

Mining 2021

Contributing editors

Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

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**Darrell Podowski, Brian Dominique, Brandon Manhas
and Lauren White**

Cassels Brock & Blackwell LLP

Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on Ireland, Nigeria and Uzbekistan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.



London
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GRATA International

Sweden

Peter Dyer and Pia Pehrson

Foyen Advokatfirma

MINING INDUSTRY

Standing

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

Mining has been of great importance in Sweden throughout modern history, and ore production has been rising significantly in recent years. There are currently about 100 companies with exploration permits active in the search for minerals, and the mining sector in Sweden employs approximately 6,000 people (indirect jobs not included).

Mines currently in operation produce iron ore, sulphide ore and gold, but other minerals can also be found in sufficiently large quantities for profitable mining. There is an ongoing permit process for an open-cast mine for rare earth minerals (the deposit is considered to be the fourth largest in the world).

Target minerals

2 | What are the target minerals?

Sweden is by far the biggest producer of iron ore in the European Union and is also among the leading producers of copper, zinc, lead, gold and silver. In 2018, most prospecting expenses in Sweden concerned base metals and gold; 20 per cent concerned iron ore. Prospecting for graphite and metals used in the production of batteries accounted for a very small portion of the costs. A comprehensive map of ore and mineral locations can be found online through the Mineral Resources Information Office.

Regions

3 | Which regions are most active?

Northern Sweden is generally rich in minerals and has the highest concentration of mining operations in the country. Specific areas of interest are the Skellefteå field in the county of Västerbotten, an area of significant mineral density, and the county of Norrbotten, where most iron ore production is located.

While the traditional mining areas in Sweden are in the north, there has been renewed interest in potential mining opportunities to be found in Skåne, in the country's south. The interest in exploration in the area is primarily focused on vanadium extraction, the metal being chiefly used in battery production. However, copper, zinc, gold and silver have also been named as potential mineral finds in the same area.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

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

Sweden's legal system is civil law-based.

Regulation

5 | How is the mining industry regulated?

All acts governing the mining industry are national, but decisions under these acts are taken by administrative bodies at municipal, regional and national level. As Sweden is a member of the European Union, any EU legislation concerning the mining industry is also applicable.

6 | What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The Swedish Minerals Act (No. 45 of 1991) (the Minerals Act) is the principal law regulating the mining industry and it governs the procedure for acquiring exploration permits and exploitation commissions on land, irrespective of who owns the land to be explored or exploited. Detailed provisions of the application process and fees can be found in the Minerals Ordinance (No. 285 of 1992). The principal regulatory body is the Mining Inspectorate.

The Swedish Environmental Code (No. 808 of 1998) is applicable in matters concerning the granting of a concession, which means that an environmental impact assessment (EIA) must be appended to an application for a concession. A permit for exploitation must always be granted under both the Minerals Act and the Environmental Code. The principal regulatory bodies are the County Administrative Board and the Land and Environmental Court, which are both able to grant different permits under the Environmental Code.

The Planning and Building Act (No. 900 of 2010) contains provisions that regulate building and construction.

Exploration work can be affected by the Off-road Driving Act (No. 1,313 of 1975) and the Heritage Conservation Act (No. 950 of 1988).

Classification system

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

A stand-alone framework called the Fennoscandian Review Board Standard (the FRB standard) is recommended for use by the Swedish Miners Association and has also been adopted by the corresponding organisations in Norway and Finland. The classification system is based on the international template for the public reporting of exploration results, mineral resources and mineral reserves that is created by the Committee for Mineral Reserves International Reporting Standards with the purpose of creating mutual international standards. The FRB standard is subsidiary to national legislation. The FRB standard is similar to the Canadian Institute of Mining Standards, the Australasian Joint Ore Reserves Committee Code and the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral

Reserves since all the standards are based on the international template for the public reporting of exploration results, mineral resources and mineral reserves.

