decrease in production of limestone is in turn due to the decrease in external demand, while the decrease in construction aggregates is due to the negative performance of the construction sector for said period. In contrast, other products such as plaster and marble experienced grow at the rates of 15.3 per cent and 18.1 per cent, respectively, in comparison to the income generated by said products in 2007.

2. Describe the legal and regulatory framework. What laws establish and grant authority to the mining authorities?

The legal framework that governs mining operations in the Dominican Republic is comprised by the following legal provisions: the Constitution of the Dominican Republic; Law No. 146 of 1971, also known as the Dominican Mining Law, and its regulation for enforcement; and presidential decrees (Decree No. 613-00, regarding the creation of the National Council for Mining Development; Decree No. 839-00 dated 26 September 2000, regarding the declaration of mining as an activity of the highest priority of the Dominican state, thereby instructing the Corporate Mining Authority to enter into certain agreements regarding the development of certain mining sectors of the country; and Decree No. 947-01 dated 19

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September 2001, regarding the creation of Industrial mining parks for whom the tax incentives of the Dominican Industrial Free Zone Law No. 8-90 are extended to). Law No. 123-71, along with its regulation of enforcement, also regulate certain mining activities, namely the extraction of sand, gravel, chippings, rocks and similar materials.

As in most nations, the Constitution of the Dominican Republic is the general framework that establishes broad norms for the functioning of the state. The Constitution enshrines the protection of property and the inviolability of such in article 8, number 13. However, article 103 of the same sets forth that “all mineral deposits belong to the State and may only be exploited by individuals by means of a mining concession or the contracts granted under the conditions established by the law”. Thus, any person seeking to undertake mining operations in the Dominican Republic must take into account that the Dominican state is a necessary participant in any mining operation, and that the property of the minerals is that of the state, although the entity awarded with a concession has the right to profit from the extracted minerals. Property of the state, as may be construed from the provisions set forth in Law No. 146’s Regulation for Application refers to the mineral reserve, and not the extracted minerals which belong to the concessionaire. The Dominican Mining Law No. 146 of 4 June 1971 (the “Law” or “Law 146”) is the legislation currently in force in the Dominican Republic relating to the exploration and exploitation of mining materials. The Law is complemented by its Regulation for enforcement number 207-98 of 3 June 1998, which clarifies certain aspects of the Law and establishes specific administrative processes in order to implement the norms contained in the Law.

Law 146 as well as its regulation reiterate the provisions of the Constitution, establishing once again that the state is the owner of all mineral deposits, of any nature, on Dominican soil, and that the exploitation or mining of such deposits are undertaken by means of concessions or agreements granted exclusively by the government. Furthermore, the Law is highly protective of the local legal regime providing that all concessions granted within national territory are exclusively governed by the laws and courts of the Dominican Republic, and when foreigners are the concessionaires, such concessionaires are deemed to have validly waived any right to diplomatic protection in relation to the concession. The Law also creates the General Mining Directorate, which is the administrative body in charge of implementing the Law and regulating mining activities in the Dominican Republic.

We should also point out that our General Environmental and Natural Resources Law No. 64-00 (Law 64-00), which governs all environmental related issues in the Dominican Republic also plays an important role with respect to mining activities in said country. The purpose of this law is to set the general rules towards the conservation, protection, improvement and restoration of the environment and the natural resources, intending to assure a sustainable use having unified segregated rules concerning environmental protection and creating a governmental authority – the Ministry of Environment and Natural Resources – with wide authority to oversee and regulate the application of Law 64-00. Article 38 of Law 64-00 establishes the process of environmental evaluation, in order to prevent, control and mitigate the impacts over the environment and natural resources caused by works, projects and other activities. According to the list published by the Ministry of Environment and Natural Resources regarding projects that require environmental impact studies in order to obtain an environmental license, the activities involving the mining sector are the following: development, exploitation and processing of metallic and non metallic mining; exploration and mining prospection; petroleum exploration; extraction of sod peat, mineral coal or natural gas; extractive metallurgy; artisan mining; mining parks; aggregate processing plants; and petroleum wells, among others.

3. Describe the investment regime (specifically or generally) applicable to foreign company involvement in mining projects.

