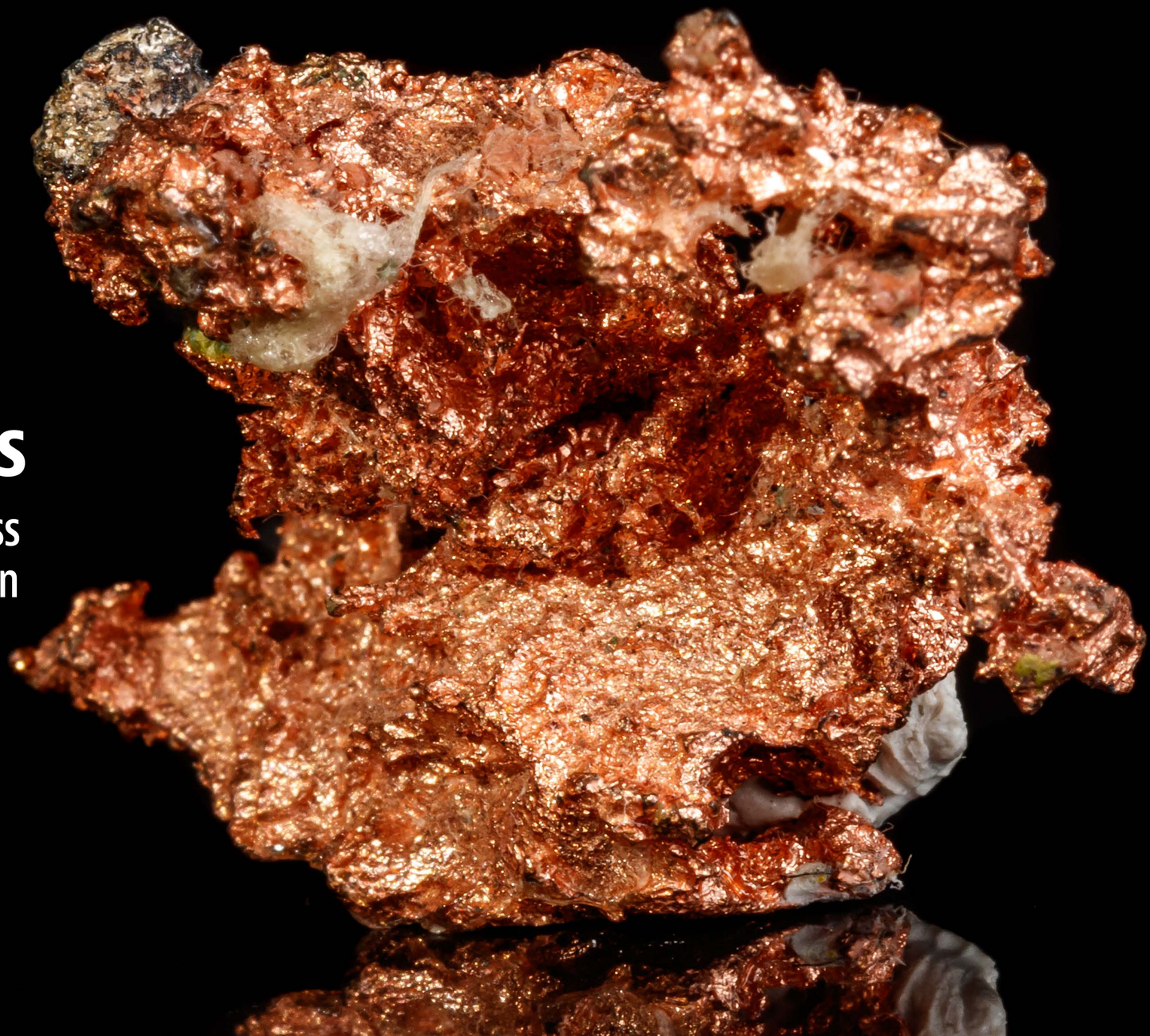
Baker McKenzie.

A Global Guide to Critical Minerals

Strategic legal issues around access to resources for the energy transition



Foreword

The global metals and mining industry has a vital role in the energy transition, with responsibility falling on the industry to source the metals and minerals used in clean energy projects, manufacturing capacity, electric vehicles and other sustainable solutions. It is a complex role as well, with years of low profitability, capital constraints and underinvestment posing risks to the industry's ability to address expected demand. Mining companies have also been faced with the challenge of rationalising operations and limited research budgets with growing stakeholder demands and regulatory pressures for improved environmental, social and governance ("ESG").

Recent geopolitical events strained global supply chains and created an energy shock of unprecedented breadth and complexity. There remain huge uncertainties over how this crisis will evolve over 2023 and the impacts when it ends. There remain legitimate questions over whether these events will boost or set back the energy transition. Much depends on governments but alongside short-term measures, many are looking to accelerate structural change and fast-track clean energy economies. Thanks in large part to the Inflation Reduction Act, the US is expected to grow solar and wind capacity additions by 2030 to two-and-a-half times what it is today, while boosting EV sales by 700% over the same period[1].

We can say that the crisis has governments globally placing even more importance on energy security, diversity and independence. In the context of critical minerals, these impetuses lead through to governments securing critical mineral supplies and their supply chains. And demand for critical minerals is still expected to rise sharply, more than doubling by 2030 and quadrupling by 2050 with annual revenues reaching USD 400 billion according to the IEA[2].

None of the major clean energy technologies have an announced supply capacity sufficient to address the net-zero scenario by 2030. Recent price growth for many critical minerals such as lithium, nickel and aluminium, have triggered increased investment in mineral exploration and production. But there remains significant risk that mineral supplies will be insufficient to meet global climate goals.

Amidst these challenges, there are opportunities – overall investment levels in mining have been rising, with mining companies' profits/cash flows improving with rising prices. There is also renewed interest in some alternative clean energy technologies where supplies of the dominant technology are being limited – for example, vanadium for flow batteries as an alternative to lithium-ion.

Alongside risks from volatile prices and supply chain uncertainties, there are significant risks associated with the ESG impacts of mining projects and ever-growing scrutiny of them by investors and other stakeholders.

These include risks associated with geopolitical tensions, human rights violations, corruption, tailings management, water use, emissions and loss of biodiversity. Such impacts can erode public support for mining projects, the so-called "social license to mine", potentially leading to production disruptions with implications for prices and supply chains, as well as exposing related companies to regulatory, ethical and reputational criticisms. Mining is also itself directly exposed to climate risks – for example, a large proportion of global lithium and copper production is concentrated in regions with scarce water resources.

Positively, there are many indications that pressure by socially conscious investors and funds has been met by a general willingness from mining companies to embrace ESG. Miners are doing more to integrate ESG into corporate decision-making and S&P GMI found[3] that 21 of the 30 largest mining companies by market capitalisation have set some level of net-zero targets or are already claiming carbon neutrality, hoping to prove their commitment to reducing their emissions. Balancing the speed that is required to extract the metals and minerals and is required for the energy transition and ESG requirements are a huge challenge for mining companies. The mining industry is also at the centre of the 'just and fair transition' debate, a key theme of COP 27, as to how the world moves from a low-carbon economy in a way that is fair and inclusive.

Many of the issues associated with verifying ESG compliance on individual projects remain – determining standards for a diverse array of operations, monitoring/reporting, transparency, sanctions as well as others – but these discussions are rapidly accelerating.

Throughout 2022, there was also increasing focus by mining companies and stakeholders on two further key issues, the prospect of dual or multi-stream pricing for high demand "clean" minerals and the growing recognition that recycling and other measures to moderate demand growth[4] are needed to supplement primary sources.

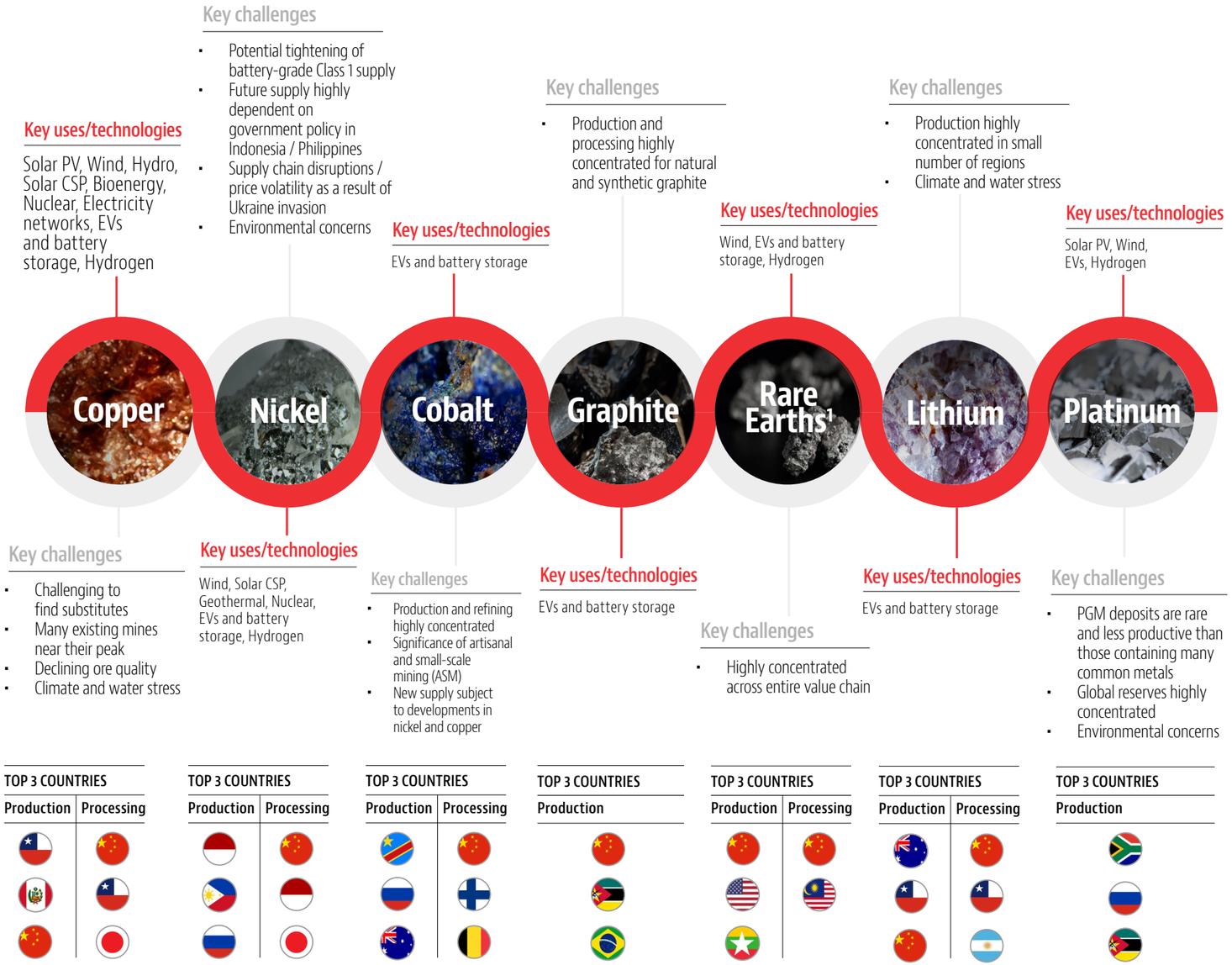
As to the first, mining companies are responding to bottom-line imperatives that they will be able to access higher prices, although this can involve up-front costs. Notably, if supply for "cleaner" stream materials is unable to keep pace with growing demand, then companies may end up competing for the limited pool, leading to bottlenecks in supply chains.

In this Guide, we are pleased to examine the status and strategic legal background for critical minerals in fifteen key countries. We look in brief at the part each country is playing in terms of critical minerals, as well as the applicable legal and regulatory framework for their extraction. Each of the countries is at a different stage of their development in terms of critical minerals, but one thing that is common to all is rapid change as the energy transition accelerates.

Baker McKenzie Metals & Mining Team

1 IEA: World Energy Outlook 2022
2 IEA: World Energy Outlook 2022, APS scenario with higher demand for the net zero scenario ("NZE")
3 S&P Global ESG Insider Report
4 For example, technological innovation has already shown the ability to relieve some pressure on primary supplies: newer low cobalt EV batteries contain 75-90% less cobalt than older ones.

State of play for Critical Minerals



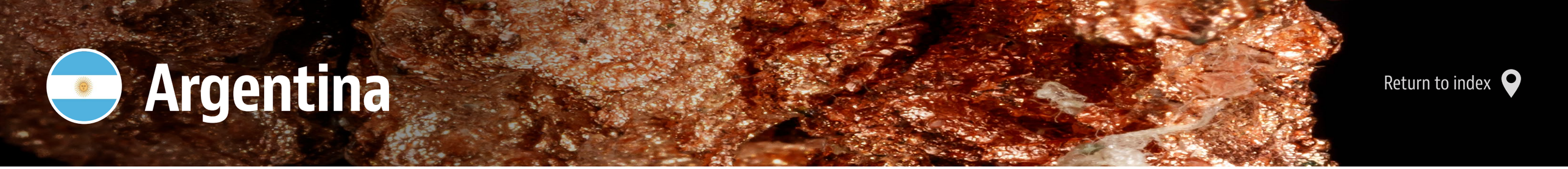
Source: IEA 2021/22

1 Rare earth elements (Neodymium, Dysprosium, Praseodymium, Terbium, others)

Country List

Select country to know more

Argentina	Colombia	South Africa
Australia	Indonesia	Thailand
Brazil	Kazakhstan	UK
Canada	Peru	US
Chile	Saudi Arabia	Vietnam



Argentina

Return to index

Key metals and minerals

In Argentina, critical minerals do not have a special regulation or category in the Mining Code or other legislation.

Copper, arsenic, aluminum, antimony, beryllium, bismuth, lithium, cobalt, manganese, nickel, tantalum, tin, tungsten, wolfram, vanadium, and zinc are classified as First Category Minerals (same as all hard minerals).

Lithium, and to a lesser degree, copper are the rare minerals most extracted in Argentina. The original domain of the Fist Class Minerals belong to the provinces where the deposits are located. Such governments grant the exploration permits and exploitation concessions through a first come first served basis. Applicants must comply with different steps until the exploitation concession or mine is granted. Surface owners do not have a preference to be granted the exploration permit or exploitation concession.

Barite, magnesium and graphite are included in the Second Category Minerals where a preference is granted to the surface owner.

In all cases. environmental permits are granted by the provincial authorities.

Contributors

Adolfo Durañona
+54 (11) 4310-2209
adolfo.duranona@bakermckenzie.com

Ezequiel Artola
+54 (11) 5776-2331
ezequiel.artola@bakermckenzie.com

Legal System

Civil law (including the Mining Code, provincial procedural codes and additional regulations).

Member of New York Convention

Yes.

Foreign investment regime

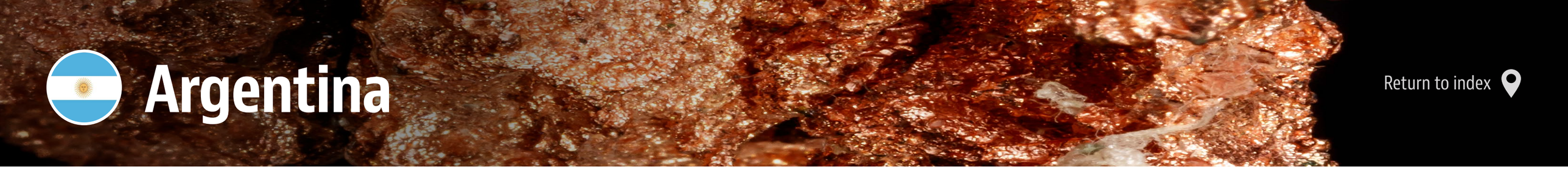
No foreign restrictions for investments in mining apply; however, the acquisition of real estate (not mining rights) in rural areas or within border zones may be restricted or subject to special approval (depending on the size or location). Argentina has signed numerous bilateral investments treaties.

Local party ownership requirements

No. However, some provinces (e.g., Jujuy) created government owned companies and requested participation in mining projects (e.g., 8.5% share participation).

Indigenous and local community rights

Yes. Constitutional recognition of the cultural pre-existence of indigenous peoples, the legal status of their communities, their community possession and the ownership of the lands they traditionally occupy.



Argentina

Return to index

Environmental protection regime

High requirements. Before commencing exploration or exploitation the authority must approve the environmental impact report prepared by the applicant, issuing a resolution that includes the actions that the mining company must take to protect the environment. The report must be updated every two years.

Federal law sets the minimum standards for the protection, management and adequate preservation of the environment, which is complemented by provincial legislation that could include more demanding standards. Provincial Governments also dictate the regulations of these provincial environmental laws.

Land tenure

Mining rights do not include rights to the surface land which can be owned by the state (fiscal lands) or by private parties. The Mining Code contemplates the granting of easements to access lands covered by mining rights – and access agreements are usually signed with private owners.

Rehabilitation security

Yes (performance bonds).