MINING RIGHTS AND TITLE

State control over mining rights

8 | To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

All minerals that are covered by the Swedish Minerals Act (No. 45 of 1991) (the Minerals Act) are listed in this Act and those not listed belong to the landowner. Minerals of interest for mining are among those listed. The reason for this policy is that landowners in general are considered not to have the required capacity for exploiting mineral resources on their land. The same rules apply to all types of landowners, whether it is the state, private entities or individuals. Exploration permits can be granted for exploration on land (real property) belonging to any type of landowner, both private and public.

Publicly available information and data

9 | What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The Geological Survey of Sweden collects basic geological data concerning Sweden's bedrock geology and properties of rock. Information related to prospecting obtained through government surveys and private exploration, is accessible through the Mineral Resources Information Office (MINKO). Most information is accessible online where maps can be produced on request for specific purposes and received in digital form or as hard copies. The National Drill Core Archive is located at MINKO and contains over 3,000km of drill cores that can be used for analysis. The results from such analysis have to be submitted to MINKO and will be made public after a period of time.

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

Acquisition of rights by private parties

10 | What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

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

An exploration permit is granted for a specific area of land where there is some likelihood of a successful discovery being made. The area

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

To commence mining activities, an exploitation concession has to be acquired. A holder of an exploration permit has a preferential right to acquire an exploitation concession for the concerned area. A concession is granted if the discovered mineral deposit shows a probability of profitable exploitation and if the location and nature of the deposit does not render it inappropriate to grant the requested concession.

Renewal and transfer of mineral licences

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

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

Transfer of an environmental permit is possible, provided that the new holder is taking over the permitted operation. According to the Ordinance of Environmentally Harmful Operations and Protection of Health (No. 899 of 1998), the new holder must notify the supervisory authority (the County Administrative Board) about the transfer.

An exploration right is valid for a period of three years and can be extended for a maximum of 15 years under special conditions.

Once a concession is granted it is valid for 25 years. It can be extended for 10 years at a time if work is performed on a regular basis in the stipulated area. If work is not performed on a regular basis in the area, the concession can still be extended for an additional period of 10 years if mining is ongoing, the work performed meets specific criteria set up under the Minerals Act or if it is otherwise motivated by the common interest that the mineral findings should be exploited in an effective manner.

Environmental permits may be time-limited or valid for an unlimited time.

Duration of mining rights

12 | What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

An exploration right is valid for a period of three years and can be extended for a maximum of 15 years under special conditions. The conditions for extension concern the likelihood of finding minable minerals and the amount of exploration already conducted, and they gradually become more severe.

Once a concession is granted it is valid for 25 years. It can be extended for 10 years at a time if work is performed on a regular basis in the stipulated area. If work is not performed on a regular basis in the area, the concession can still be extended for an additional period of 10 years if mining is ongoing, the work performed meets specific criteria set up under the Minerals Act or if it is otherwise motivated by the common interest that the mineral findings should be exploited in an effective manner.

Environmental permits may be time-limited or valid for an unlimited time. As the Minerals Act is applied in parallel to the Swedish Environmental Code (No. 808 of 1998) (the Environmental Code), the

environmental permit is linked to the restrictions of the exploitation concession even though the environmental permit itself is not explicitly time-limited.

The Minerals Act states that an exploration permit or an exploitation concession can be revoked if the holder does not fulfil their obligations in accordance with the provisions of the Minerals Act, the terms laid out in the exploration permit or exploitation concession or if there are other specific reasons. The revocation of an exploration permit or an exploitation concession can only occur if considerable public interests are at stake. Revocation may also proceed owing to foreign and defence policy if it is necessary to secure Swedish influence over a deposit. An exploration permit may also be revoked if the holder is in breach of any term regarding consent to exploration work.

The terms of an exploitation concession can be changed if an operation according to the concession gives rise to inconveniences of considerable size that were not anticipated when the concession was granted.