Law 146 regulates investments in mining activities, although there is also a general foreign investment law (Law No. 16-95 and its amendments), which requires registration of foreign investments for statistical purposes. Under Law 146 mining rights may be acquired both by domestic and foreign parties; however, foreign investors in these activities are required to incorporate a Dominican subsidiary prior to holding exploration concessions over mineral rights. Also, foreign governments or states are banned from acquiring the mineral rights governed by Law 146. The possibility of operating through a branch, in lieu of a Dominican subsidiary may be reached through special agreements entered with the executive branch and subject to Congress approval. Special agreements with the executive branch and Congress approval are also required in connection with mining rights awarded to partially or wholly state-owned foreign mining enterprises. Although Law 146 provides for certain rules governing the exemption to foreign exchange requirements, such provisions are no longer relevant as per freedom of convertibility and transferability principles in force since 2002 with the enactment

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of our current Monetary and Financial Law No. 183-02. Accordingly, in connection with foreign exchange regulations, including in connection with external debt service, we should point out that no approvals are currently required from any governmental authorities for purposes of assuming debt in foreign currencies, accessing the currency exchange markets or transferring funds abroad, provided such exchange and transfer activities are done through duly authorised financial and exchange intermediation entities of the Dominican Republic. These activities also require from the person converting or transferring foreign currencies compliance with all applicable reporting requirements under our current money laundering laws and foreign exchange regulations. Additionally, as per the provisions set forth in article 63 of the Currency Exchange Regulation adopted in this respect by the monetary board of the Dominican Republic, although provided solely for statistical purposes, failure by any local person or entity to report before the International Department of the Central Bank of the Dominican Republic obligations assumed in a foreign currency, may be construed by local monetary and financial authorities as an infraction punishable under our Monetary and Financial Law No. 183-02. Therefore, although explicitly provided as an obligation of the obligor, it is recommended that lenders require from any borrower the fulfilment of this reporting obligation, which is carried out by delivering a special form provided in the Central Bank of the Dominican Republic's website. As to stability on foreign exchange and tax requirements, special agreements may be reached with the executive branch, which, if approved by Congress, may provide for tax exemptions and certainty with respect to the rules governing foreign exchange.

4. Is your country a party to international investment treaties applicable to mining projects undertaken or sponsored by foreign companies?

Although the Dominican Republic is party to numerous international investment and free-trade treaties, none apply specifically to mining activities, and such operations are usually excluded from these treaties in most cases. As to dispute resolution mechanisms we should point out that the Dominican Republic is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and that arbitration clauses are not in contradiction of or subject to restrictions under the laws of the Dominican Republic, except for judicial homologation (exequatur) requirements.

5. What in general terms is the mining exploration and exploitation permit or concession regime? What is the licensing regime?

Law 146 recognises two distinct types of concessions that may be granted by the state: concessions for the exploration of mining materials; and concessions for the mining itself or exploitation of the mining materials. Article 17 allows additionally, the creation of "Fiscal Reserves" by the executive branch, within a determined mining zone, and following such creation, allow the exploration and evaluation of mining sources, and allow exploitation activities through special contracts. The process of obtaining a mining concession is relatively straightforward, and is contained in articles 143 through 176 of the law, as well as certain other provisions of Regulation 207-98. In summary, the entity interested in mining a piece of land must fulfil the requirements established by the Law, Regulation 207-98, and those of the General Mining Directorate. The General Mining Directorate then either approves the concession or rejects it. If approval is granted, the Ministry of Industry and Commerce proceeds to issue a resolution authorising the concession. The General Mining Directorate also grants any and all rights of passage and rights of use of the land of third parties once the concession is granted, notwithstanding if the permit is granted either for exploration purposes or for mining operations. If a foreign entity seeks to receive a concession for exploration purposes only, then it is allowed to do so as a foreign entity, though it must prove its existence to the General Mining Directorate through the filing of certain documents. However, the Law expressly establishes that foreign entities that seek mining (or exploitation) concessions must do so through the incorporation of a Dominican company fulfilling all the requirements under Dominican law. Nevertheless, if the foreign entity had begun exploration operations as such, and requested the granting of a mining concession, while the incorporation of the Dominican company is being undertaken, the foreign entity may initiate mining activities. The concession granted is *intuitu personae*, and consequently, may not be assigned without prior written approval from Ministry of Industry and Commerce.