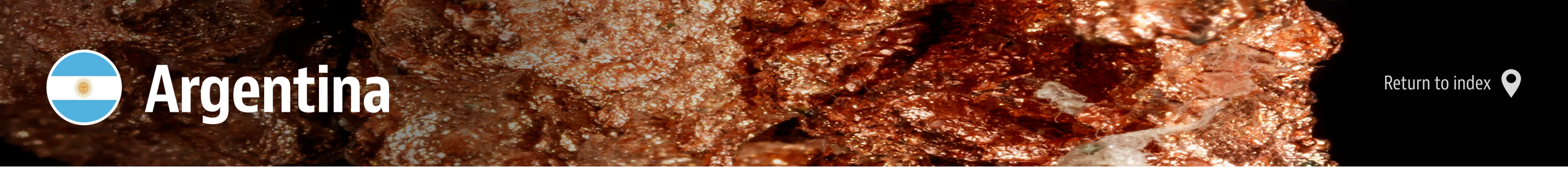
Exploration license

The areas covered by an exploration permit are divided into units comprising up to 500 hectares each unit. One exploration permit may include up to 20 units (i.e., 10,000 hectares). A company is not allowed to hold, directly or indirectly, more than 20 exploration permits or more than 400 units per province (i.e., not more than 200,000 hectares in any one province).

Each exploration permit is for up to 150 days for the first unit and for a further 50 days for each additional unit. Exploration permits cannot be renewed, and the holder of an exploration permit cannot request another permit covering the same or part of the area covered by the exploration permit after it expires for a period of one year from the expiration date.

Mining license

Exploitation concessions (including a mining license) are perpetual provided that the holder complies with the Mining Code proceeding to have them granted and with the main obligations to maintain mining rights (payment of surface fee or canon) and implementation of minimum investments. If an exploitation concession is inactive for more than four years, the provincial authority may request its holder to file an activation or reactivation project within six months. Lack of filing of that project will allow the authority to declare the cancelation of the exploitation concession. The activation or reactivation project must be complied with for up to five years.



Argentina

Return to index

Use tenement as security

Yes. It can be subject to a mortgage or usufruct.

Royalty payable to Government

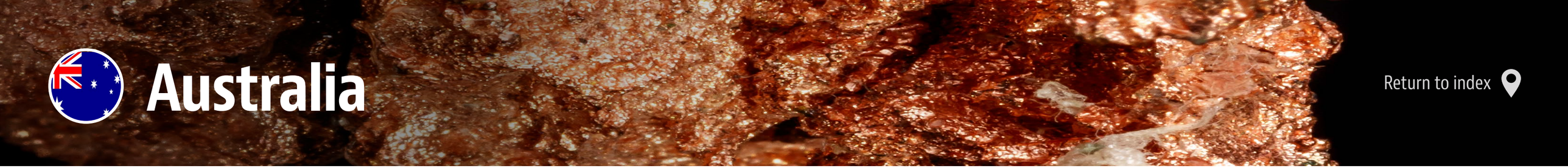
Yes. Any province adhering to the Mining Investment Law may charge a maximum 3% royalty on the “mine head” (boca de mina) value of extracted minerals.

Classification system

By category, according to the type of minerals (first, second and third category). See above.

Other key regulation / policy for critical minerals

Exchange controls limit the payment of dividends, importation, intercompany services and payment of loans. All these restrictions can affect a project and should be considered carefully when starting an investment within this industry.



Australia

Return to index

Key metals and minerals

Australia is one of the largest producers of iron ore, bauxite, gold, lead, diamond, uranium, and zinc, and has extensive mineral sand deposits of ilmenite, zircon and rutile. Australia also produces large quantities of black coal, antimony, silver, copper and tin. In terms of critical minerals, Australia produces almost half of the world's lithium, is the second-largest producer of cobalt and is the fourth-largest producer of rare earths as well as producing nickel and manganese (amongst others).

Contributors

Derek Pocock
+61 7 3069 6234
derek.pocock@bakermckenzie.com

Legal System

Common law.

Member of New York Convention

Yes.

Foreign investment regime

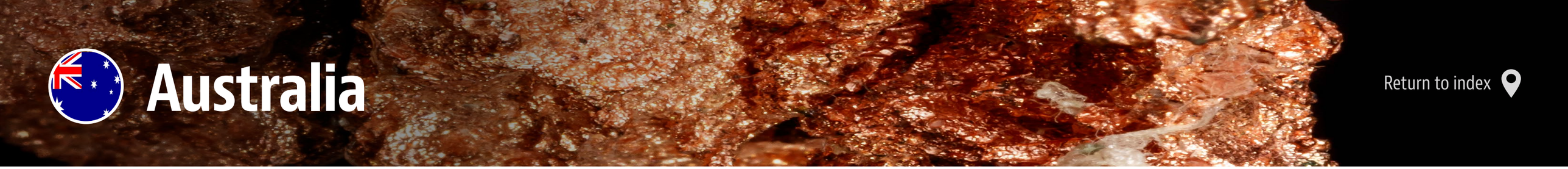
The foreign investment review framework is administered by the Australian Treasurer, who is advised for this purpose by the Foreign Investment Review Board ("FIRB"). The relevant legislation gives the Treasurer certain powers to block, unwind or impose conditions on regulated actions.

National interest and national security

Some actions are regulated to protect Australia's 'national interest'. In many cases actions are regulated if they exceed a substantial monetary threshold. Key examples are:

- a 'foreign person' acquiring 20% or more of an Australian company valued above $310 million (from 1 January 2023); or
- a 'foreign government investor' (FGI) acquiring 10% or more of an Australian business, regardless of its value.

Other actions are regulated to protect Australia's 'national security' (the meaning of which is outlined in Australia's Foreign Investment Policy).
These actions are regulated regardless of the value of the transaction.



Australia

Return to index

Approval requirements

Prior FIRB approval is required for:

- 'notifiable actions' (which are assessed against Australia's national interest); and
- 'notifiable national security actions' (which are assessed against national security).

Parties can agree to a proposed transaction (i.e., enter into the relevant transaction documentation) before FIRB approval is obtained, provided the agreement is conditional on FIRB approval. If the agreement is not conditional, the action is deemed to be taken at the time the agreement is entered into.

There are various definitions required to understand Australia's foreign investment regime. These are discussed herein.

Who is a 'foreign person'?

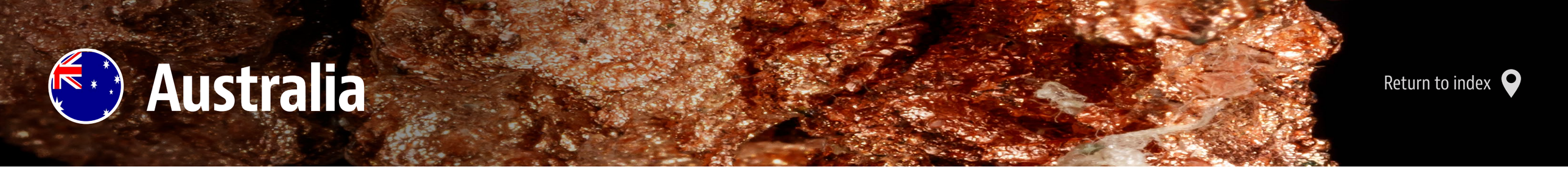
A foreign person is:

- a non-resident individual;
- a foreign government investor ("FGI"); or
- a corporation, trustee of a trust, or general partner of a limited partnership in which:
  - 'substantial interest' (at least 20%) is held by one foreign individual, corporation or foreign government investor ("FGI") (and its associates); or
  - an 'aggregate substantial interest' (at least 40%) is held by multiple such persons (and their associates).

Who is a 'foreign government investor' ("FGI")?

- A foreign government or separate government entity; or
- A corporation, trustee of a trust, or general partner of an unincorporated limited partnership in which:
  - substantial interest (at least 20%) is held by foreign governments, government entities or FGIs from a single country (and their associates); or
  - an aggregate substantial interest (at least 40%) is held by such FGIs from multiple countries (and their associates) (with an exception for passive investment schemes).

The scope of FGIs is broader than it may appear, and it is not always obvious that an entity is an FGI (e.g., many private equity and other funds are FGIs due to upstream foreign government investment). FGIs are strictly regulated (e.g., generally not subject to monetary thresholds) so this is a critical point to identify.



Australia

Return to index

What is a ‘notifiable action’?

All foreign persons must obtain FIRB approval before acquiring:

- a substantial interest (at least 20%) in an Australian corporation or unit trust subject to high monetary thresholds (note, this does not include asset acquisitions);
- a ‘direct interest’ (at least 10%, or less if combined with other influence) in an Australian agribusiness, subject to low monetary thresholds;
- a direct interest in an Australian media business, regardless of value; or
- an interest in Australian land, subject to varying monetary thresholds.

There are additional ‘notifiable actions’ that apply to FGIs only.

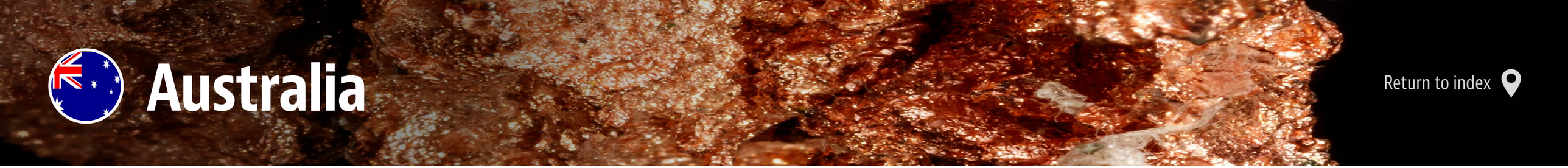
Critical minerals

FIRB has issued specific guidance relating to critical minerals because foreign investment in such minerals may raise national security risks. With respect to critical minerals, FIRB noted that there are generally no mandatorily notifiable national security actions; however, there would be relatively few circumstances in which the national interest test would not apply. Foreign persons proposing to undertake a reviewable national security action by investing in a business / entity involved in the extraction, processing or sale of certain critical minerals named in FIRB’s Guidance Note No. 8: National Security are encouraged by FIRB to seek FIRB approval. A reviewable national security action does not have to be notified but, if it is not notified and approved, may be called in for review by the Treasurer within 10 years after it is taken if it raises national security concerns. The Treasurer may block, unwind or place conditions on such an action to protect Australia’s national security. Note: voluntary notification will not, however, extinguish the Treasurer’s ability to use the “last resort” power.

Recently, the Treasurer has announced a more “assertive” approach to ensuring that foreign investment in critical minerals aligns with the national interest, where government agencies will gather data on relevant investments and develop more sophisticated methods of tracking investment patterns in critical minerals. On the other hand, participants in the critical minerals industry feel there exists inconsistencies in FIRB approval, with some even suggesting that there should exist a “full-time, impartial review board”.

Local party ownership requirements

No. There are no state or general federal Government mandatory participation rights in a license or a project.



Australia

Return to index

Indigenous and local community rights

Yes. “Native title” is the term used to describe certain rights held by indigenous Australians, known as Aboriginal and Torres Strait Islanders, in respect of traditional access to and use of land and water.

The Native Title Act 1993 ("NTA") and state legislation implement a national scheme governing the validity of land dealings affecting native title and establishing a process for indigenous Australians to make native title claims. A register of native title claims and granted interests is maintained and is publicly accessible (the National Native Title Tribunal). There are no native title rights to minerals, but if native title rights exist over an area that is the subject of a mining lease application, the right must be taken into account and certain procedures must be complied with before a tenement will be issued.

If a proposed mining tenement is affected by a native title claim, an Indigenous Land Use Agreement ("ILUA") can be negotiated and entered into bilaterally to provide certain benefits to the native title parties while providing certainty to the mining investor in the form of protocols and agreements for future mine development. If an ILUA cannot be negotiated, the parties must comply with the ‘right to negotiate’ process set out in the NTA and negotiate in good faith regarding the conditions of the grant of the mining tenement.

Federal and state laws have an impact on activities affecting Aboriginal and Torres Strait Islander heritage. Depending on the jurisdiction, the protection requirements may include the entity seeking to progress the mining project being required to survey potential cultural heritage sites in the tenement area and take all reasonable and practical measures to ensure the activity does not harm any protected heritage sites or objects.

State legislation also sets out the remedies and penalties for non-compliance, which include injunctions or stop work orders. At the federal level, among other protections, penalties may be imposed on any person who takes an action significantly impacting a place recognised for its national heritage value.

Environmental protection regime

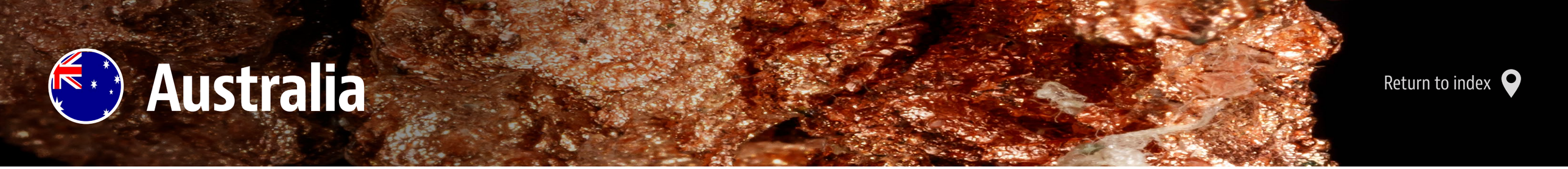
Highly developed. In Australia, mining exploration and production activities may be subject to extensive federal and state environmental laws and local council planning regulations. Mining projects in each state require environmental and planning approval from the state Government.

Legislation provides for the integrated assessment of these issues, and approval may be given subject to certain conditions, including rehabilitation, protection of flora and fauna, and the acquisition of environmental offsets.

The National Greenhouse and Energy Report Act 2007 ("NGERA") requires companies to audit and report annual greenhouse gas emissions as well as energy consumption and production. Together with NGER reporting obligations, a safeguard mechanism sets emissions baselines for all facilities that directly emit over
100,000 tonnes of carbon dioxide equivalent per year. Facilities subject to an emissions baseline must ensure their emissions stay below that baseline or offset
any excess emissions.

In line with Australia’s commitment to achieve net zero emissions by 2050, the Australian Government is consulting on options to reform the current Safeguard Mechanism. Legislation before federal parliament proposes to reduce baselines over time and create a framework which will enable safeguard facilities that stay below their baselines to generate tradable credits, known as Safeguard Mechanism Credits ("SMCs").

Australia has strong ESG credentials, with the mining sector demonstrating vital workplace relations and having a reputation internationally for acting ethically and with integrity. The sector’s environmental record continues to improve, as is consultation and coordination with Aboriginal and Torres Strait Islanders. These strong ESG credentials have provided an excellent opportunity for Australian critical minerals companies as off-takers (such as large electric vehicle ("EV") manufacturers) typically prefer procuring minerals from countries like Australia that employ sustainability practices.



Australia

Return to index

Land tenure

All minerals located within state boundaries are the property of the relevant state until the mineral is extracted. Mining legislation creates a system of mining tenure separate from land tenure. Upon grant of a mining lease, the license holder is entitled to mine the minerals and retain the economic benefit of the minerals that have been mined, subject to payment of a royalty to the relevant Government.

Therefore, landholders, be they freehold, leasehold or native title, do not have any ownership right to minerals, although they may be entitled to compensation for the loss of the use of land due to mining activities.

Rehabilitation security

Yes.

Exploration licence

Typically, five years, with extensions.

Mining licence

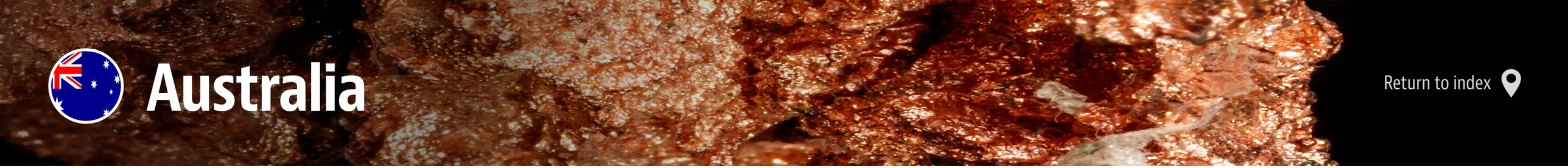
Typically, 20–25 years, with extensions.

Use tenement as security

Yes.

Royalty payable to Government

Yes. Amount depends on commodity and State.



Australia

Return to index

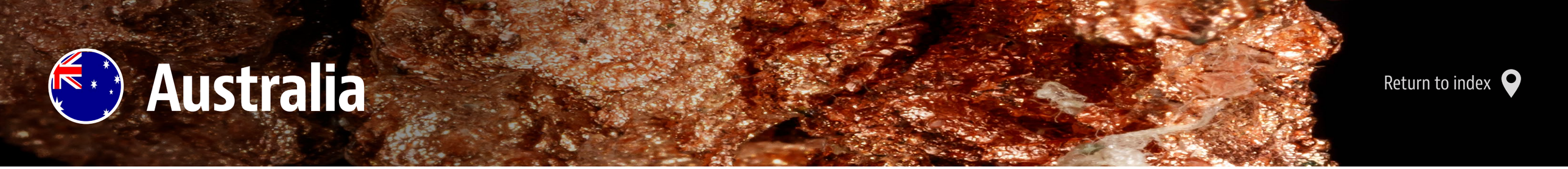
Classification system

Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves ("JORC Code").