The Environmental Code also provides the possibility to change the conditions and terms of an environmental permit or to revoke the environmental permit, in whole or in part. A revocation or change of conditions and terms may only be made owing to specific circumstances such as the operations giving rise to inconveniences of considerable size that were not anticipated when the environmental permit was granted or a considerable breach of the environmental permit terms and conditions. Several governmental authorities have the possibility to initiate the processes described above.

Acquisition by domestic parties versus acquisition by foreign parties

- 13 | Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

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

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

Protection of mining rights

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

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

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

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 has been ratified by Sweden.

Surface rights

- 15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

A legal proceeding for the designation of land is held at the request and expense of the concession holder. This procedure establishes the concession area, which is the area the concession holder may use for

exploitation of the mineral deposits. In addition, any land within or outside the concession area, which the concession holder plans to use for activities related to the exploitation, may be covered by the decision. When an exploitation concession is terminated, the concession holder forfeits any rights to the land assigned to him or her at that time.

Prior to the designation of land, the holder of the mining rights may enter into agreements with surface rights holders to acquire land rights. If all parties are in agreement, land will be designated according to what has been agreed instead of through the land designation process. A surface rights holder may oppose the request by the mining rights holder to acquire land rights. If so, the conflicting interest is tried according to provisions in the Minerals Act, and land is designated according to what is required for the mining operations and connected activities. Land designations can be appealed to the Land and Environmental Court and subsequently to the Land and Environmental Court of Appeal.

Participation of government and state agencies

- 16 | Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

Neither the government nor state agencies have a right to participate in mining projects. The project company is not required to be listed locally.

Government expropriation of licences

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

It is not possible to expropriate permits or concessions related to mining, hence there are no compensation provisions regarding expropriation.

Protected areas

- 18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

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

- in areas included in local plans or regional provisions under the Planning and Building Act (No. 900 of 2010);
- closer than 30 metres to publicly owned transport infrastructure;
- within 200 metres of inhabited buildings;
- in areas of military interest;
- in areas with electric power stations and industrial plants;
- within 200 metres of public buildings, hotels, churches and comparable establishments;
- in churchyards and burial grounds; and
- in certain specified undisturbed areas of the Swedish mountains.

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

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

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

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

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

For an exploration permit, certain fees have to be paid to the Mining Inspectorate by the applicant. An application fee of 500 kronor shall be paid to the Mining Inspectorate when handing in the application for every new area consisting of 2,000 hectares. If permission is granted, another 20 kronor for each hectare has to be paid for the first three-year period of the permit. If an extension of the exploration permit is permitted, an additional fee of 21 kronor per hectare per year is required. Further extension of the permit is possible but will result in even higher annual fees. All fees are required to be paid in advance for each period of time.

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

Tax advantages and incentives

- 20 | What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

There are no tax advantages or incentives available to private parties carrying on mining activities.

Tax stabilisation

- 21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

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

Carried interest

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

During the course of the exploitation, the holder of the concession must pay an annual mineral reimbursement according to the Minerals Act. The holder of the concession is obliged to provide the information necessary to determine the scope of the reimbursement.

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

Transfer taxes and capital gains

- 23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

No.

Distinction between domestic parties and foreign parties

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

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

BUSINESS STRUCTURES

Principal business structures

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

The principal business vehicle used is the limited liability company. Joint venture agreements are common, but a joint venture is not a legal person and so the actual vehicle used to operate the joint venture is still the limited liability company. Partnerships are rarely used in any larger scale or capital-intensive business since they do not provide the same structure and ease in transferring shares in the case of options and earn-in clauses. It is also possible to open a local branch that is registered in Sweden and that is not a legal person in its own right but considered part of a foreign legal entity. Trusts, however, are not recognised in the Swedish legal system.

Local entity requirement

- 26 | Is there a requirement that a local entity be a party to the transaction?

No.