Pursuant to the provisions of Law No. 146, a mining concession gives the exclusive right over all substances found within the perimeter thereof, to explore, exploit or develop such substances in accordance with the provisions of applicable laws.

Among the obligations of the holder of a concession are the following, which may be construed as covenants to

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maintain its concession:

- Protection of life and health of the workers.
- Submission of semi-annual progress and annual operation reports.
- Compliance with environmental standards.
- Payment of annual patents, royalty fees and income taxes.
- Keeping of legal accounting books in accordance with applicable accounting rules.
- Execution of works in accordance to methods and techniques avoiding damages to the landowner and to the adjoining concessionaires.
- Starting the works within six months after the date of the granting of the concession, under sanction of forfeiture.

Among the requirements for the obtainment of a mining concession, the petitioner must also file an environmental impact study. Mining activities are also subject to an environmental licence. Article 38 of Law 64-00 establishes the process of environmental evaluation, in order to prevent, control and mitigate the impacts over the environment and natural resources caused by works, projects and other activities. This evaluation is pursued in accordance with the following instruments:

- Environmental Impact Statement (DIA in Spanish).
- Strategic Evaluation Impact.
- Study of Environmental Impact.
- Environmental Report.
- Environmental Licence.
- Environmental Permit.
- Environmental Audits.
- Public Consultation.

According to this law, any project which in nature entails a substantial alteration to the environment in which it is to be developed, shall follow an evaluation process, be it for the obtainment of an environmental permit or licence, as the case may be, depending on the magnitude of the effects that the project may cause, destined to the prevention of negative impacts to the environment and natural resources. The criterion for the determination of whether a project requires an environmental licence or an environmental permit is established by the Ministry of Environment and Natural Resources. Environmental permits and licences must comply with the programme from the environmental management and adaptation (PMAA in Spanish), which shall be executed by the person in charge of the activity or project, establishing the criteria to pursue such programme and observe its terms. It is noteworthy that the environmental permits and licences compel the beneficiary of the same to: assume the administrative, civil and criminal liabilities for the damages caused to the environment and natural resources; observe the provisions of the regulations and rulings in force; execute the PMAA; and allow the environmental control by the competent authorities. The Ministry of Environment and Natural Resources shall pursue audits for environmental evaluation. In order to assure compliance with the environmental licence and permit, regarding the PMAA, the person in charge of the project must provide a compliance bond for an amount equivalent to 10 per cent of the total costs of the physical works or investments that are required to comply with the PMAA. The Ministry of Environment and Natural Resources will have a public record of the environmental permits and licences granted, as well as the individuals or corporations that are punished under an administrative or judicial action. For the purpose of regulating the issuance of environmental permits and licenses, the Ministry of Environment and Natural Resources issued the Regulation for the System of Environmental Permits and Licences as of June 2004, (the Regulation). According to the Regulation, projects and establishments that at the moment of its enforceability were already operating were required to initiate the relevant process for compliance with Law 64-00, in accordance with the procedure established for environmental permits for existing establishments or projects. These installations will have a term of one year after the issuance of the Regulation to complete the process of obtainment of the environmental permit, except in the event it is evidenced that such establishments or projects constitute an imminent danger to the health and security of people or the conservation of the ecosystem. In this latter case, the Ministry of Environment and Natural Resources will decide the conditions for the operation of the establishments or projects or will order their cease in operations. The type of study required for existing establishments or projects is an environmental report, which is the result of a multidisciplinary diagnosis, which describes the project and its main impacts, from an environmental and socio-economic perspective,