Other key regulation / policy for critical minerals

There are various recent government incentives aimed at developing the Australian critical minerals space including:

- In 2020, the Critical Minerals Facilitation Office was established to provide national policy and strategic advice on critical minerals and connect Australian critical minerals projects to investors, regulators, government financing facilities and Australia's strategic partners.
- In 2021, the Australian government established the AUD 2 billion Critical Minerals Facility that is administered by Export Finance Australia (the Australia export credit agency). The Critical Minerals Facility helps projects aligned with Australia's Critical Minerals Strategy ("CMS") deal with financing issues. The AUD 15 billion National Reconstruction Fund to be established will include the AUD 1 billion Value Adding in Resources Fund to work alongside the Critical Minerals Facility.
- State-based critical mineral strategies also being rolled out (e.g. New South Wales' Critical Minerals and High-Tech Metals Strategy)
- The Australian government has also made an AUD 200 million commitment to the Critical Minerals Accelerator Initiative ("CMAI") to support strategically significant projects at challenging points in their development (early to mid-stage projects).
- Mid-stage critical minerals projects have access to the AUD 1.3 billion Modern Manufacturing Initiative to help firms pilot, demonstrate or scale up the techniques and processes they need to achieve commercial close.
- In late 2022, the Queensland Government amended the Mineral Resources Act 1989 to enable the Minister for Resources to defer the first year of rent payable pursuant to a critical mineral mining lease where the Minister is satisfied that the mining lease holder proposes to spend an amount that is at least equivalent to the first year rental on start-up and development costs in order to start mining operations of the critical mineral.



Australia

Return to index

Australian Government strategy

To achieve the public goal of becoming a "global critical minerals powerhouse" and being integral to the international critical minerals supply chains and technologies crucial to the global economy, the CMS was developed with three key actions:

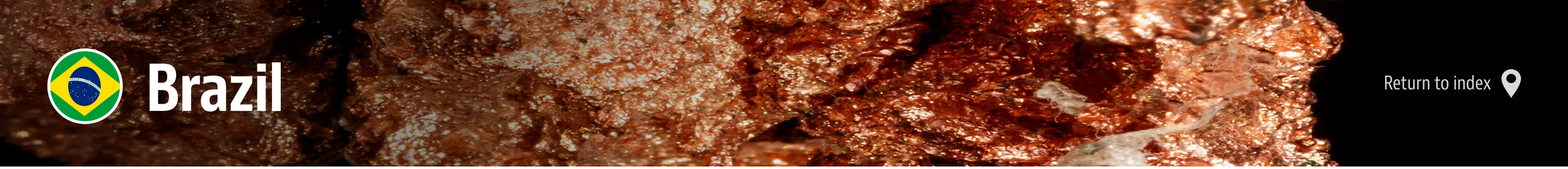
- de-risk projects through project facilitation, providing technical support and making strategic investments to scale up processing and lock in finance and offtake for production;
- create an enabling environment such as R&D, standards and accreditation and shared infrastructure and precincts; and
- strengthen international partnerships (namely with key countries such as the US, Japan, South Korea, the UK, India and EU members).

Critical minerals also featured in the 2022-2023 federal budget, which included a commitment to promote the onshore processing of critical minerals and funding infrastructure projects that support mining and mineral processing. A new

National CMS is being developed and is currently in the consultation phase. The new CMS focuses on how Australia will progress critical minerals projects at all stages of development, and stresses that the global opportunity lies in moving along the value chain into downstream processing and manufacturing (as opposed to just extraction and export of minerals). With this, the discussion paper emphasises the importance of foreign investment as Australia's domestic demand alone cannot sustain a large critical minerals sector.

Opportunities for the Australian critical mineral space more broadly

Australia is known as a dependable trading partner which has historically encouraged mining investment. Particularly in the context of critical minerals, many supplying and processing nations lack the same infrastructure and social / environmental regulation that western purchasers of critical mineral place emphasis on. An example of an opportunity arising out of Australia's high standards in this regard is the US Inflation Reduction Act which was passed in 2022. Amongst other things, this act incentivises the diversification of critical mineral supply chains through the introduction of a tax credit system that applies to qualifying EVs. The tax credit has many components, but the most important for Australian critical mineral companies is the concept of a 'foreign entity of concern'. From 2025, a qualifying EV's battery must not contain any critical minerals that were extracted, processed, or recycled from a 'foreign entity of concern'. Given Australia is not a 'foreign entity of concern', this creates a significant opportunity for Australia's critical minerals space.



Brazil

Return to index

Key metals and minerals

In general, the following mineral substances are those most commonly mined in Brazil: aluminium, copper, chromium, tin, iron, manganese, niobium, nickel, gold, vanadium and zinc.

Brazilian iron ore reserves are estimated at 34,000 million tons according to Ministry of Mines and Energy 2022 statistics. Brazil is responsible for 18.9% of global reserves.

Brazilian participation in iron ore global production is estimated at 18.4%, which places Brazil as the second biggest exporter of iron ore. Iron ore was responsible for 84.7% of Brazilian exports in the mining sector. Iron ore exports represented a total of US$ 15 billion in exports between January and June 2022. The leading iron ore producers are the States of Pará and Minas Gerais.

Brazilian copper ore reserves are estimated at 11,212 thousand tons according to 2022 statistics. In that year, Brazil was responsible for 1.6% of global reserves.

Brazilian production of copper ore was around 335.8 thousand tons in 2021. Copper ore represented 6.8% of Brazilian mineral exports in 2022.

Brazil has also a large aluminium reserve and it is the third largest producer of aluminium in the world. The leading aluminium producing states are Pará, Minas Gerais and Maranhão.

Brazil is historically also a key gold producer. In recent years, the country has still ranked among the top world 15 producers, with potential for further development. The main gold mines are located in the following States: Goiás, Maranhão, Goias, Amapá, Mato Grosso and Minas Gerais.

Legal System

Civil law.

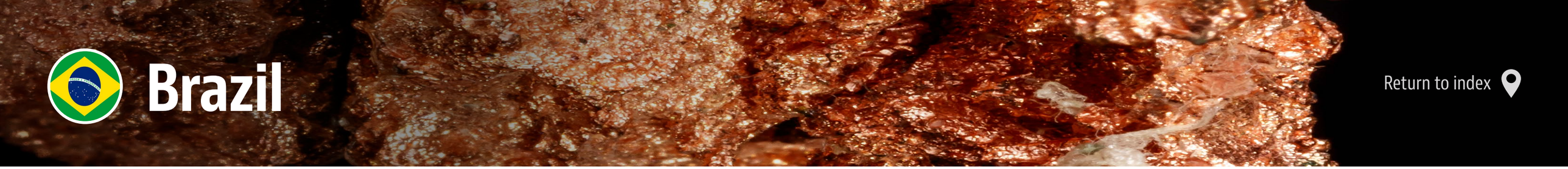
Member of New York Convention

Yes.

Contributors

Joaquim Tavares de Paiva Muniz
+55 (21) 2206-4921
joaquim.muniz@trenchrossi.com

Gabriela Bezerra Fischer
+ (55 21) 2206-4972
gabriela.fischer@trenchrossi.com



Brazil

Return to index

Foreign investment regime

Mining activities in Brazil may only be carried out through authorizations and/or concessions granted by the Federal Government to either: (a) Brazilian citizens; or (b) companies with head offices and management in Brazil (regardless of the nationality of the controlling partners, save very few exceptions). Therefore, it is possible for foreign companies to invest in mining activities in Brazil by incorporating a Brazilian subsidiary or investing in existing Brazilian companies.

However, mining companies operating within a frontier zone (an area within 150 kilometres of Brazil's border with other countries) must have at least the majority of the corporate capital belonging to Brazilian citizens and a majority of the members of the management of such companies must be Brazilian citizens who shall have predominant management powers over the company.

Furthermore, pursuant to the Brazilian Constitution, the exploration and production of nuclear minerals and its derivatives on Brazilian territory may only be carried out by state-owned companies. Recently, legislation has passed to ease the monopoly and allow private companies to be engaged in certain activities relating to nuclear minerals.

Local party ownership requirements

No.

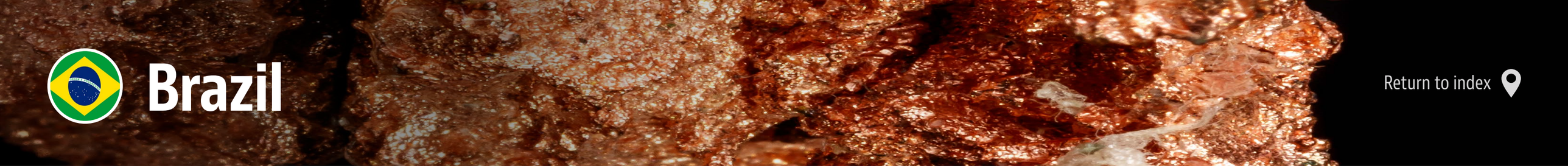
Indigenous and local community rights

The Brazilian Constitution foresees that the Federal Government shall protect indigenous people and their culture. In this sense, indigenous people in Brazil are entitled to the land they have traditionally occupied, which shall be declared "reserves" and also to the enjoyment of the natural resources found in such lands.

The Federal Congress can authorize the exploration and production of mining resources found within indigenous land. In these cases, the indigenous community shall be heard and will be entitled to participation in the outcome. The Brazilian Constitution determines that mining activities in indigenous lands will be subject to specific legislation.

As at January,2023 the Bill of Law No. 191/2020 is pending review by the National Congress. The Bill allows mining on indigenous lands, establishing the conditions for this activity and compensation for the restriction of the use of indigenous lands.

Furthermore, the ILO Convention 169 is applicable in Brazil and mining activities usually have some level of conflict with indigenous and tribal people regarding land uses, especially because of the reserve's locations which tend to be situated close to indigenous and tribal lands/occupations.



Brazil

Return to index

Environmental protection regime

Mining activities are deemed to be potentially high-polluting activities. As such, they are subject to environmental licensing being obtained as well as to strong scrutiny from environmental authorities. Except in certain cases set forth in the Supplementary Law No. 140/2011, environmental licensing of mining projects is conducted by the competent state environmental agency. The proceeding will be simultaneous with the proceeding for granting of the production license.

An environmental licensing proceeding comprises three phases:

- the Preliminary License, which authorizes the location of the activity and the concept of the project, pursuant to the environmental studies presented;
- the Installation License, which, upon fulfilment of the conditions imposed in the Preliminary License, authorizes the installation of the activity; and
- the Operating License, which authorizes the start-up of the activities.

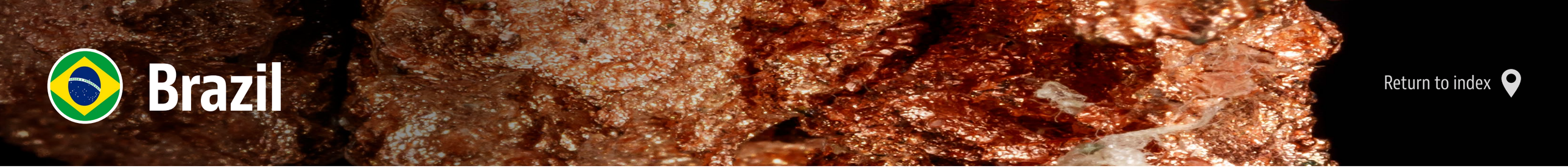
As a general rule, for the issuance of the Preliminary License, an Environmental Impact Study ("EIA") and a corresponding Environmental Impact Report ("RIMA") are required. The purpose of the studies is to assess negative and positive impacts of the intended activity, explore the locational and technological alternatives and evaluate the measures to prevent or mitigate negative impacts.

In addition to the environmental licensing proceeding, other environmental permits and licenses will apply in a mining project. For example, permits from the federal or state water agency for the use of water and for the construction of dams. Mining is also subject to permits for appropriate destination of solid waste and scrap materials, as well as to registration with the Registry of Potentially Polluting Activities. Suppression of vegetation, use of explosives and utilization of certain chemicals products are also subject to specific licenses from the authorities.

Failure to comply with applicable environmental laws and regulations can result in criminal and administrative penalties pursuant to Brazilian Federal Law No. 9,605 of 12 February 1998 and Federal Decree No. 6,514 of 22 July 2008, in addition to the obligation to restore the environment and indemnify third parties in case of environmental damage. Polluters in Brazil are subject to strict, joint and several liability. It is possible to pierce the corporate veil and obtain the assets of controlling shareholders if the polluter does not have funds to pay the damage and/or the penalties

The environmental license procedure also includes, when applicable, the consultations from the ILO (International Labour Organization) Convention 169 and may result in specific and additional environmental studies regarding indigenous and tribal people.

Also, Federal Law N. 12,334/2010 establishes a Dam Break Security Police, with which all mining activities must comply when the operations involve water and waste dams. There are other regulations on dam safety which are usually applicable to mining activities in Brazil.



Brazil

Return to index

Land tenure

Mining rights are separate from surface rights. All minerals located within Brazilian national territory are the property of the Union until the minerals are extracted. Mining legislation creates a system of mining tenure separate from land tenure. Therefore, landholders do not have any ownership rights to unproduced minerals, although they are entitled to compensation for the loss of the use of land due to the mining activities.

Rehabilitation security

No.

Exploration license

Exploration authorizations ("*alvará de pesquisa*") are granted by the ANM's general officer.

Exploration Licenses are granted for a term up to four years, which may be extended once for the same period by ANM. Additional extension is exceptional when it is not possible to access the area or there are delays in environmental licensing.

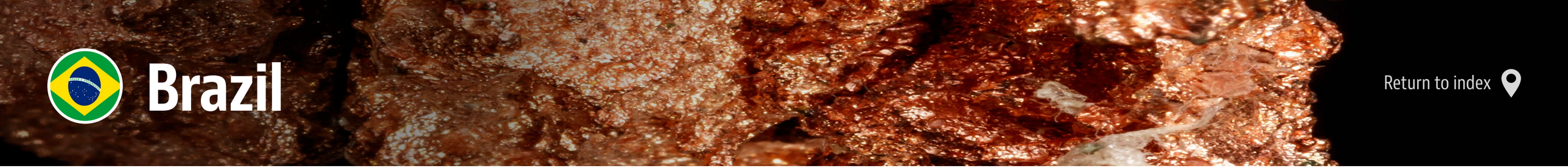
Assignment of an Exploration License is allowed, subject to the ANM's prior approval. ANM will assess the assignee's ability to comply with the approved exploration work plan, budget and exploration schedule.

Mining license

A party who performed exploration has a pre-emptive right to apply for a mining concession within one year from the approval of the final exploration report by the ANM. Mining concessions are granted for an undetermined period.

Use tenement as security

Yes.



Brazil

Return to index

Royalty payable to Government

Yes. The amount depends on the commodity as follows:

- Rocks, sands, gravel, clay and other mineral products used directly in civil construction (also called construction aggregates), ornamental rocks, as well as mineral and thermal water: 1% rate.
- Gold: 1.5% rate.
- Diamonds and other mineral products: 2% rate.
- Bauxite, manganese, niobium and rock salt: 3% rate.
- Iron ore: 3.5%.

The ANM is authorized to reduce iron ore's rate to up to 2% for mineral deposits with feasibility compromised due to low grades, production scale, taxation or the number of employees.

Classification system

Brazilian System of Mining Resources and Reserves ("SBRRM") ("*Sistema Brasileiro de Recursos e Reservas Minerais*").

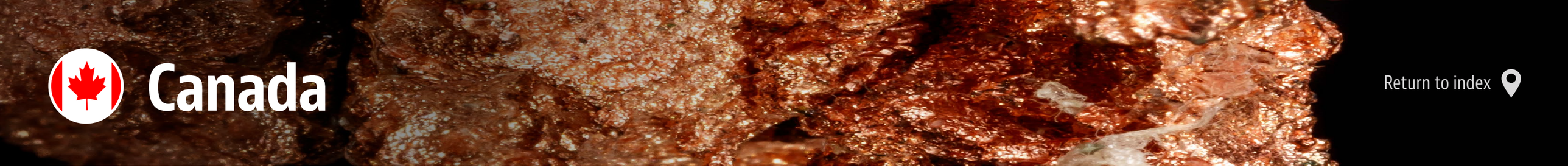
Other key regulation / policy for critical minerals

The newly elected Government in Brazil (as of 2023) has set a pro-energy transition and decarbonization tone, as opposed to the previous Government which had a more aggressive approach towards extractive activities and fossil fuels.

The new Ministry of Mines and Energy advocates the creation of a program to increase the domestic supply of critical minerals, important to ensuring the energy transition. Amongst the minerals found in Brazil the following are considered "critical minerals": lithium, copper, cobalt, nickel and vanadium.

In respect to lithium specifically, if the program goes on, the new Government is expected to revoke a previous Decree that eased the requirements for lithium exportation and its by-products, aiming at focusing on the national industry and aligned with the Government's agenda for increase of industrialization in the country.

In respect to mining activities in general, recently approved Law No. 14,514/22 (a) eased the Federal Government monopoly over nuclear minerals, authorizing private companies to perform certain activities relating to nuclear minerals; (b) increased the term of research license to up to four (4) years, as opposed to the previous 3-year limit; and (c) extended the possibility of encumbering mining rights not only to mining concessions, but also in respect of earlier stages of the project, including such as a research license.



Canada

Return to index

Key metals and minerals

The Canadian mining sector produces diverse minerals ranging by region and including precious and base metals, nuclear materials, fertilizers, aggregates, coal and petroleum, and critical minerals used in the energy transition and the deployment of clean energy technologies.