Bilateral investment and tax treaties

- 27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

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

FINANCING

Principal sources of financing

- 28 | What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

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

Direct financing from government or major pension funds

- 29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

There is no direct financing provided by the government, its agencies or pension funds. However, the government owns 100 per cent of the shares in major mining operator LKAB and pension funds may from time to time own shares in listed mining companies.

Security regime

30 | Please describe the regime for taking security over mining interests.

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

RESTRICTIONS

Importation restrictions

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

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

Standard conditions and agreements

32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

The most commonly used standard terms used for equipment supplies are NL 09, General Conditions for the Supply of Machinery and other Mechanical, Electrical and Electronic Equipment in Denmark, Finland, Norway and Sweden. NL 09 is issued by the engineering industries organisations in the Nordic countries and is widely recognised. For construction of buildings, roads or other structures, parties will use either AB 04, General Conditions of Contract for Building and Civil Engineering Works and Building Services, or ABT 06, General Conditions of Contract for Design and Construct Contracts for Building, Civil Engineering and Installation works. These standard form agreements are issued by the Swedish Construction Contracts Committee (BKK), a body formed by the main private employers' associations and contractor's associations as well as state infrastructure agencies such as the Swedish Transport Administration. They provide a tried and tested structure, and they can be combined with add-on standard terms from BKK (eg, subcontractor terms and conditions or index provisions). For erection of plants, Orgalime's general conditions are sometimes used, for example, in the Turnkey Contract of 2003.

Mineral restrictions

33 | What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

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

Import of funds restrictions

34 | What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

There are no foreign exchange controls or other restrictions on the import of funds for exploration and extraction or the use of the proceeds from the business.

ENVIRONMENT

Principal applicable environmental laws

35 | What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Swedish Environmental Code (No. 808 of 1998) (the Environmental Code) is the principal environmental law in Sweden. To conduct mining operations, both an exploitation concession and a permit under the Environmental Code must be acquired. With respect to mining operations, permits under the Environmental Code are granted by the Land and Environmental Court.

If exploration work could have significant impact on the environment, it entails certain investigations of the environmental aspects according to the Environmental Code. The Mining Inspectorate also hears applications for exploration permits and exploitation concessions, in consultation with the County Administrative Board, which examines whether the site is acceptable from an environmental point of view and not just from the Minerals Act. The Environmental Code is also applicable in matters concerning the granting of an exploitation concession, which means that an environmental impact assessment (EIA) must be appended to an application for a concession.

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

Environmental review and permitting process

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

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

The first step to acquiring a permit is the consultation process. This takes place between the company wishing to engage in activities with an environmental impact and parties environmentally affected by the operations, as well as agencies and organisations concerned with environmental issues. The purpose is to hear from all concerned parties so that their interests can be considered when preparing the EIA.

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

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

Sustainability

37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

On 1 January 2018, a new climate law (No. 2017:720) was introduced that requires the present and future governments to govern according to the environmental goals of Sweden and to report on any progress made. On 18 December 2019, the Swedish government presented the first climate policy action plan, outlining how work concerning climate policy should be conducted during the mandate period, including both decided and planned measures that contribute to achieving national and global climate goals.

The action plan includes a review of all relevant legislation and further measures in emissions sectors with a particular focus on the transport sector, which is likely to have an impact on the mining industry.

Closure and remediation process

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

The closure and remediation process is handled in the Environmental Code permit process through the details for the permit. A security will have to be provided to cover for potential damage to the environment and closure of the mining operations. All types of security are approved as long as they are satisfactory for their purpose.

Restrictions on building tailings or waste dams

39 | What are the restrictions for building tailings or waste dams?

Certain requirements for the operator in charge of dam maintenance are listed in the Ordinance on Dam Safety (No. 214 of 2014). A tailings or waste dam typically needs a water operation permit according to the Environmental Code and the main principle being that the owner of the tailings or waste dam is responsible for its maintenance. The Ordinance on Dam Safety requires the operator in charge of maintenance to produce an impact assessment and propose a classification based on the impact that may potentially be caused by a dam failure. Furthermore, the operator in charge of maintenance must have a safety management system concerning the methods, routines and instructions needed for:

- organisation, areas of responsibility and qualifications for personnel working with dam safety;
- identification and assessment of risks for major accidents;
- operations, permit supervision and maintenance;
- routines for changes in the operations;
- planning for emergency situations; and
- audits and reviews.