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and identifies the relevant mitigating measures, by means of the creation of the PMAA for the same. For existing projects and establishments, the evaluation of the Environmental Report and the PMAA will be carried out by the Directorate of Environmental Quality and the sub-ministry of environmental management of the Ministry of Environment and Natural Resources. It is important to point out that the Regulation states in its article 8 that the environmental licences and permits are of contractual nature and that are issued only one time during the enforceability of the project. Nonetheless, its validity will depend on the results arising from the application of the PMAA, which will be audited in the terms established by the relevant permit or licence. Note that the Ministry of Environment and Natural Resources can temporarily or permanently repeal the licence in case of violation of its terms or damage to the environment. The violating party is subject to penal and civil liabilities. The Ministry of Environment and Natural Resources will perform periodic inspections and audits regarding the compliance with the PMAA and in general, the compliance with the legislation in force. In this sense, in the cases where the inspections and audits demonstrate that the project complies with the PMAA and the relevant legislation, as well as with the conditions established in the permit or license, the Ministry of Environment and Natural Resources will issue certifications of environmental compliance. For the cases of projects with respect to which construction activities, installations or operations are initiated without obtaining the corresponding environmental permit or licence, the activities undertaken in such projects must cease until the relevant process is fulfilled. This project may be penalised under the administrative procedure with the payment of fines, without prejudice of the criminal and civil sanctions that may arise from such violation. As mentioned before, according to the list published by the Ministry of Environment and Natural Resources regarding projects that require environmental impact study in order to obtain an environmental licence, the activities involving the mining sector are the following: development, exploitation and processing of metallic and non-metallic mining; exploration and mining prospecting; petroleum exploration; extraction of crowd, mineral coal or natural gas; extractive metallurgy; artisan mining; mining parks; aggregate processing plants; and petroleum wells, among others.

The executive branch may declare a mining zone as a fiscal reserve, and grant exploitation rights over such reserve through special contracts. The requirement for such exploitation rights, as per the provisions of article 19 of the law, is that any such mining exploitation within a fiscal reserve, must be granted by means of a public bidding process. Congress approval is not necessary for these purposes; however, such Congress approval becomes mandatory when tax incentives are provided through the special contract. The use of the fiscal reserve and “special contract” combination, although not uncommon, is treated as the exception as opposed to the rule when it comes to the granting of mining concessions under Law 146. They simply allow for the executive branch to reach mining arrangements with private parties in conditions that may differ from those generally provided under Law 146. In general, this combination will have equivalent standing as compared to a concession, but following the amendment made to article 19 of Law 146, special agreements may provide for conditions or rights that are less favourable to those generally granted under Law 146 with respect to mining concessions in general.

As may be construed from the descriptions detailed above, the jurisdiction authority over mining activities is generally placed in the executive branch, comprised by the presidency and the Ministries of Industry and Trade, and Environment and Natural Resources.

6. What types of duties, royalties and taxes must be paid by the mining project company as a condition to obtaining or continuing a mining concession? What remedial actions are available to the granting authority when such levies are unpaid?

Mining concessionaires must pay three distinct taxes or fees: royalty fees to the Dominican government; export fees; and income tax. First, the royalty fee contemplated by the law is calculated on the basis of the size of the land covered by the concession, as well as the type of concession granted. However, the amount paid in royalty is not very large, since in no case does any royalty payment exceed 45,000 Dominican Republic pesos. This fee is paid on a yearly basis, but in two installments. On the other hand, the second fee that must be paid is an export fee, equivalent to 5 per cent of the FOB value of the mineral exported, paid in full within three months of the export. Finally, we must note that in the concession and mining agreement executed between the state and the concessionaire, the parties are free to establish any royalty payment that is agreed upon, in addition to those contemplated by the law.

In addition to those taxes and royalties payable by mining concessionaires, which include a 25 per cent income tax, the latter would also need to consider and may be required to pay an annual asset tax of 1 per cent over the value of the assets of the concessionaire and tax withholding obligations over salaries paid to employees and dividends distributed to

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shareholders.

In case of non-renewable natural resources, parties are required to pay a 5 per cent contribution of their generated net profits produced from the exploitation activity to the municipality. Right holders of concession permits under Law No. 123-71 are required to pay the above mentioned income and municipal taxes. In addition, such right holders must pay a contribution equal to 4.10 Dominican Republic pesos per cubic meter of mineral extracted, removed or excavated. The above tariff may be increased from time to time.

Upon the occurrence of payment defaults, as a cause of forfeiture, the Ministry of Industry and Commerce, before pronouncing the forfeiture must require, by means of a written notice, that the concessionaire rectify the fault within a period of 30 working days. After the expiration of said period, the Ministry of Industry and Commerce may dictate the forfeiture by means of a resolution which must be published in the Official Gazette. The concessionaire may also be penalised with a 10 per cent surcharge. There are no rules prohibiting a creditor to step in and cure in lieu of the mining company. Income tax payment defaults are subject also to penalties provided under the Dominican Tax Code.