The Canadian government has designated as critical minerals a list ("Canada's Critical Mineral List") that includes 31 minerals and metals, with 21 of them currently being produced in industrial quantities (such minerals or metals designated with *): aluminum*, antimony*, bismuth*, cesium*, chromium, cobalt*, copper*, fluorspar, gallium, germanium, graphite*, helium*, indium*, lithium*, magnesium, manganese, molybdenum*, nickel*, niobium*, platinum group metals*, potash*, eare earth elements, scandium*, tantalum*, tellurium*, tin, titanium*, tungsten, uranium*, vanadium, and zinc*.

Legal System

Common law (civil law for the Province of Quebec).

Member of New York Convention

Yes.

Foreign investment regime

Acquisitions of or investments in Canadian mining companies may be subject to suspensory and non-suspensory filings under the Investment Canada Act ("ICA"), as is the case with investments in all other industries. See below.

In addition to the above, the Canadian federal Government has broad discretionary powers to review any foreign investment on grounds that it could be "injurious to Canada's national security", including those investments involving designated critical minerals appearing on Canada's Critical Mineral List, which includes minerals considered critical for the sustainable economic success of Canada.

Over the course of the last couple of years, the Canadian Government has indicated its intention to further scrutinize investments involving such minerals and their entire supply chains, irrespective of whether mines are located in Canada or whether the sole nexus to Canada is a listing on a Canadian stock exchange, by introducing critical minerals as a new factor for consideration in national security reviews.

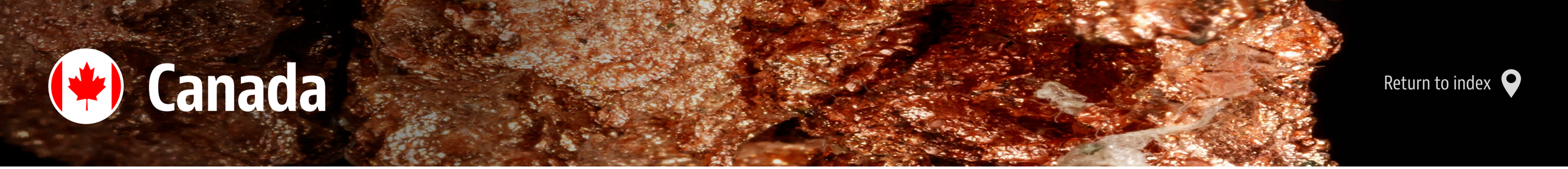
Contributors

Matthew Martin
+1 416 814 4447
matthew.martin@bakermckenzie.com

Sarah Mavula
+1 416 814 3300
sarah.mavula@bakermckenzie.com

Francois Desmarais
+1 416 865 6936
francois.desmarais@bakermckenzie.com

Anton Rizor
+1 416 865 6939
anton.rizor@bakermckenzie.com



Canada

Return to index

Local party ownership requirements

No.

Indigenous and local community rights

Yes. Canadian Courts have recognized a constitutional duty on Canadian Governments to consult with and, where appropriate, accommodate indigenous groups when conduct might adversely impact potential or established indigenous or treaty rights. This duty to consult is proportional to the anticipated impact of a mining project on indigenous peoples' rights, and the strength of the rights or claims asserted by the indigenous people involved. The complexity and length of the consultation process will vary from project to project.

Unlike Canadian Governments, private companies engaged in mining projects are not themselves constitutionally obliged to consult with indigenous peoples, but generally will be required to do so to some extent by the common law and/or statutory duty applicable in the particular province or territory. Indigenous consultation has become commonplace and therefore, mining companies are generally advised to identify affected indigenous peoples, if any, prior to the engagement of exploration or development.

Environmental protection regime

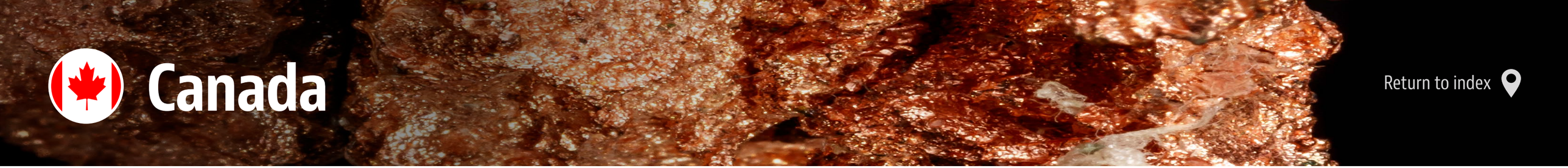
Highly developed. Canadian environmental protection is governed by a combination of federal, provincial and municipal Government legislation and regulations. While there are instances of harmonization between provincial and federal regimes in certain provinces, large-scale mining projects are often subject to an environmental assessment under the federal Canadian Environmental Assessment Act as well as under applicable provincial or territorial legislation.

Land tenure

It is typical for exploration stage Canadian mining companies to hold land rights in the form of mining claims only. In order to bring the mine into production, there is a process whereby a mining claim holder is entitled, and has the exclusive right, to apply for a mining lease over the area of the claim, following the prescribed periods of assessment work. Such a mining lease grants the right to enter into production from a mineral deposit and, upon production, to take title to the minerals and to process and dispose of them for valuable consideration.

Rehabilitation security

Yes.



Canada

Return to index

Exploration license

Typically, 1-24 years, with extensions and renewals (and, in some cases, no expiry) if activity is conducted in compliance with license requirements.

Mining license

Typically, 15-30 years.

Use tenement as security

Yes.

Royalty payable to Government

Yes. The amount of royalty depends on the commodity and province/territory.

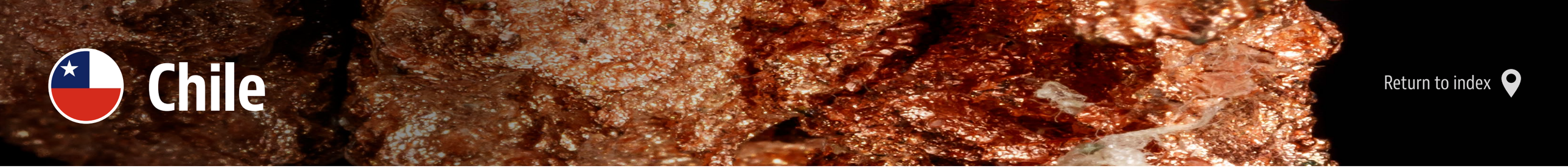
Classification system

NI 43-101.

Other key regulation / policy for critical minerals

Most recently, the Canadian Government stated that it will only approve foreign investments by state-owned or state-influenced enterprises ("SOEs") involved in critical minerals on an exceptional basis. Specifically, acquisitions of control by SOE investors in Canadian businesses operating in the critical minerals sector, which are subject to an economic pre- closing approval review, will only receive approval on an exceptional basis. Under national security rules, all investments by SOE investors in Canadian businesses operating in the critical mineral sectors will support a finding that there are reasonable grounds to believe that the investment could be injurious to Canada's national security, therefore triggering additional national security scrutiny. Despite these developments, there are generally no other restrictions on foreign investors holding direct or indirect interests (through a Canadian-incorporated subsidiary) in mining rights.

As indicated above, acquisitions of or investments in Canadian mining companies may be subject to suspensory and non-suspensory filings under the ICA. The ICA requires foreign investors to submit a filing when they establish a new business in Canada or acquire deemed control (i.e., an interest of at least 33.3%) of an existing Canadian business. From a national security perspective, a transaction cannot be closed without approval if the Government has given notice of a potential or actual national security review to the non-Canadian investor and not issued a subsequent notice authorizing the transaction to proceed. If the transaction has already closed, the Governor in-Council may order a divestiture or impose other conditions, and the review period will typically last up to 200 days, and potentially longer. Similarly, new amendments to the ICA subject minority investments to the ICA's national security jurisdiction for a period of five years after closing unless a voluntary filing is filed. The ICA does not define "national security", and while updated national security guidelines were recently released, as yet virtually no guidance has been provided as to how national security concerns will be interpreted or implemented.



Chile

Return to index

Key metals and minerals

The main metallic minerals extracted in Chile are copper, iron, silver, molybdenum and gold. The copper industry retains its decades-long global relevance, as Chile is the world's largest Copper producer. In 2022, copper production was 5,624 million metric tons, representing 12% of the country's GDP and almost a third of the metal´s global output (26%). Other relevant mineral productions are iron, with 12 million metric tons, followed by silver, molybdenum and gold. Chile is also rich in non-metallic rocks and minerals, being the largest producer of iodine, nitrate, lithium and potassium salts.

Lithium is especially important, as its vast mines and salt pans make Chile the country with the world's largest known lithium reserves to date, that is, over 9.2 million tons. The northern Atacama Desert is part of the so-called South American Lithium Triangle, along with zones of Argentina and Bolivia, and its mineral's production is expected to grow over thecoming years by approximately 16% a year.

Legal System

Civil law.

Member of New York Convention

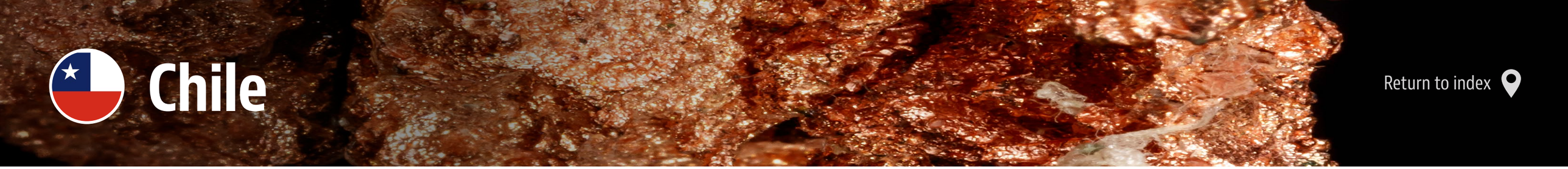
Yes.

Contributors

Antonio Ortuzar Jr
+56223677078
antonio.ortuzar.jr@bakermckenzie.com

Mirco Hilgers
+56223677037
mirco.hilgersg@bakermckenzie.com

Antonia Montt Strabucchi
+56223677069
antonia.montt@bakermckenzie.com



Chile

Return to index

Foreign investment regime

Since January 2016, a new legal statute (Law No. 20.848) regulating foreign investment entered into force, replacing the older Decree Law N° 600. The new framework points is aimed atcomplying with OECD standards, through the creation of InvestChile, a new government agency tasked with the promotion of non-Chilean investment intothe country.

The current statute does not impose specific percentage limitations or domestic ownership requirements for companies that carry out operations at the local level.

Regarding foreign direct investment ("FDI"), the Law establishes the requirements needed to qualify under such concept, as follows:

- Investment transfer (foreign capitals or assets have to be transferred from abroad, or by a company controlled by a foreign investor to Chile).
- The minimum amount of investment (the investment made has to be equal or higher than 5 million USD).
- The Law considers FDI as an activity that is carried out, directly or indirectly, through acquiring or possessing shares of a local company, that gives the foreign investor control of at least 10% of the local company's voting shares or rights t or its equivalent.

There are also certain restrictions, to which only certain transactions are subject to. These include transactions that must be conducted through the Formal Exchange Market (for example, local commercial banks) and /or must be reported to the Central Bank of Chile.

Local party ownership requirements

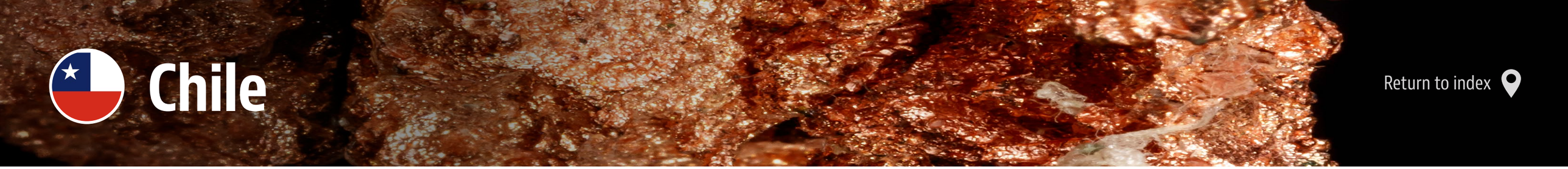
No.

Indigenous and local community rights

Yes.

Environmental protection regulation

Highly developed.



Chile

Return to index

Land tenure

Mining rights are separate from surface rights.

Exploration license

Currently, an exploration license is granted for two years, with the possibility to extend its good standing period for two more years, provides the licensee abandons at least half of the granted area. Fom February 2023 onwards, exploration licenses will have a duration of 4 years, without the possibility to extend their good standing.

Use tenement as security

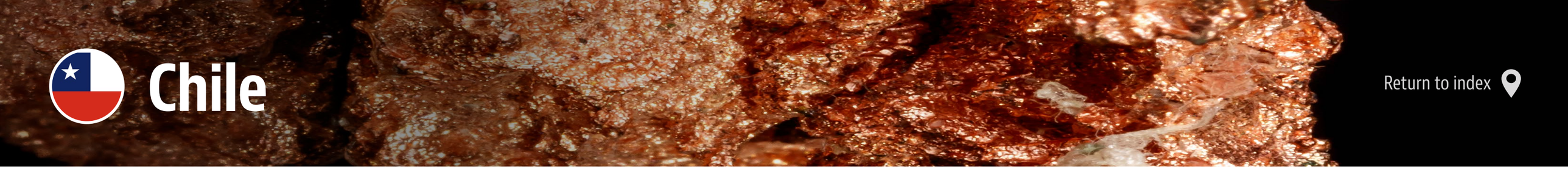
Yes.

Royalty payable to Government

Yes. The amount depends on the extension of the concession area and its antiquity.

Classification system

N/A.



Chile

Return to index

Other key regulation / policy for critical minerals

Lithium

Regarding lithium extraction, the regulatory status differs widely from those applicable to other Chilean minerals. With the exception of lithium mining properties registered before 1979, lithium properties are declared by law as not being capable of being granted a mining concession for exploration or exploitation and these properties are reserved to the State.

The Mining Code 1983, together with the Constitution, state that the right to exploit lithium can be granted through three legal mechanisms:

- State-owned companies, such as Codelco or Enami.
- Under administrative concessions.
- Pursuant to Special Lithium Operation Contracts ("CEOL") decreed by the Mining Ministry.

In furtherance of the above, the Chilean Nuclear Energy Commission ("CCHEN") plays an important role in regard to lithium's exploitation, as it sets and allows the quotas for the extraction and commercialization of lithium.

Mining safety regulations

Decree number 30, published on February 23, 2022, amends and replaces Title XV of the Mining Safety Regulations applicable to mining operations. Its purpose is to update the regulatory provisions to the national reality, specifically in relation to small-scale mining. Consequently, the scope of application of the regulation applies to mining operations with an underground or open-pit extraction or mineral processing capacity equal to or less than five thousand tons per month. Along with the above, modifications are introduced to the obligations of companies and workers.

Furthermore, on May 31, 2022, Exempt Resolution number 747, established new categories of contraventions to the mining police and safety regulations. It also established a catalogue of cases that constitute contraventions of different degrees of graveness. Finally, it allowed for self-reporting, allowing mining companies the possibility of exempting or reducing certain fines.

Modification to the Chilean Mining Code

Finally, Law number 21,420 introduced a set of relevant modifications to the Mining Code, which are to come into force in 2023. However, a draft law is currently being discussed in Congress that aims to postpone the entry into force of some changes incorporated in the aforementioned law. One of the most important and relevant changes introduced is the amount of Annual License Fees to be paid for each mining concession. The parameters for its calculation have changed, since with the enforcement of this new Law the amount to be paid will not only consider the extension, but also its longevity and if actual efforts are taking place or not. The amendments, if approved, that are to be extended to 2024 are related mainly to the duration of exploration concessions, including the option to extend it for 4 more years. The prohibition to acquire a new concession within the same surface for one year after it's extinction, and a procedure for the update of the coordinates of current mining claims, given the expected change of datum.

Colombia

Return to index

Key metals and minerals

There is existing regulation enacted since 2012 that regulates "minerals of strategic interest" which are not necessarily the same as "critical minerals".

Existing regulation mentions that gold, platinum, copper, phosphates, potassium, magnesium, metallurgical coal, thermal coal, uranium, iron and coltan (niobium and tantalite) are to be classified as "minerals of strategic interest".

This regulation has changed over time but it looks to encourage the Colombian government (via the Geological Survey) to identify the country's geological potential in these minerals in order to promote foreign investment.

Legal System

Civil law.

Member of New York Convention

Yes.

Foreign investment regime

No particular restrictions for foreign investment apply to the mining sector.

Local party ownership requirements

None.

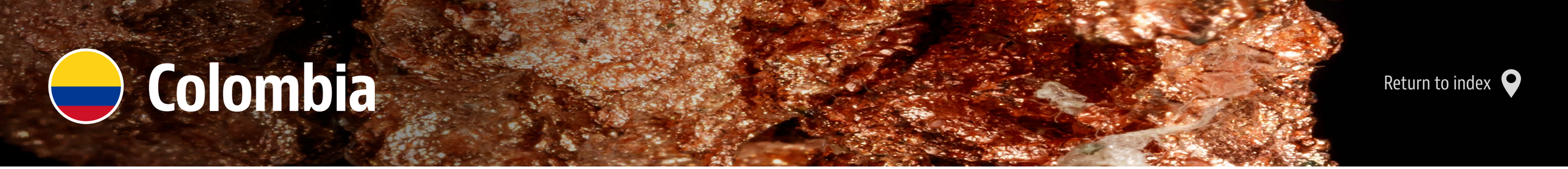
Indigenous and local community rights

Yes. Prior consultation must be conducted in the event that a project overlaps with an indigenous community.