High-risk installations are subject to provisions with more severe requirements in the Ordinance on Mining Waste (No. 319 of 2013). The operator in charge of maintenance must make a complete assessment of the dam's safety and the operational organisation every 10 years. The operator is also obligated to produce yearly safety reports to the supervising authority.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

40 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal health and safety law is the Work Environment Act (No. 1,160 of 1977), which is applicable in all situations where an employee performs work for an employer. The Work Environment Act is a framework act and detailed regulations are found in the provisions issued by the Swedish Work Environment Authority, which is the principal regulatory body concerning health and safety in the workplace in Sweden. The Work Environment Act states the obligations of the employer; for example, prevention of ill health and accidents. Other provisions that may be applicable to mining can be found on the Swedish Work Environment Authority's website.

The general labour laws in Sweden are applicable to the mining industry such as the Working Hours Act (No. 673 of 1982), the Co-determination Act (No. 580 of 1976), the Discrimination Act (No. 567 of 2008), the Parental Leave Act (No. 584 of 1995) and the Annual Leave Act (No. 480 of 1977). However, labour provisions in Sweden also exist in collective agreements and private employment agreements.

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

Management and recycling of mining waste

41 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

Management and recycling of mining waste products is regulated by the Swedish Environmental Code (No. 808 of 1998) (the Environmental Code), the Regulation on Waste from Extractive Industries (No. 319 of 2013) and to a lesser extent the Waste Regulation (No. 927 of 2011). The relevant rules are based on the EU Mining Waste Directive (2006/21/EC). For ongoing mining operations, the mining operators are responsible for mining waste and the possibility of extracting minerals from this. The normal approach is to handle extraction of minerals from waste as part of the environmental permit, which may require an amended permit if the extraction from waste is not included in the original permit.

The right to exploration and extraction of mining waste from closed mining waste facilities varies depending on the circumstances and when the waste management was considered closed but is typically held by the previous mining operator or landowner.

Use of domestic and foreign employees

42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

The same laws and provisions concerning health and safety apply for domestic and foreign national employees. An employer with domestic employees in Sweden has to follow the Swedish labour legislation. The same applies when foreign personnel are employed in Sweden. But if an employee is merely posted to Sweden, the employer is only obliged to follow some of the Swedish labour legislation, according to the Act on Posting of Workers (No. 678 of 1999), which was adopted to fulfil Sweden's obligations according to the corresponding EU Directive (96/71/EC).

Foreign employees sometimes need a work permit in order to work in Sweden. Citizens of EU or EEA countries are exempt but they need to inform the Swedish Migration Board if their residency lasts longer than three months. Any employee from a country outside the European Union or European Economic Area who works in Sweden for more than three months needs both a work permit and a residence permit. They may also need a visa.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

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

The consultation process is part of the permit process within the Swedish Environmental Code (No. 808 of 1998) (the Environmental Code). According to the Environmental Code, known affected parties shall have the opportunity to express their opinions on a mining application. The principal regulatory bodies are the Land and Environmental Court and the Mining Inspectorate. Supervision of compliance with the environmental conditions is usually carried out by the County Administrative Board and by the municipality's Environment Health Board.

Rights of aboriginal, indigenous or disadvantaged peoples

44 | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

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

During 2019 and 2020, the rights of the Sami people in relation to the mining industry came to the fore – balancing the national interests of reindeer husbandry and mineral extraction being the core subject of debate.