7. What in general terms is the water rights regime?

Several institutions are in charge of issuing required permits and authorisations for the use of waters resources. Law No. 5852 on the Distribution of Public Waters provides that any party wishing to use public waters must obtain a water title. In accordance with article 48 of said law, a petition in this sense must be filed before the National Institute of Hydraulic Resources (INDRHI). If granted, the water rights are subject to certain fees based on invested capital in installed facilities and annual permitting fees. Other authorisations or permits may be required from the Natural Potable Water and Sewage Institute (INAPA) particular in connection with the use or installation of water lines and sewers, or both. For the construction of wells and for the exploitation and use of underground waters, parties are required also to obtain a permit from the sub-ministry of soil and water of the Ministry of Environment and Natural Resources.

Pursuant to the provisions of article 126 of Environmental Law No. 64-00 water resources in general are owned by the Dominican state and are not subject to private ownership in any case. However, as per the provisions of Law 146, in general, all concessionaires of exploration and exploitation mining rights, subject to prior compliance with applicable legal provisions in force over water sources and environmental protection, have a non-exclusive right to use fluvial waters needed for such mining activities. They are also entitled to use the water that flows or is discovered during the mining operations, or water that is drained from the mines, or from properties of third parties (article 167 of the law). Concessionaires are also entitled to use the water that freely flows through their concessions, whether to put into use for the production of hydraulic energy, or any other use necessary for exploration or extraction of mineral activities, provided that the water is restored to its bed following its use, once adequately purified and made free of any hazardous substances (article 134 of the Law). Should the water sources required by a concessionaire be available only in land owned by private third parties, the concessionaire may only resort to such sources upon an agreement with such third parties, or upon the initiation of expropriation proceedings with the explicit authorisation of the general mining directorate. This expropriation would not be granted if resorting to water source would interrupt or result detrimental to the potable water sources of nearby towns or villages (article 135).

Water rights may be subject to liens in the benefit of creditors of the concessionaire following prior authorisation from the granting authority.

8. What in general terms is the surface rights regime (use and occupation of surface; access routes; pipeline and electric line routes; roadways or railways for product transport)?

Under article 6 of the law, the mining concession constitutes a different right than that of an owner of a real property, whether the mining concession and the ownership right over the property, belong to the same person. The usufruct of mining sources gives the right to the concessionaire to use also the surface of the land, whether it owns such land or not, provided however that the concessionaire must indemnify the corresponding third party for damages causes during the mining operations (article 63 of the law). Article 78 of the law provides that concessionaires must reach agreements with the owners or occupants of land they require for their mining operations, or both. Such agreements must include provisions relating to the superficial extension of the land required for purposes of building dwellings, storage spaces, shops, plants, tailings deposits, water tanks, construction deposits, and other types of improvements. Easements relating to electric line routes are governed by our General Electricity Law No. 125-01, its amendments and rules of enforcement. Under

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said legislation easements are usually granted through the concession agreement required for purposes of distributing or transmitting energy; the use of the national grid transmission lines are subject to the payment of special tolls and other similar fees.

9. What is the availability of power for remote mining facilities? May mining facilities generate their own power?

Subject to the obtainment of required permits or concession rights under our General Electricity Law No. 125-01 and its amendments and rules of enforcement, mining concessionaires may elect to procure their supply of electricity under different modalities that include total or partial self generation, the purchase of energy in the National Interconnected Electricity System of the Dominican Republic (national grid) under special contractual rights and as an Un-Regulated User (URU); or purchase of electricity from a third party outside the NIES, or national grid, under any contractual modality and as a URU, or both.

10. What are the grounds for lawful termination of rights under a mining concession, water rights or surface rights or power (generation or transmission) rights? What remedies are available to the concessionaire if rights are wrongfully terminated?