Contributors

Alejandro Mesa
+57 601 6341551
alejandro.mesa@bakermckenzie.com

Nicolás Arboleda
+57 601 6341542
nicolas.arboleda@bakermckenzie.com



Colombia

Return to index

Environmental protection regime

Highly developed.

Land tenure

Mineral rights are separate from surface rights.

Rehabilitation security

No. The only bond required by Colombian mining legislation regarding mining concession agreements is a mining-environmental insurance policy guaranteeing the performance compliance of the concessionaire's obligations under the concession agreement, including those related to environmental and mining obligations, as well as those pertaining to the payment of fines and caducity.

Exploration license

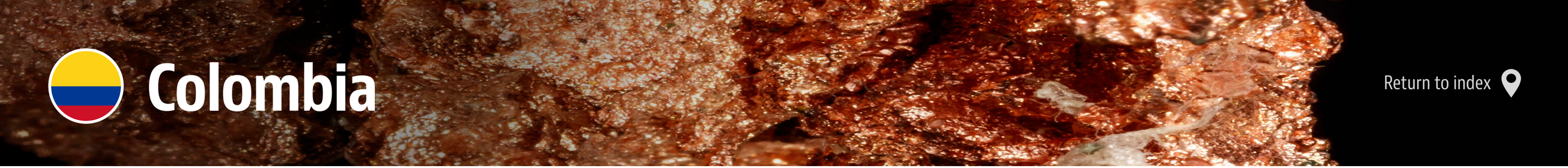
Exploration licenses are not applicable to Colombia. Colombian law provides for the rights to explore and exploit minerals to be granted as a whole, by means of the execution of a concession agreement between the government and the interested party (mining company), and no individual per-stage licenses are granted, unlike some other jurisdictions. We instead refer to the different stages of a single concession.

Mining license

Mining licenses are not applicable to Colombia. Colombian law provides for the rights to explore and exploit minerals to be granted as a whole, by means of the execution of a concession agreement between the government and the interested party (mining company), and no individual per-stage licenses are granted, unlike some other jurisdictions. We instead refer to the different stages of a single concession. The maximum term will be equivalent to the total term of the concession (30 years) minus the time spent on the exploration, construction and assembly stages (in any case, no more than 15 years).

Use tenement as security

Yes.



Colombia

Return to index

Royalty payable to Government

Yes. The amount depends on the minerals produced.

Classification system

Colombian CRIRSCO Reserves and Resources Standard ("CCRR").

Other key regulation / policy for critical minerals

In 2021 the National Mining Agency opened a public tender process to award 5 strategic copper areas to investors. All 5 copper areas were awarded to mining companies.

Indonesia

Return to index

Key metals and minerals

There are four types of mining products classified under Indonesian regulatory mining framework: (a) ferrous minerals; (b) non-ferrous minerals; (c) rocks and; (d) coal.

Indonesia has significant coal and mineral deposits, with the majority of Indonesia's mining exports being thermal coal.

According to the Indonesian Government's statement, the role of critical mineral commodities is very strategic and vital in supporting the energy transition. Critical minerals, on the other hand, are also associated minerals from tin mining, bauxite, nickel, and iron sands, and these minerals have high prices because they are difficult to find, difficult to extract in economic quantities and difficult to substitute for metals or other materials.

Contributors

Norman Bissett
+62 21 2960 8678
norman.bissett@bakermckenzie.com

Legal System

Civil law.

Member of New York Convention

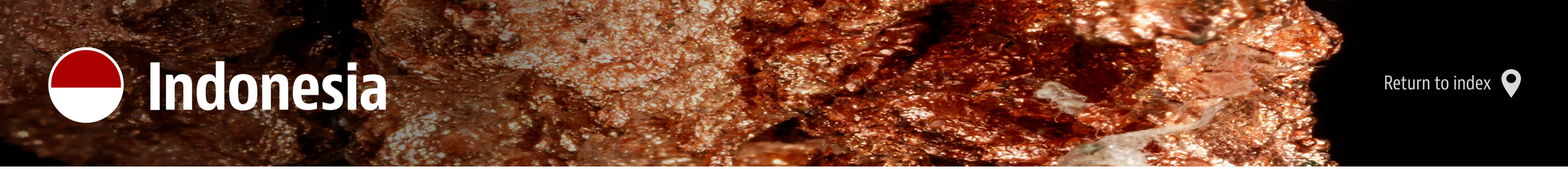
Yes.

Foreign investment regime

Yes. Foreign shareholders in Indonesian mining companies holding mining business licenses ("IUPs") may initially own 100% of the shares, but upon reaching the operation-production stage, it must divest at least 51% of its shares (gradually) to the central Government, regional Government, state-owned enterprises, regional-owned enterprises and/or Indonesian-owned entities (in tiers).

The timeline for divestment varies depending on the type of mining:

- for open-pit mining (not integrated with processing, refining and/or coal development and utilization facilities; or 'integrated business'): the divestment starts from the 10th year (5%) to the 15th year (51%), each after the start of production of production;
- for open-pit mining (with integrated business) and for underground mining (without integrated business): the divestment starts from the 15th year (5%) to the 20th year (51%), each after the start of production of production;
- for underground mining (with integrated business): the divestment starts from the 20th year (5%) to the 25th year (51%), each after the start of production of production.



Indonesia

Return to index

Local party ownership requirements

Yes. See above.

Indigenous and local community rights

A mining company must negotiate and enter intocompensation agreements with local landowners in relation to the disruption of their enjoyment of the surface rights to the land (compensation for lost crops, for example). Holders of IUPs are required to formulate plans for the development and empowerment of local communities around the IUP area in consultation with the local Government and local communities.

Environmental protection regime

A Production Operation IUP cannot be granted unless an Environmental Impact Assessment (known as an "AMDAL") or a less onerous Environmental Management Effort/Environmental Monitoring Effort (known as "UKL-UPL") has been completed and approved by the government, and an environmental approval has been obtained. Whether a mine requires an AMDAL or a UKL-UPL depends on the size of the mining project. The AMDAL includes an ongoing monitoring and reporting plan which also needs to be complied with by the mining company.

In addition, mining companies are required to deposit a "post-mining guarantee" and a "reclamation guarantee" to the government prior to commencing any production activities. At the end of a mining project, mining companies must perform reclamation on the affected land, to restore the land to a natural state. A reclamation guarantee is also required for reclaiming land damaged by exploration activities.

In addition, mining activities carried out in a forest area will be subject to a "Borrow and Use" license.

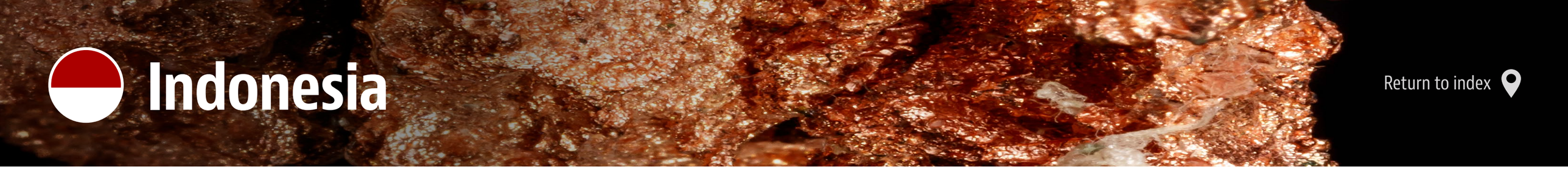
Land tenure

Mining rights are separate to surface rights.

Under Indonesia's Constitution, the land, water and natural resources of Indonesia are required to be under the control of the State and are to be used to the greatest benefit of the Indonesian people. There are varying interpretations of what control of the State should involve. The State is the ultimate owner of minerals and coal. Land titles (as opposed to mining rights) do not give the holders of the land any rights to minerals or coal located on or under the land.

Rehabilitation security

Yes.



Indonesia

Return to index

Exploration license

Typically, 3-8 years depending on type of mine with an entitment for extension depending on the type of mine.

Mining license

Typically, 5 - 30 years with an entitlement for extension depending on the type of mine. If it is integrated (i.e., mining plus processing and/or purification (for mineral) and mining plus development and/or utilization (for coal)), the license for integrated mining activities is guaranteed a 10-year extension with unlimited number of extensions – this is conditional on meeting statutory requirements.

Use tenement as security

No.

Royalty payable to Government

Yes. The royalty amount depends on the type of mineral or coal and other factors (for example, for coal different royalties apply to different calorific values).

Classification system

Indonesian Mineral Reserve Committee Code ("KCMI").

Other key regulation / policy for critical minerals

Currently, the Indonesian Government aims to stop exporting raw minerals to grow its economy and instead focus on expanding its downstream industries.

In line with this policy, Indonesia banned the export of nickel ore in 1 January 2020. Despite a lawsuit filed by the European Union which has been ruled on by the World Trade Organization dispute settlement body in favor of the European Union (and is currently under appeal by the Indonesian Government), the nickel ore export ban policy still applies.

The main focus of the Government is now the process of developing raw nickel into lithium batteries for use in electric vehicles.

The Government also provides special treatment to integrated mining activities (i.e., mining plus processing and/or purification (for mineral) and mining plus development and/or utilization (for coal)) whereby the license for integrated mining activities is guaranteed a 10-year extension with an unlimited number of extensions – this is conditional upon meeting statutory requirements.

Kazakhstan

Return to index

Key metals and minerals

Kazakhstan is rich in mineral resources. According to the Government's statistics, Kazakhstan's share in the world's reserves of wolframium is 63%, chromium - 48%, uranium - 14%, silver - 6%, copper - more than 4%. Currently, Kazakhstan leads the world in uranium production.

Key solid minerals extracted in Kazakhstan include iron, copper, uranium, zinc, molybdenum, wolframium, manganese, gold, aluminium and others.

The Northern Kazakhstan region is the country's main base for production of aluminium, gold and iron ore. Also, main reserves of nickel-cobalt, stannic tantalum and titanium zirconium are concentrated in this area.

The Eastern Kazakhstan region is the main area for extraction of polymetallic ores.

Central Kazakhstan is the main supplier of copper and manganese. Considerable reserves of wolframium molybdenum and zinc-lead ores are concentrated in this area.

Southern Kazakhstan is the base for the uranium industry, where most of the country's uranium deposits based on in-situ leaching extraction are located.

Legal System

Civil law.

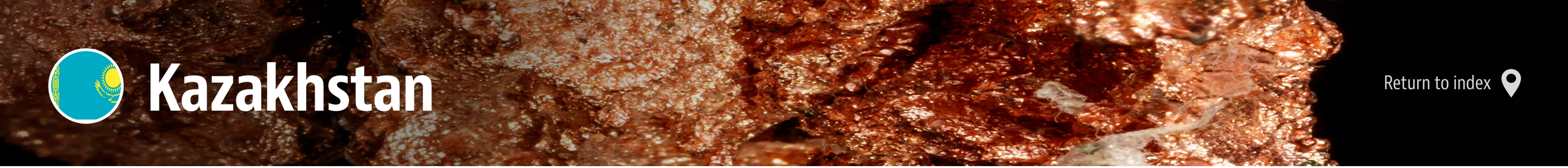
Member of New York Convention

Yes.

Contributors

Azamat Kuatbekov
+7 777 2106025
azamat.kuatbekov@bakermckenzie.com

Nurgul Abdreyeva
+77273300500#2103
nurgul.abdreyeva@bakermckenzie.com



Kazakhstan

Return to index

Foreign investment regime

Currently, the level of foreign direct investment in the country is among the highest in the former Soviet Union. The government prepared a series of initial public offerings (IPOs) for several state-run companies to improve liquidity in the local stock market and increase local participation.

Raw mineral extraction is by far the biggest sector of Kazakhstan's economy, making it overly dependent on world market prices for mineral resources. For the purposes of developing the non-raw material sectors of the economy, Kazakhstan has established a number of investment support institutions, including the Development Bank of Kazakhstan and the Investment Fund.

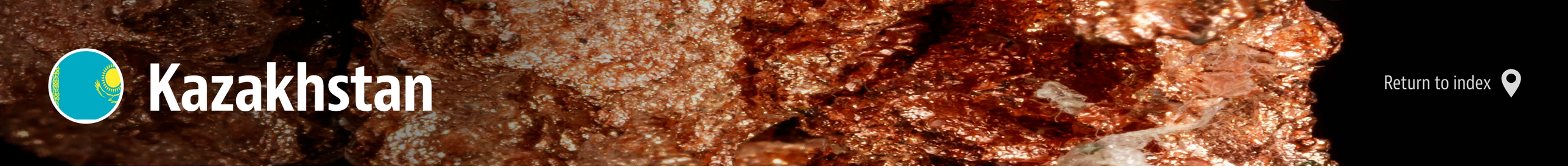
The major exports are natural resources, including hydrocarbons and ferrous metals. The major imports include machinery, equipment and vehicles.

The principal state body overseeing investments in Kazakhstan is the Committee on Investments within the Ministry of Foreign Affairs. Among other things, the Committee on Investments is charged with negotiating and concluding investment contracts with investors pursuant to the Entrepreneurship Code ("Code").

In October 2015, the Code , which superseded the Law on Investments, was adopted in Kazakhstan. The Code retained most of the earlier investment guarantees, such as the stability of contracts (with certain exceptions), free use of income, the transparency of state investment policy, the stability of tax and foreign labor law in relation to priority investment contracts, reimbursement of losses in the event of nationalization and requisition and certain others.

Kazakhstan has concluded bilateral treaties on the encouragement and mutual protection of investments with 49 countries. Kazakhstan is also party to a number of multilateral treaties concerning foreign investments (for example, the Energy Charter).

Investment treaties provide a number of guarantees to nationals of member countries, including most-favored-nation treatment, protection against discrimination, requisition and nationalization and the right to resolve investment disputes by international arbitration in the absence of an arbitration agreement with the state.



Kazakhstan

Return to index

Local party ownership requirements

Generally, there are no local participation requirements in the mining industry, except for the below.

As concerns Government participation, the Code of the Republic of Kazakhstan "On Subsoil and Subsoil Use" dated 27 December 2017 (the "Subsoil Code") provides that mining rights for uranium deposits can only be granted to the national company in the uranium industry (currently, "Kazatomprom" National Atomic Company JSC). Mining rights granted in such way can be subsequently transferred only to companies where the national uranium company holds more than 50% of the shares.

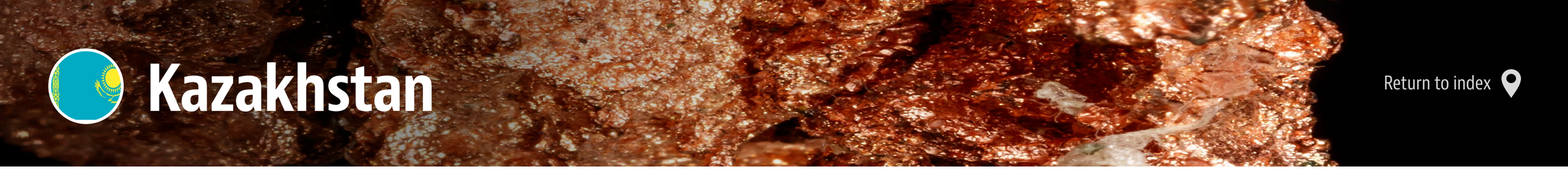
There are no special requirements or limitations on the acquisition of mining assets by foreign companies or individuals. However, the acquisition of subsoil use assets (irrespective of whether they are acquired by local or foreign parties) is subject to a number of statutory approvals and consent, including the waiver of the state's pre-emptive purchase rights (if a transaction involves a strategic uranium deposit from the special list approved by the government), consent of the regulator and consent of the competition authority. Among other things, Kazakhstani law allows the Ministry of Industry and Infrastructure Development (MIID"), which is the primary regulator for the mining industry (except for uranium and coal), to withhold its consent to the transfer of an interest in a subsoil use license or shares in the relevant subsoil entity (or its parent entity), if such transfer may result in a "concentration of rights to conduct subsoil use operations" in the hands of one person or a group of persons from one country. The concept of "concentration of rights" is not clearly defined in the law at present and the MIID may exercise substantial discretion in this regard.

Indigenous and local community rights

In Kazakhstan, there are no indigenous people or similar population groups.

However, there are a number of so-called local content requirements. Further to these requirements, subsoil users must buy locally produced goods, works and services according to minimum thresholds usually set in subsoil use contracts.

Certain restrictions on these requirements were changed (lightened) in connection with Kazakhstan becoming part of the World Trade Organization. In particular, subsoil use contracts executed after 1 January 2015 should not contain any obligations of subsoil users to procure goods from local manufacturers. The requirement for a minimum level of local works and services was retained, but the minimum level cannot exceed 50%. Notional discounts which subsoil users had to give to local manufacturers of goods were removed from 1 January 2021. Notional discounts to be granted to local manufacturers of works/services continue to apply.



Kazakhstan

Return to index

Environmental protection regime

Subsoil users in Kazakhstan are subject to extensive environmental protection regulation. The Ministry of Ecology and Natural Resources of the Republic of Kazakhstan (the "MENR") is the principal state authority in the area of environmental protection. Among other things, it issues environmental permits and licenses and establishes limits for environmental emissions.

The Ecological Code regulates environmental protection in Kazakhstan. The Ecological Code was adopted only recently (on 2 January 2021) and entered into force on 1 July 2021. It is generally believed to be close to international standards of environmental regulation.