International law

45 | What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

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

- the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 1998, concerning the right to get information and appeal Environmental Matters;
- the ILO 176 Safety and Health in Mines Convention 1995, which regulates the working conditions in a mine (there exist additional ILO Conventions that can be applicable on mining);
- the Convention on Biological Diversity 1992, which regulates the protection of biological diversity, sustainable use of it and fair and equal sharing; and
- the Rio Declaration on Environment and Development 1992, and Stockholm Declaration on the Human Environment concerning sustainable development and environmental protection 1972.

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

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

46 | Describe any local legislation governing anti-bribery and corrupt practices.

The Swedish legislation against bribery and corruption is found in the Penal Code. The Code covers not only corruption in the public sector but also in the private sector, and between the public and private sector. The relevant provisions are found in Chapter 10, sections 5a–5e. An employee or person performing an assignment who receives, accepts a promise of or demands an improper benefit for the performance of the employment or assignment may be deemed as taking a bribe. A person who gives, promises or offers an improper benefit in the cases referred to above may, on the other hand, be guilty of giving a bribe. There is no distinction between bribery of public officials and private bribery. Moreover, there is no distinction between bribery of foreign or domestic public officials. However, the involvement of a public official will act as an aggravating circumstance and make it more likely that a benefit will be deemed a bribe.

Additional offences are trading in influence and negligent financing of bribery. Trading in influence involves the act of taking or giving an improper benefit to influence a person's action or decision in the exercise of public authority or in public procurement. An individual acting on behalf of a company that provides money or assets used by a third party for the giving of a bribe may be found guilty of negligent financing of bribery.

Consequences of bribery may range from a fine (proportional to the income of the individual, limited to a maximum of 150,000 kronor) or up to two years' imprisonment, or in grave cases, imprisonment of between six months and six years. A company may be fined between 5,000 and 10 million kronor.

Foreign legislation

47 | Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Particular attention is paid to the UK Bribery Act and the US Foreign Corrupt Practices Act in view of the extraterritorial reach of these acts and in the former case, its strict liability provisions.

Disclosure of payments by resource companies

48 | Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

No.

FOREIGN INVESTMENT

Foreign ownership restrictions

49 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

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

INTERNATIONAL TREATIES

Applicable international treaties

50 | What international treaties apply to the mining industry or an investment in the mining industry?

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

UPDATE AND TRENDS

Recent developments

51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

In December 2020 the government proposed a bill regarding increased consultation with, and influence for, the Sami, however, this bill was repealed in March 2021. The government will continue political discussions for the new law with the aim that a new, revised proposal can be put forward during the spring of 2021. In the meantime questions regarding the effects of mining on the traditional Sami way of life remain at the forefront of both Swedish politics and media.

In a world where smart and green technology is increasingly common and change is towards a fossil-free society there is a need for innovation-critical metals and minerals. It is with this in mind that on 21 March 2021 the government appointed an inquiry to assess the permit review processes and regulations currently in place concerning the mining industry: the purpose being to ensure a sustainable supply of innovation-critical metals and minerals from both primary and secondary sources. Of particular interest is the potential to extract or recycle innovation-critical metals and minerals from secondary materials and whether the current processes and regulations regarding mineral extraction from primary sources may in whole or in part also be applied to extraction or recovery from secondary materials.

The inquiry is to report its findings to the government no later than 31 October 2022.

Coronavirus

52 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Due to the impact of covid-19 on the mining industry, the government has introduced certain amendments to the Minerals Act, the result of which being that the validity period for exploration permits has been extended by one year under certain circumstances.

The government has also implemented a number of measures providing financial relief for companies and businesses, for example, increased state responsibility regarding sick pay, the possibility to defer tax payments and the possibility for employers to implement, and receive financial support for, furlough schemes.

FOYEN

ADVOKATFIRMA

Peter Dyer

peter.dyer@foyen.se

Pia Pehrson

pia.pehrson@foyen.se

Regeringsgatan 38
Box 7229
103 89 Stockholm
Sweden
Tel: +46 8 506 184 00
Fax: +46 8 506 184 70
www.foyen.se/en

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