Pursuant to the Mining Law, exploitation concessions are granted for a maximum term of 75 years. The termination of the concession occurs upon expiration of the applicable tenure. Anticipated termination of rights under a mining concession may occur upon the following:

- Through a waiver or reduction upon request of the concessionaire.
- Upon a declaration of nullity or invalidity following a determination that:
 - The concession was granted to an unqualified person as per article 13 of Law 146.
 - That the concession was granted directly or indirectly to foreign governments.
 - That the concession was granted within the perimeter of an existing fiscal reserve or existent concessions.
 - That the concession was granted to the same person in excess of the maximum limits provided under articles 32 and 43 of Law 146.
- Upon termination pursued by the Ministry of Industry and Trade subject to the lawful causes detailed in Law 146, which include the following in connection with exploration concessions:
 - Failure to start exploration within six months following the issuance of the concession.
 - Interruption of exploration activities for more than six continuous months.
 - Carrying out exploitation activities during exploration tenures under an exploration concession.
 - Failure to pay mining fees, taxes and royalties.
 - Upon failure to comply with programmed works.
 - Failure to carry out reporting obligations as required under articles 72 and 192 of Law 146.

And the following causes in connection with exploitation concessions:

- failure to initiate exploitation within a one-year term following issuance of the concession.
- Interruption of exploitation activities for more than two continuous years.
- failure to pay applicable mining fees, royalties and taxes.
- suspension of commercial production (defined as the sale of exploited metallurgic minerals without benefits for the state in the form of income tax for more than two consecutive years).
- failure to incorporate a Dominican subsidiary within a six-month term following issuance of the concession.
- failure to comply with reporting requirements.

Upon the occurrence of the causes of termination specified above, the Ministry of Industry and Commerce, before pronouncing the forfeiture must require, by means of a written notice, that the concessionaire rectify the fault within a period of 30 working days. Upon expiration of said period, the Ministry of Industry and Commerce may dictate the forfeiture by means of a resolution which must be published in the Official Gazette.

Affected parties may file administrative appeals before the Ministry of Industry and Commerce, and before the Administrative Courts of the Dominican Republic which are part of the Judicial Branch.

Other causes of termination may be found in Environmental Law No. 64-00, mostly in connection with the failure to comply with reporting requirements, and the requirements under applicable environmental licences, permits and PMAAs.

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Water rights may be lost upon failure by the concession to pay applicable fees for the use of water or installation of water facilities, and failure to cure any environmental defaults within a six-month period. Finally, concession for electricity generation, distribution or transmission are subject to termination upon the causes detailed in our General Electricity Law No. 125-01 and its amendments.

11. Describe the extent to which the legal and regulatory regime is conducive to the installation or provision of essential infrastructure.

As per the provisions set forth in article 64 of Law 146, mining concession allow the concessionaire to build any infrastructure necessary in order to carry out the process, particularly ports and other systems of transportation. Installation of such essential infrastructure is however subject to numerous permitting requirements, involving the Ministry of Environment and Natural Resources, the Ministry of Public Works and Communications and municipal permits, the Ports Authority and the Superintendency of Electricity.

12. Please provide a description of the collateral security arrangements permitted in your jurisdiction, relating particularly to the mining project's ability to grant to creditors a perfected security interest (whether by mortgage, pledge, trust, etc) in concession rights, water rights, surface rights, related easements, permits, licences (including environmental), land and bank accounts. Are there any limitations to the ability to transfer such rights to a successor owner/operator of the mine?