The Ecological Code introduced a number of serious changes, including the need to comply with best available techniques.
Under the Ecological Code, all industrial facilities/activities, depending on a level of impact on the environment, are divided into four categories. Activities that have the highest level of environmental impact (e.g., certain types of power production, manufacture and processing of metals, chemical industry, etc.) are included into the I category, while activities with the lowest level of environmental impact are included into the IV category.

All individuals and legal entities that cause a negative impact on the environment in the course of operating facilities under the I and II categories must obtain an ecological permit from the regulator, its local subdivisions or local executive authorities (depending on the type of the relevant facilities and area of activities). Under the Ecological Code, there are two types of environmental permits:

- Complex ecological permit;
- Ecological permit for impact.

Complex ecological permits are mandatory for facilities under the I category and could be issued subject to compliance with best environment techniques. Ecological permits for impact are mandatory for facilities under the II category and are issued for the period until the relevant technologies change, but not more than 10 years. Entities that operate facilities falling under the III category must submit a declaration on the environmental impact.

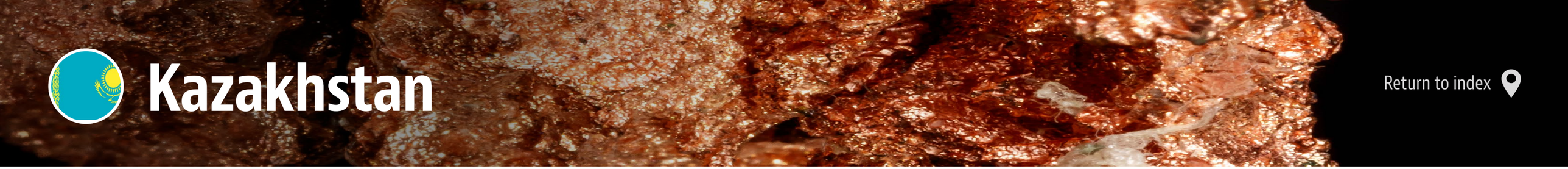
New developments primarily have impact on the largest enterprises of the country and contribute largely to pollution. Thus, it is now necessary for them to make considerable investments in order to comply with new requirements.

Land tenure

All minerals *in-situ* are the property of the State until the minerals are extracted. The mining legislation creates a system of mining tenure separate from land tenure. Therefore, landholders do not have any ownership right to minerals (except for certain commonly occurring minerals), although they may be entitled to compensation for the loss of the use of land due to the mining activities.

Rehabilitation security

Yes.



Kazakhstan

Return to index

Exploration license

Exploration licenses are issued for a period of 6 years. Subject to compliance with conditions prescribed by the Subsoil Code, this period can be extended once for a period not more than 5 years.

Mining license

Mining licenses are issued for a period of up to 25 years. Subject to compliance with conditions prescribed by the Subsoil Code, this period can be further extended for the same period. The number of extensions is unlimited.

Use tenement as security

Yes.

Royalty payable to Government

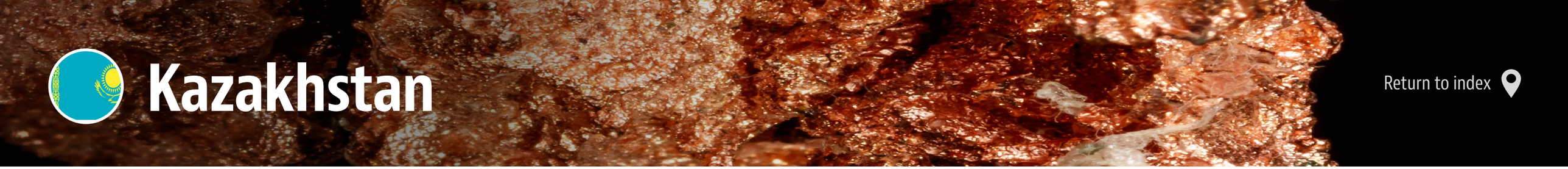
Generally, there is currently no royalty on activities related to extraction of solid minerals. Royalties were replaced by the mineral extraction tax.

Classification system

Kazakhstan's mineral resource and reserve reporting system were in the past notably different, both in principle and in practice, from generally recognized international systems such as Canada's CIM standards, Australia's JORC Code and South Africa's SAMREC Code.

Kazakhstan, along with other CIS countries, used to apply the former Soviet system for classification of mineral resources and reserves, which categorizes mineral reserves according to the extent to which they have been explored and substantiated. Specifically, mineral reserves are divided into categories A, B, C1 and C2, depending on the extent to which they have been explored and substantiated. Potential resources are categorized into P1, P2 and P3 groups depending on the extent to which they have been substantiated. Mineral reserves, on an economic-value basis, are also classified into balance reserves (commercial reserves) and off-balance reserves (reserves currently lacking commercial potential).

At the same time, after adoption of the Subsoil Code, Kazakhstan is transferring to a new classification system – the so-called Kazakhstan's Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves ("KAZRC Code"). The aim of such changes is to make Kazakhstan's classification system closer to international classification standards.



Kazakhstan

Return to index

Other key regulation / policy for critical minerals

In Kazakhstan, the mining industry is regulated by the Subsoil Code – a single law which covers both mining and oil and gas sectors. The Subsoil Code has a general part which applies to all natural resources, and special parts which separately regulate oil and gas, uranium and other solid minerals areas. Mining rights for solid minerals (except for uranium) are granted by the state on the basis of licenses. Mining rights in the uranium industry are granted on the basis of so-called "subsoil use contracts" executed between the state and a subsoil user.

Mining operations are heavily regulated by various laws (including, but not limited to, environment protection, safety, health, local content and other regulations). Compliance with obligations set forth in subsoil use licenses/contracts is essential since failure to comply may result in unilateral termination of such contracts/licenses by the state. Acquisition, direct or indirect, of mining rights is subject to obtaining a number of statutory clearances, with a limited number of exceptions (please see above).

Recently, the government has announced its intent to change its general policy with respect to the mining industry. The contemplated policy change is prompted by the desire to increase the investment attractiveness of the industry, particularly in the mineral exploration sector. In line with this policy, the Republic of Kazakhstan adopted the Subsoil Code at the end of 2017.

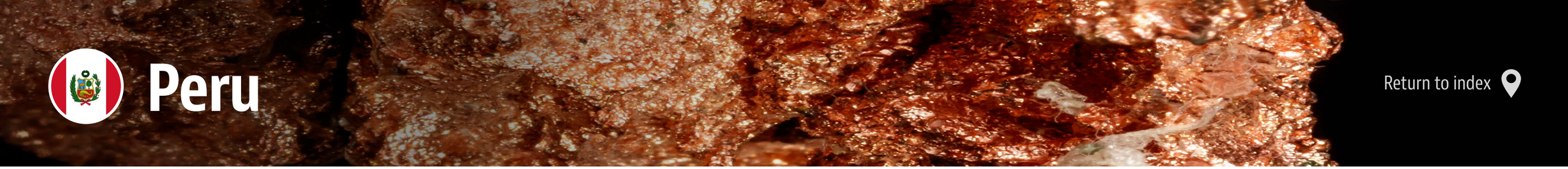
The Subsoil Code, as a code, has priority over laws and remains the main statute for both petroleum (oil and gas) and mining industries. At the same time, the Subsoil Code introduces quite a different legal framework for the mining industry. Among other things, mining rights will now be granted on the basis of a license. Except for mining contracts executed prior to the enactment of the Subsoil Code (which will continue to govern relevant operations unless the relevant operators decide to switch to the new "licensing system"), there will be no subsoil use contracts in the mining industry (except for the uranium industry, which will remain subject to the "contractual system" – the same as the oil and gas industry).

The Subsoil Code envisages that, under a general rule, exploration licenses are granted on a first-come, first-served basis. The list of territories available for grant according to this principle is set forth in the program for management of state subsoil use fund. To obtain subsoil use rights, an applicant must comply with a number of qualification requirements (e.g., availability of technical staff, necessary funds, etc.).

A subsoil user that has made and assessed a commercial discovery on the basis of an exploration license, has an exclusive right to obtain a mining license. This exclusive right can be exercised any time during the exploration period.

The main obligations of a subsoil user are established by the mining license. Such obligations include, among other things, the obligation to pay a signature bonus and land rental payments, minimum production expenses, minimum threshold of local works and services to be purchased for mining operations, obligations on financing of training local personnel and obligations on financing of research and development works.

Among other things, the subsoil user should also develop a development project document – exploration or mining works plan. The plan must include types, methods and ways of conducting works, approximate volumes and terms of such works, as well as technological decisions to be used. The exploration/mining works plan is subject to coordination with environmental protection and industrial safety authorities.



Peru

Return to index

Key metals and minerals

Peru is considered one of the world's top ten richest mineral countries and one of the world's biggest base and precious metals producers.

Currently, Peru is the world's second-largest copper producer and a major producer of gold, silver, zinc and other minerals. According to the most recent data published by the US Geological Survey, Peru has 8.7% of the world's copper reserves, 3.7% of its gold, 22.6% of its silver, 7.6% of zinc, 7.1% of lead, and 3% of tin reserves.

Legal System

Civil law.

Member of New York Convention

Yes.

Contributors

Valentín Paniagua
+5116188540
valentin.paniagua@bakermckenzie.com

Ina Maria Drago
+51 (1) 6188523
inamaria.drago@bakermckenzie.com

Claudia Pacora
+5116188579
claudia.pacora@bakermckenzie.com

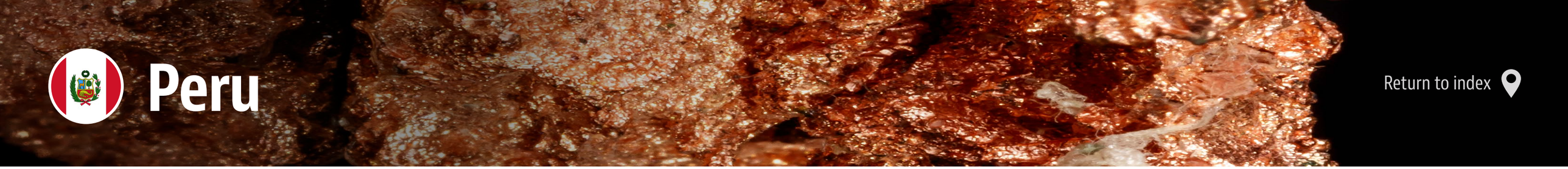
Foreign investment regime

The Peruvian constitutional and legal framework opens Peru's economy to private investment, which is practiced in the context of a social market economy. In that sense, it promotes competition and provides for foreign investment in any type of company. Article 63 of the Peruvian Constitution of 1993 stipulates that foreign investors have the same rights as domestic investors.

Foreign investors are guaranteed the right to freely transfer abroad — in freely converted currency and without any authorization whatsoever — their entire capital, dividends, profits, royalties, and consideration for the use and transfer of technologies and elements of industrial property. Where the conversion from national to foreign currency is deemed necessary, they are entitled to the most favorable exchange rate. Investor rights can be stabilized through legal stability agreements, by meeting the requirements established by law.

No authorization is required for foreign investments, which may only be subject to subsequent registration.

The only restriction on foreigners allowed by the Constitution is that foreign individuals (including Peru-domiciled companies ultimately owned by foreign investors) must obtain permission from the President of the Republic and the Board of Ministers, in the form of a Supreme Decree, to hold properties (including mining concessions) on lands located within 50 kilometers of any of Peru's national borders.



Peru

Return to index

Local party ownership requirements

Yes, but this requirement can be fulfilled by establishing a Peruvian subsidiary which can be wholly owned by foreign investors.

Indigenous and local community rights

Yes. To harmonize with Convention 169 of the International Labor Organization, in 2011, the Prior Consultation Law was enacted. According to this legislation, the Government must consult indigenous people before approving any legislative or administrative measure directly affecting their collective rights, cultural identity, quality of life or development.

Even with the foregoing, a prior consultation procedure is not required to grant a mining concession title over indigenous peoples' land because the concession title alone does not give any right to perform mining activities. In this regard, prior consultation is required whenever authorization to start any mining activity (exploration, exploitation, or processing) is filed.

The Prior Consultation Law does not grant indigenous populations veto rights in relation to mining.

Environmental protection regime

Highly developed. Mining concessionaires are responsible for their activities' emissions, effluents, discharges and other negative environmental impacts.

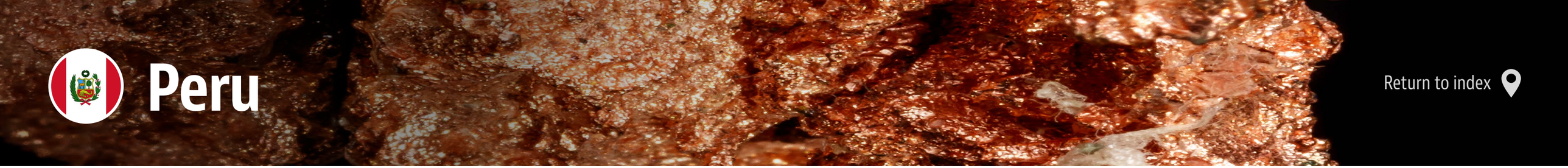
Mining exploration activities require prior authorization from the Ministry of Energy and Mines to confirm compliance with environmental requirements.

Any mining project that has completed the exploration stage and is about to carry out mining activities must obtain, depending on the magnitude of the impacts on the environment, a Semi Detailed Environmental Impact Assessment ("EIA-SD") or a Detailed Environmental Impact Assessment ("EIA-D").

The National Service of Environmental Certification for Sustainable Investments ("SENACE") is responsible for reviewing and approving the EIA-D, while the Ministry of Energy and Mines is in charge of reviewing and approving the EIA-SD.

Non-compliance with Peruvian environmental laws or regulations can result in the imposition of administrative sanctions, such as fines or closure orders by the Environmental Supervision and Enforcement Agency ("OEFA").

Finally, under the Mine Closure Act, all entities that hold rights to conduct mining activities and who intend to start their exploitation activities must prepare and submit a Mine Closure Plan within one year following approval of the relevant environmental instrument. This Mine Closure Plan must describe the measures to recondition each mining operation unit's areas, works and premises. The holders of mining activities must file a guarantee bond with the Ministry of Energy and Mines to secure compliance with its approved Mine Closure Plan. The directors and majority shareholders of a mining company that abandon a mining unit or fail to comply with its Mine Closure Plan are jointly and severally liable, provided: (i) direct responsibility of these persons is determined for the abandonment or breach of the corresponding Mine Closure Plan; and (ii) real environmental damage has occurred.



Peru

Return to index

Land tenure

According to Peruvian Mining Law, the mining concession constitutes a different, separate and independent right from the surface land where it is located. In other words, the mining concession title does not grant rights to the surface land, meaning that the concession holder must obtain a right to use the corresponding surface land from the landowner in order to start mining activities.

Rehabilitation security

Yes.

Exploration license

There is no special license for the exploration of mineral resources. Under Peruvian regulations, the mining concession title grants the right to explore and mine the mineral resources within a specific area identified through Universal Transverse Mercator ("UTM") coordinates.

In addition to the mining concession, the titleholder must obtain authorization from the government to start exploration or mining activities, which in turn requires having the respective environmental licenses and water use permits.

Mining concessions are granted for an unlimited time and are irrevocable, except in the circumstances there is:

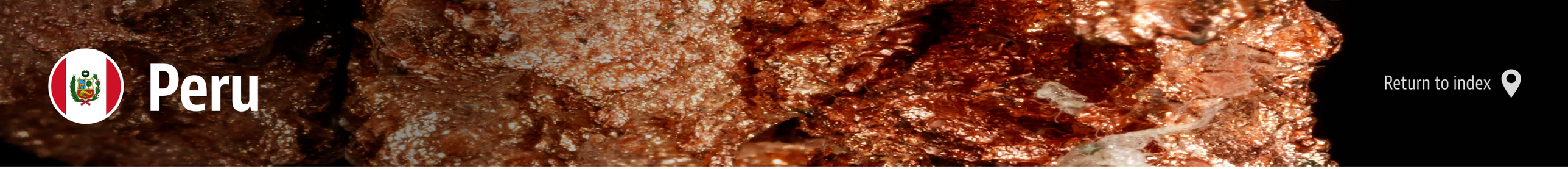
- failure to pay the good standing fee (Derecho de Vigencia) for two consecutive years;
- failure to pay the mining penalty due when the annual production target has not been met for two consecutive years; or
- failure to meet the annual production target within 30 years.

Mining license

See above.

Use tenement as security

Yes.



Peru

Return to index

Royalty payable to Government

Yes. Mining concessionaires must pay a Mining Royalty as an economic consideration for exploiting mineral resources (metallic and non-metallic).

The payment obligation of the Mining Royalty falls due at the closing of each quarter. It is calculated based on the greater of either: (a) the amount determined per a statutory scale of tax rates ranging between 1% and 12%, applied to the company's operating profit margin; and (b) 1% of the company's net sales, in each case during the applicable quarter. Mining royalty payments are deductible as expenses for income tax purposes in the fiscal year in which such payments are made.

In addition, mining concessionaires shall pay an annual Good Standing Fee amounting to USD 3 per hectare of area to keep their concessions in force.

Classification system

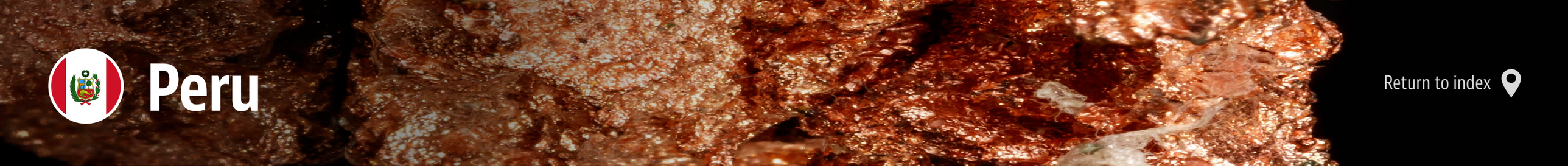
The Peruvian Code for Reporting Mineral Resources and Ore Reserves based on the JORC Code.

Other key regulation / policy for critical minerals

Stability Agreements

A key issue for foreign investment in critical metals and mining is adverse changes in law. Investors and the companies they invest in may protect themselves from changes in Peruvian law by executing stability agreements with the Peruvian Government through the Private Investment Promotion Agency ("PROINVERSIÓN"). A legal stability agreement ("General Stability Agreements") is a civil contract with the rank and force of a law. It guarantees the continued application of certain rules and regulations in force at the execution date for ten years. Among the rights that are stabilized are the following:

- Income tax regime (tax rate in force at the time such agreements are signed plus two percent (+2%).
- The regime of free disposition of currencies.
- The right to remit abroad the total capital and dividends of the company.
- The right to the most favorable exchange rate.
- The right not to be discriminated against.
- Worker-hiring regime.
- Export-oriented regimes, such as temporary admission, duty-free zones, and the like.



Peru

Return to index

To enter a General Stability Agreement, investors must guarantee an investment of no less than USD 10 million.

In addition to General Stability Agreements, local and foreign investors in mining projects are entitled to execute with the Ministry of Energy and Mines, on behalf of the Peruvian Government, guarantee agreements and investment promotional measures ("Mining Stability Agreements").

These agreements secure the continued application of specific tax and mining laws and regulations. Among the rights that are stabilized are the following:

- Tax Regime.
- Mining Contributions, including Good Standing Fees and Penalties for not reaching production targets; Mining Royalty, among others.

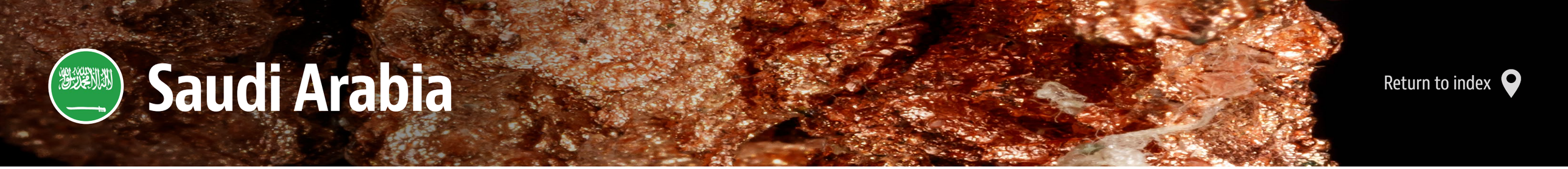
Mining Stability Agreements also have the rank and force of law and protect investors from changes for 10, 12, or 15-year terms. The term will depend on the amount of the investment committed, as described below:

10-year term: companies starting or with ongoing mining operations above 350 tons per day up to a maximum of 5,000 tons per day. An investment commitment of a minimum of USD 20 million is required. Companies may benefit from the stabilized regimen during the investment stage for a maximum period of 3 consecutive years. Such advanced term shall be deducted from the 10-year term.

12-year term: companies with a starting capacity of at least 5,000 tons per day or with expansion projects underway to reach at least 5,000 tons per day. An investment commitment of a minimum of USD 100 million (for the commencement of mining activities) or USD 250 million (for already-existing mining companies carrying out expansion projects) is required. Companies may benefit from the stabilized regimen during the investment stage for a maximum period of 8 consecutive years. Such advanced term shall be deducted from the 12-year term.

15-year term: companies with a starting capacity of at least 15,000 tons per day or with expansion projects underway to reach a capacity of at least 20,000 tons per day. An investment commitment of a minimum of USD 500 million is required. Companies may benefit from the stabilized regimen during the investment stage for a maximum period of 8 consecutive years. Such advanced term shall be deducted from the 15-year term.

Finally, to promote investments in mining exploration projects, the Peruvian Government has recently extended the Regime of Final Return of VAT for 5 years (i.e., until December 31, 2027). Under this regime, holders of mining concessions that are exclusively carrying out exploration activities are entitled to an early refund of VAT transferred to them or paid by them for the execution of their activities during the exploration phase. It is important to point out that the return of VAT is not conditioned on the commencement of the exploitation phase.



Saudi Arabia

Return to index

Key metals and minerals

Saudi Arabia possesses more mineral resources than any other country in the Gulf region, with substantial reserves of gold, copper, phosphate and industrial minerals. The central and northern parts of the Kingdom contain significant amounts of bauxite, silver, zinc, copper, magnesite and kaolin. In the west of the country, the Arabian Shield is a major source of precious and basic minerals such as gold, silver, copper, zinc, chromium, manganese, tungsten, lead, tin, aluminum and iron. Overall, it also contains one of the world's largest reserves of phosphate and tantalum (rare-earth mineral), the latter with a quarter of the world's reserves.

The Kingdom's Vision 2030 was put in place in 2016 and aims to raise the GDP of mining to SAR 260 billion by 2030 and create more than 100,000 local jobs. The development of the mining sector occupies a prominent position in Saudi Arabia's program of diversifying its economy outside of fossil fuels. The Kingdom values its mineral wealth at more than USD 1.3 trillion. The Kingdom is also working to achieve diversity in its investments in the mining sector. More than 1,200 exploration license applications have been received by Saudi's Ministry of Industry and Mineral Resources since January 2021 (20% of which were from non-Saudi companies).

Contributors

Osama Audi Lama AlHabib
+97126961209
osama.audi@bakermckenzie.com

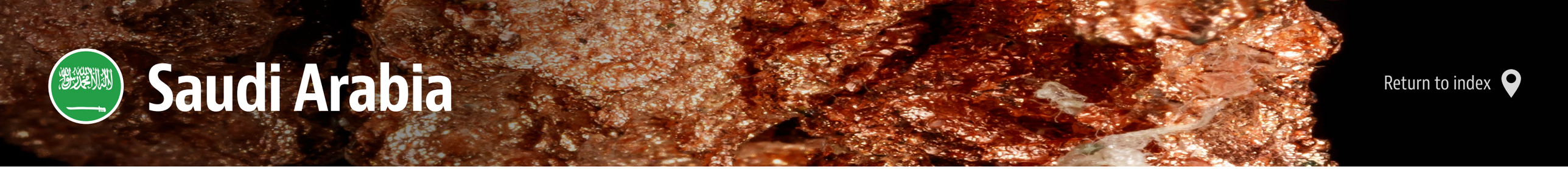
Gavin Witcombe
+966 11 265 8905
gavin.witcombe@legal-advisors.com

Legal System

Shariah, supplemented by statutes, regulations, decrees, circulars and policy statements.

Member of New York Convention

Yes.



Saudi Arabia

Return to index

Foreign investment regime

Yes. Pursuant to the Companies Law and the Foreign Investment Law issued by the Ministry of Investment of Saudi Arabia ("MISA"), a foreign entity doing business in Saudi Arabia is required to carry out such business through either: (a) a subsidiary incorporated in Saudi Arabia; or (b) a branch established in the Kingdom.

MISA must approve the formation of any company in which a foreign party is to have an interest, or any share transfer in a Saudi entity if any of the seller(s) or the buyer(s) are foreign, by granting a licence authorizing the foreign party's investment in the company, or authorizing its exit, as the case may be.

The legal regime governing foreign investors from countries that are not members of the Gulf Cooperation Council ("GCC") is somewhat different from the regime that applies to Saudi individuals and wholly Saudi-owned companies on the one hand and that which applies to nationals of other GCC countries and/or GCC companies wholly owned by GCC nationals on the other. A non-GCC foreign investor wishing to engage in ongoing commercial activities in Saudi Arabia will ordinarily require a foreign investment licence issued by the MISA in order to form or participate in the formation of a legal entity in Saudi Arabia.

A legal entity may only obtain a licence from MISA if the commercial activity it is pursuing is not set out in the so-called "Negative List" published by the Supreme Economic Council, which lists various activities in which foreign investment is prohibited or restricted. This list is subject to periodic review and may be amended from time to time at MISA's recommendation. Mining is not currently on the Negative List.

Local party ownership requirements

Not automatically, but subject to licencing authority discretion.

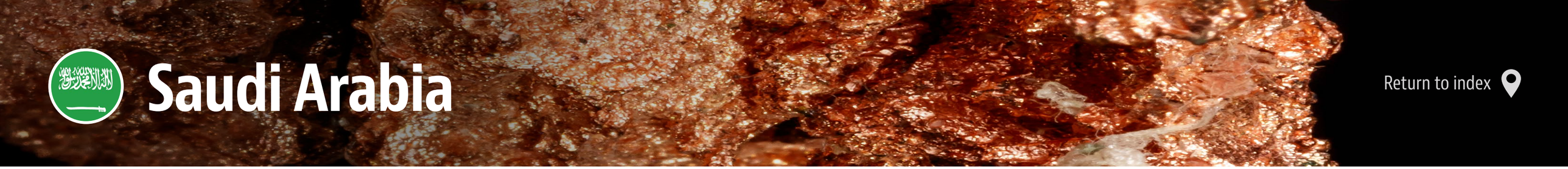
Indigenous and local community rights

Applicants for an exploitation license must submit a social impact study describing how they intend to contribute to the development of local communities and support local content. Community development requirements are set out in the Implementing Regulations, and depending on the type of licence applied for, the social impact study will be included in either the environmental and social impact study or the social impact management plan.

Environmental protection regime

Highly developed.

Environmental protection in Saudi Arabia is mainly regulated by the Public Environmental Law ("Environmental Law") and its implementing regulations ("Environmental Regulations"). The Environmental Law operates as a general regulatory framework for the development and enforcement of domestic environmental rules and regulations. Supplementing the Environmental Law and the Environmental Regulations are four standards relating to air quality, emissions control, noise and wastewater discharge. Projects operating within the areas managed by the Royal Commission for Jubail and Yanbu ("Royal Commission") must also comply with the Royal Commission Environmental Regulations ("Royal Commission Regulations").



Saudi Arabia

Return to index

The Presidency of Meteorology and Environmental Protection ("PME") is the agency responsible for the application and administration of the Environmental Law and the Environmental Regulations. The Environmental Law imposes a number of broad obligations on those undertaking projects that may have a negative impact on the environment ("Impact Project") including:

- the use of techniques and materials that minimize the negative impact on the environment;
- the efficient use of natural resources (including non-renewable resources); and
- the development/use of renewable resources.

Those participating in an Impact Project are required to undertake environmental impact studies in accordance with the Environmental Regulations. The scope and detail of such studies depends on the extent of the project's environmental impact. The Environmental Regulations categorise Impact Projects according to the following three classes:

- "Class I Projects" that have limited environmental impact;
- "Class II Projects" that have significant environmental impact; and

"Class III Projects" that have harmful environmental impact.

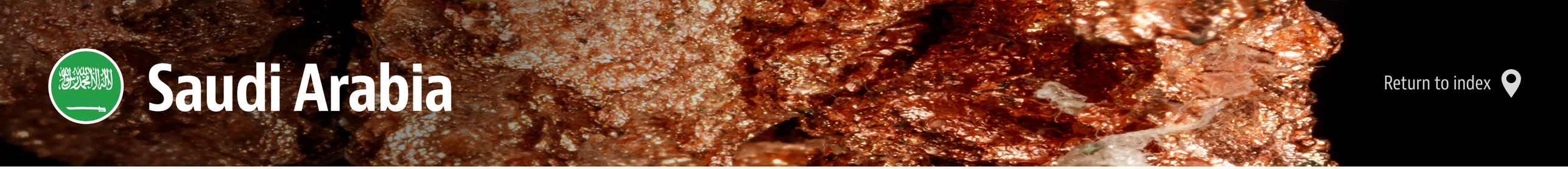
Mining is generally classified as a Class III Project. To undertake a Class III Project, the mining licence holder would need to obtain the PME's consent (in the form of a PME issued licence by submitting an application to the PME that includes an environmental impact assessment (prepared by a consulting firm) that, among other things, details:

- the mining project's scope and objectives;
- the current environmental status of the project's location (including air, soil and topography);
- the project's impact on the environment; and
- how the mining company shall mitigate the project's environmental impact.

Pursuant to Article 35(1) of the Mining Investment Law, the applicant for a mining, small mine, or general purpose licence will be required to provide an environmental and social impact study and a rehabilitation and closure plan as part of the application process. The environmental and social impact study will include the requirements imposed by the Environmental Law, in addition to the information and requirements as set out in the Implementing Regulations.

The competent authority will have a deadline of 60 days to approve the environmental and social impact study. While positive from an applicant's perspective, the Mining Investment Law is silent on the consequences of an authority missing the deadline, and we anticipate that in practice, holding the relevant authorities to these types of deadlines may prove difficult.

An application to the Ministry for an exploration licence or a construction material and quarry licence will need to contain an environmental impact management plan and social impact management plan as part of the application process. The Ministry shall notify the applicant of its approval of the environmental impact management plan in conjunction with the approval or denial of the relevant licence (timing to receive approval of each licence is noted below).



Saudi Arabia

Return to index

Licensees will also be required to report incidents occurring at the licence site, and submit an annual report to the Ministry on the status of the compliance with any approved:

- environmental and social impact study, and the environmental management plan, for a mining licensee, small mine licensee, or general purpose licensee; and
- environmental impact management plan for an exploration licensee or construction material and quarry licensee.

Furthermore, exploitation activities shall only be undertaken after the approval of the rehabilitation and closure plan. For activities requiring a mining licence, small mine licence, or general purpose licence, the rehabilitation and closure plan will need to be approved by both the environmental authority and the Ministry, and for activities requiring a construction material and quarry licence, approval by the Ministry only will be required.

The information to be included in the rehabilitation and closure plan is set out in the Implementing Regulations, and shall be submitted for the approval of the Ministry along with the licence application. Similar to the environmental plan, the licensee will be required to submit an annual report to the Ministry on the status of compliance with the rehabilitation and closure plan. Within 60 days of receiving the rehabilitation and closure plan, the Ministry will send the plan to the environmental authority for approval, which shall be required to notify the Ministry of its decision within 60 days of receiving such plan.

An applicant for a mining or small mine licence shall also, when submitting its application to the Ministry for approval, include an economic feasibility study of the project.

Land tenure

Mining rights are separate to surface rights. Under the Mining Investment Law, metals and minerals are owned by the State. Ownership is transferred from the State to the license holder when the materials are extracted.

Rehabilitation security

No, but subject to licencing authority discretion.

Exploration license

Typically, 5 years with extensions.

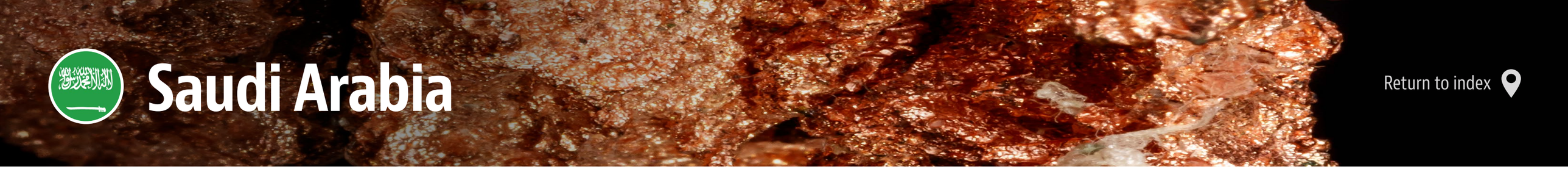
An exploration license is available under Article 14 of the Mining Investment Law.

A mining company may also apply for a reconnaissance licence which provides the holder with a non-exclusive right to survey and explore the license area.

Mining license

Typically, 30 years with extensions.

Exploitation licenses includes: (a) a mining license; (b) a small mine license; (c) a construction material and quarry license; and (d) a general purpose license.



Saudi Arabia

Return to index

Use tenement as security

Yes. subject to previously notifying the Ministry and such security being registered in the Licences Registry.

Royalty payable to government

Yes. The amount depends, in part, on net income.

Classification system

Other key regulation / policy for critical minerals

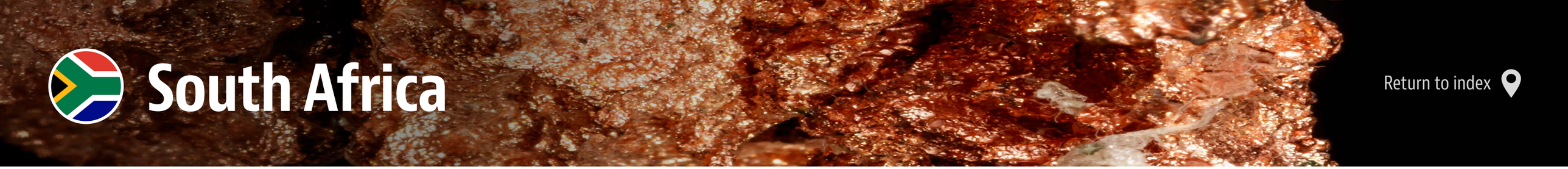
The regulatory environment of mining industry in the Kingdom of Saudi Arabia ("Kingdom") was modernised via mining investment laws issued in 2004 and the Kingdom witnessed significant growth in investment as a result. These laws streamlined the process for companies (including those with foreign shareholders) to obtain a variety of exploration and exploitation licences and have reduced taxes payable on income derived from mining activities.