Concession rights granted by the Dominican government may be subject to pledges under Dominican law, provided that such granting party agrees to the awarding of the security interest. These types of securities are governed by the provisions set forth in articles 91 et al of the Commercial Code that relate to the commercial pledge. A commercial pledge is usually the type of security considered for purposes of pledging all types of intangible assets, in connection with international and domestic credit facilities or other finance arrangements. Applicable to all pledges over intangible assets, creation is done through the execution of a bilateral pledge agreement, signatures of which are usually certified by a local notary public (since the agreement will be subject to filings and public notices, it is important, as to all other collateral agreements aiming to create a security interest in local assets, to be drafted in Spanish, and as per conventional forms usually resorted to for such purposes). Perfection of the security takes place through a notice of the pledge agreement by an appointed local and territorially qualified bailiff. This notice is required under articles 91 of the Commercial Code, and article 2075 of the Civil Code. The notice documentation is registered by the bailiff before the Civil Registry, as required for all bailiff acts. When attempting to create a security interest over concession rights, prior approval from the governmental institution or agency providing such concession is required, as ordinarily, transfer restrictions are imposed in these concessions, or apply in the absence of any particular language, as a general rule deriving from administrative law principles. Other permits, such as environmental permits are not subject to pledges or prior approvals from the granting authority, as these permits are usually only issued once for the entire life of the approved project. In case of a foreclosure resulting in a change of control over the project, a notice of such change of control, and the responsible party named in the environmental license is to be served to the Ministry of Environment and Natural Resources. Similar creation and perfection requirements apply in connection with the granting of pledges over other intangibles, including rights under project agreements, onshore bank accounts and trademarks, insurance proceeds and share of local companies. All security agreements must be recorded also before the public registry maintained by the mining directorate. Mortgages may also be granted over real property owned by the concessionaire or an affiliate guarantor; non-possessory pledges (similar to chattel mortgages) may also be granted over the concessionaire's inventory, its equipment and other personal property.

13. Is it accepted practice for creditors financing a mining project to enter into an agreement with the mining authority in connection with the creation, perfection or acknowledgement of the collateral security interests granted to the creditors in mining projects, including to facilitate the transfer of such rights to a successor owner/operator? Is there any requirement, benefit or limitation to such agreements?

It is accepted practice for creditors financing mining projects and other major projects subject to governmental concessions to enter into direct agreement with the Government for further strengthening the step-in rights of such creditors, namely by allowing lenders to become qualified successor owners or operators following foreclosure procedures.

14. What means of enforcement are available to creditors in connection with collateral security interests in mining rights?

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In general, our laws governing security interests have organised certain special protection for the benefit of the credit itself, and also for the benefit of the debtor, when requiring a public auction: the creditor must proceed to the court so that it may order the sale, and give a chance to the debtor, since the latter may have means of defence to present against the proceedings. Accordingly, a creditor may not seize property directly, instead it must attempt to receive proceeds from the public sale of the pledged or mortgaged asset of its obligor.

15. What insurance must be placed with domestic insurance companies? Can insurance be placed abroad? Can claims be paid directly offshore? Are there restrictions with respect to obtaining reinsurance outside the country, and obtaining assignments or cut-through endorsements to permit claims (and payment) to be made directly to owners or creditors outside the jurisdiction?

In general, as per the provisions of our current Insurance Law No. 146-02, all insurance obtained for assets and interests located in the Dominican Republic must be obtained through duly authorised insurance companies or intermediaries of said jurisdiction. Risks assumed by local insurance companies may be reinsured with foreign insurance or reinsurance companies, although in practice, many projects resort to fronting policy schemes.

16. Describe any requirements related to the use of domestic and foreign labour, suppliers and contractors.

In accordance with article 135 of the Dominican Labour Code, at least 80 per cent of the total number of employees of any local business must be made up of Dominican citizens. The salaries earned by Dominican employees must also amount to at least 80 per cent of the total sum of payments made by the employer to all its employees. Note that the salaries earned by employees that work in technical functions, as well as positions of direction and management are excluded from the calculation as to the above provision.

17. Can any liabilities extend beyond the mining project company to its owners, mortgagees, or creditors?

Company owners may be liable for labour and tax liabilities as per the provisions set forth in the Dominican Labour Code and the Dominican Tax Code; these liabilities should not extend beyond the mining project company to mortgagees or creditors, although the rights of employees for the payment of their salaries and the rights of the government in connection with the payment of applicable taxes benefit from a legal privilege that would allow for payment ahead of any other creditors of the mining concessionaire. Unless involved directly, environmental liabilities should not extend beyond the mining project company or its directors, to any other third party.

18. Describe any other relevant legal considerations related to financing of mining projects in your jurisdiction.

Special attention and due diligence efforts should always be carried out in connection with the financing of mining projects, mainly in connection with all environmental licensing and permitting requirements.

19. Please provide electronic links to any of the principal statutory and regulatory compilations referred to in your answers to the foregoing questions, including items such as Mining Law, foreign investment regime applicable to mining and environmental law and regulation.

Below is the General Mining Directorate's website, in which most mining laws and regulations may be found in electronic form: <http://www.dgm.gov.do/>.

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