As part of the Kingdom's Vision 2030, the Saudi Cabinet approved a new Mining Investment Law on 9 June 2020 ("Mining Investment Law"). One of the main goals of the Mining Investment Law is to attract more local and international investors to the mining sector, and it lays the foundation for a number of interesting initiatives, including: (a) the establishment of a national geological database; (b) the establishment of a "Mining Fund" to support the mining sector; (c) improving the procedure for obtaining mining licences; and (d) introducing certain financial incentives for investors.

Recognising both the opportunities and the challenges in respect to the vast underutilized mineral reserves in the Kingdom, the Council of Ministers approved a new mining strategy, developed as part of the National Industrial Development and Logistics Program ("NIDLP"), one of the strategic programs under Vision 2030. On a practical level the mining sector reforms proposed by the NIDLP will be implemented via 42 priority initiatives designed to accelerate exploration and mine development and fill key gaps in the midstream and downstream value chain. Accordingly, the Ministry of Industry and Mineral Resources ("Ministry"), in collaboration with other stakeholders, developed the Mining Investment Law. The Mining Investment Law provides that the Ministry has the authority to issue the regulations, forms, procedures, and instructions necessary to implement the Law. The Mining Investment Law and its implementing regulations ("Implementing Regulations") are the main bodies of law governing mining in the Kingdom.

Recently, the Kingdom has announced steps to focus on strategic minerals needed for renewable energy and battery storage and gain a foothold in the global commodity value chain. In January 2023, state-owned mining giant Ma'aden announced a new joint venture with the Kingdom's sovereign wealth fund as it hunts for mining assets abroad – the fund's initial capital will be only USD 50 million but that amount could climb to over USD 3 billion.

Also in January, the Kingdom and the UK announced an agreement under which the two nations agreed to collaborate on diversifying sources of critical minerals in order to ensure critical mineral supply chains are not overly reliant on any one country.



South Africa

Return to index

Key metals and minerals

Key major mining sectors in South Africa:

- Gold, Platinum Group Metals ("PGMs"), coal, and diamonds.

Metals mined in South Africa:

- Platinum Group metals: Platinum, palladium, rhodium and chromite.
- Ferrous minerals: Copper, iron ore, manganese and diamonds.

Other Metals / minerals mined in South Africa:

- Cobalt, nickel, zinc, lead, rare-earth minerals, coal, uranium, chromium, vanadium and lithium.

South Africa's mining industry is a major contributor towards its GDP. It is a key player in the country's economic performance and is deeply embedded within the framework of industries which make up the developing, albeit struggling, economy.

2022 was a financial year characterised by uncertainty, which bred volatility in the performance of the mining industry. Eskom's persistent power struggles, the continuing Russia-Ukraine conflict, and increasing interest rates created a turbulent economic environment, with the latest statistics released by StatsSA reflecting these challenges.

The industry experienced a 9% decrease in year-on-year production as of November 2022. This was attributed to decreases in the production of PGMs (22%), iron ore (19,4%), and diamonds (21,5%).

This coincided with a 15,2% decrease in mineral sales at the same date, with revenue from PGMs falling 23,7%, iron ore decreasing 40,2%, and gold taking a 54,9% hit.

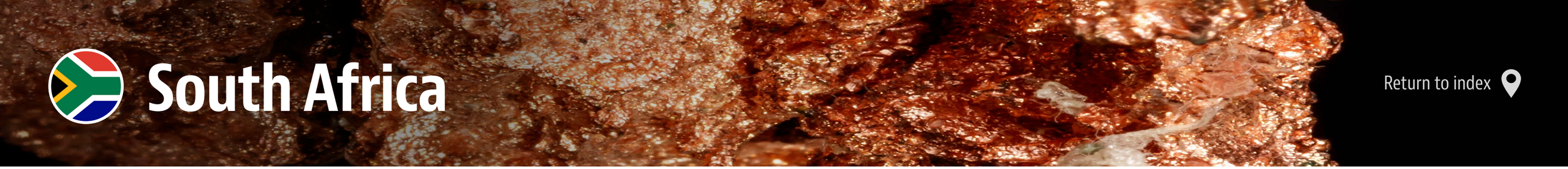
In accordance with the findings of the World Bank, DMRE, Statistics South Africa and SARS, as of May 2022, South Africa has the largest global reserves of PMGs, manganese, chromite and gold. It also ranks well in titanium minerals, zirconium, vanadium, vermiculite and fluorspar. In addition, the country contains 17% of the world's antimony reserves.

South Africa is currently ranked 5th highest internationally in terms of mining contribution to GDP and the country is ranked in the top three globally in terms of production of PGMs, vanadium, ferrochrome, alumino-silicates, vermiculite, zirconium, titanium minerals, manganese ore and antimony, with its gold, coal, iron ore, ferro-silicon, silicon metal and fluorspar ranked in the top ten globally.

Contributors

Kieran Whyte
+27 11 911 4302
kieran.whyte@bakermckenzie.com

Marc Yudaken
+27 11 911 4407
marc.yudaken@bakermckenzie.com



South Africa

Return to index

Legal System

South Africa has a hybrid or mixed legal system, consisting of various legal traditions, namely civil law, common law and the customary law systems which are subject to the Constitution of the Republic of South Africa (1996) ("Constitution") which enshrines civil as well as socio-economic rights.

Member of New York Convention

Yes.

Foreign investment regime

No. Although South Africa has enormous potential as an investment destination, offering a unique combination of a highly developed, first-world economic infrastructure within an emerging market economy, there is currently no uniform framework under which foreign investment transactions are assessed. Foreign investors can thus freely invest in South Africa. However, they are subject to the Exchange Control Regulations made under the Currency and Exchanges Act 9 of 1933 ("Exchange Control Regulations") and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, (2018) ("Mining Charter III").

South Africa enforces a system of exchange control, where prior approval is required for proposed or potential transactions under the authority of the South African Reserve Bank ("SARB") in the case where sums of money are transferred to and from South Africa. Various of the major commercial banks in South Africa are designated as authorised dealers in respect of exchange control. The flow of capital across the borders of South Africa is regulated by the Exchange Control Regulations and administered by the Financial Surveillance Department of SARB.

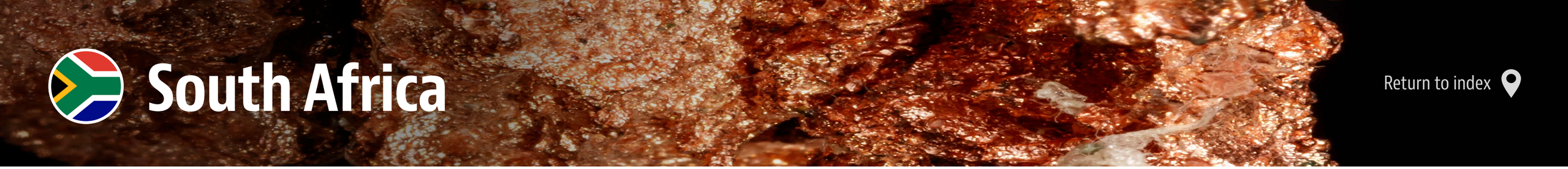
The Mining Charter III, establishes an incentive-based system, making provision for a number of broad-based black economic empowerment ("BEE") ,compliance criteria and additional socio-economic requirements to be adhered to by new and existing mining right holders. The requirements to be considered are ownership of historically disadvantaged South Africans ("HDSA") including procurement, supplier and enterprise development; human resource development; employment equity; mine community development; housing; and living conditions; and beneficiation. Under the Mining Charter III, mining companies are required to ensure that, within a period of five years, 70% of both capital and consumer goods and 80% of their services are procured from South African based manufacturers and spent with Historically Disadvantaged Persons ("HDPs"), women and youth owned and controlled companies as well as BEE-compliant companies.

Local party ownership requirements

Yes. In terms of the Mineral and Petroleum Resources Development Act (2002) ("MPRDA"), the state is regarded as the custodian of all underground mineral resources as they are considered common heritage for all South Africans. The MPRDA provides for a system that allocates the right to mineral resources on a first come, first served basis and upon the applicant complying with the financial, technical, environmental, health and safety, empowerment and socio-economic development requirements. However, preference is given to applications from HDPs.

As the MPRDA makes no distinction between local and foreign applicants, all applicants must comply with the same requirements, including complying with the Mining Charter III which requires compliance with a minimum 30% ownership by HDSA for new applicants for mining rights, comprising of:

- 5% non-transferable carried interest to qualifying employees from the effective date of the mining right;



South Africa

Return to index

- 5% non-transferable carried interest or a minimum 5% equity equivalent benefit as defined to host communities from the effective date of a mining right;
- a mining right holder has to ensure that any reduction in shareholding of existing shareholders through the issue of new shares, shall not reduce qualifying employees carried interest and host communities carried interest or equity equivalent benefit;
- 20% effective ownership in the form of shares to a BEE entrepreneur and 5% hereof must preferably be for women; and
- a mining right holder (of the minimum 20% shares) is obliged not be diluted below 51% ownership and control by a BEE entrepreneur.

In addition, existing mining right holders who have complied with a minimum 26% ownership by HDSA, would be recognised as fully compliant for the duration of the mining right and would not be required to increase or "top-up" ownership by HDSA to 30%. This follows the "once empowered, always empowered principle". In addition, the aforementioned ownership requirements in terms of the Mining Charter III may be complied with at holding company level, mining right level, on units of production, shares or assets, following the flow-through principle.

Indigenous and local community rights

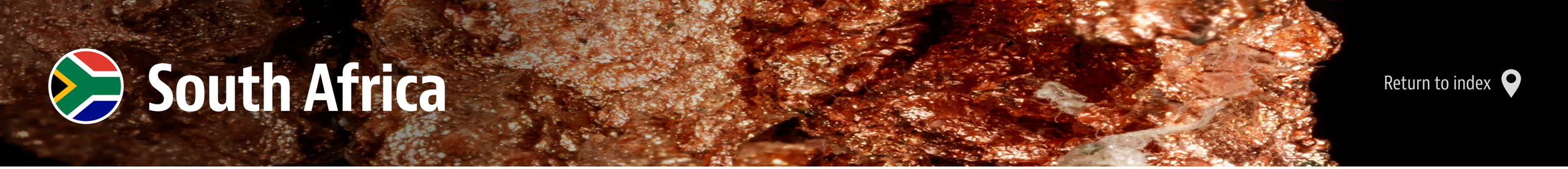
Yes. Under the MPRDA and the National Environmental Management Act 107 of 1998 ("NEMA") an applicant for a prospecting right, mining right or mining permit is required to notify and consult with the relevant landowner or lawful occupier and any other affected party. Recent judicial decisions on the MPRDA and the Interim Protection of Informal Land Rights Act 31 of 1996 ("IPILRA") have indicated that informal land right holders must be consulted and, in some instances, may need to consent to the mining operations before a mining right is granted. Accordingly, and as part of the consultation requirements of the MPRDA, it may be advisable or necessary for mining companies to engage with indigenous communities and, particularly in rural areas subject to traditional leadership, with traditional leaders.

The MPRDA further creates preferent prospecting or mining rights granted only in the absence of pre-existing mining or prospecting rights. Accordingly, they do not pose a risk to mining companies. They may only be granted to a community which is able to show that the right will be used to contribute towards the development and social upliftment of the community.

Environmental protection regime

In South Africa, the MPRDA and NEMA have aligned to ensure that mining occurs within the broader environmental management framework. NEMA regulates the environmental impact of mining activities with the core aims of preventing pollution, ecological degradation, and the exploitation of natural resources; ensuring sustainable development and managing environmental impacts by providing for a number of core principles. The most important and wide-reaching environmental principle is the duty of environmental care. This operates as a catch-all requirement for all mining and prospecting activities and should inform how specific obligations are interpreted. In addition, two principles with a direct effect on how mining companies engage with environmental obligations are the notion of cradle-to-grave environmental planning and the presumption that the polluter pays.

An applicant for a prospecting or mining right in terms of the MPRDA is further required in terms of NEMA to demonstrate that its prospecting or mining activities will not result in 'unacceptable' pollution or environmental degradation. The MPRDA requires that persons wishing to apply for mining rights must simultaneously apply for environmental authorisation therefore requiring that environmental considerations are present even before mining operations commence. A requirement upon application for an environmental authorisation relating to mining or prospecting rights is that applicants comply with the prescribed financial provision for rehabilitation, closure and ongoing post decommissioning management of negative environmental impacts. To obtain such environmental authorisation which incorporates an environmental management plan or programme, the applicant is required to conduct a basic assessment or an environmental impact assessment.



South Africa

Return to index

As noted above, the regulations under NEMA require applicants and holders of a prospecting or mining right to make financial provision for the rehabilitation of mining-related impacts Consequently, South African mining companies are required to perform rehabilitation work as part of their operations in accordance with an approved environmental management plan that supports the mine closure plan. Closure certificates on the cessation of mining may only be granted once obligations have been met in respect of environmental liability, pollution, ecological degradation, the pumping and treatment of extraneous water, compliance to the conditions of the environmental authorization and the management and sustainable closure of the mine. The MPRDA also empowers the Minister of Mineral Resources and Energy ("Minister") to recover costs from polluters in the event of environmental emergencies and to suspend or cancel mining or prospecting rights if conditions of an environmental authorisation are breached. An important effect of such ongoing obligations is that holders of prospecting or mining rights as well as the previous holder of an old order right or previous owner of works that has ceased to exist, remains responsible for any environmental harm and the resulting liability beyond the cessation of mining operations following the polluter pays principle. The extent to which historical polluters may be held liable is an emerging area of law. The legislative framework, criminalizes historical pollution which attracts extensive financial penalties as well as personal liability for company directors.

NEMA operates together with a range of national, provincial and local legislation depending on the area and nature of the intended activities. These laws require various licenses to conduct certain activities. The most significant of these are the water use licence under the National Water Act 36 of 1998; the atmospheric emission licence under the National Environmental Management Air Quality Act 39 of 2004; and the waste management licence under the National Environmental Management Waste Act 59 of 2008.

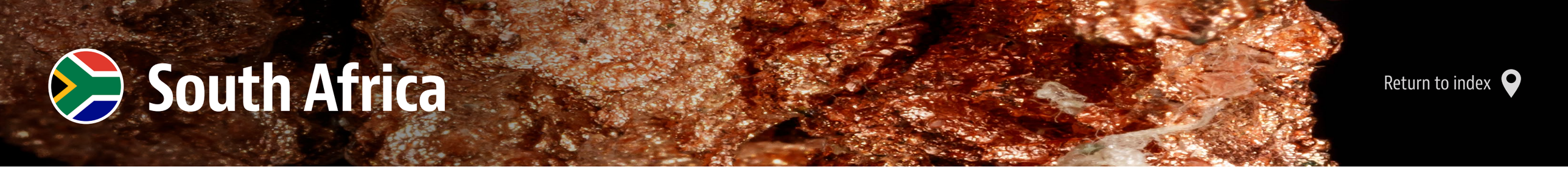
Land tenure

All mineral resources are under the custodianship of the State until lawfully extracted. The MPRDA creates a system of mining tenure separate from land tenure, as landowners cannot claim ownership of mineral resources found on their land. Holders of prospecting and mining rights have limited real rights in respect of the land to which they relate, consequently limiting the rights of ownership of the landowner or lawful occupier of the land. The mining or prospecting right holder has a statutory right to access land which such right relates to, together with his or her employees and bring onto that land any plant, machinery, or equipment and build, construct or lay down any surface, underground, or under sea infrastructure that may be required for the purpose of mining. Such holders have to consult landowners as part of the rights application process and are required to reach agreement over surface rights including securing access arrangements to the prospecting or mine site and/or compensation.

The IPILRA, which should be read together with the MPRDA, requires that the full and informed consent of directly affected holders of rights must be obtained before a mining right is granted over land held in terms of the IPILRA and customary law. However, if such holders of rights refuse to provide such consent after all processes have been exhausted, the IPILRA and the Constitution provide a mechanism for the State to expropriate their rights to land in the public interest.

As a form of property, mining and prospecting rights are protected by Section 25 of the Constitution, which prohibits the arbitrary deprivation of property and requires fair and equitable compensation in the event that expropriation for a public purpose or in the public interest becomes necessary. Expropriation itself is governed by statute. Prior to expropriation representations can be made by affected property owners, and in the event of expropriation, such property owners are entitled to compensation.

A risk of which mining companies should be aware, is the potential for land claims on land subject to mining or prospecting rights. Due diligence enquiries into potential land claims prior to investing in mining enterprises or engaging in the rights application process may assist in reaching agreements with claimant communities or individuals. Such agreements may be designed to meet community development obligations in the MPRDA and ensure cooperation with local communities, thereby mitigating the risks of protracted conflict over or loss of mineral tenure after the commencement of operations.



South Africa

Return to index

Rehabilitation security

Yes.

Exploration license

A prospecting right is valid for five years. Upon expiry of the initial five years, the holder may request for a renewal of that right for a period no longer than three years, but may only do so once.

Mining license

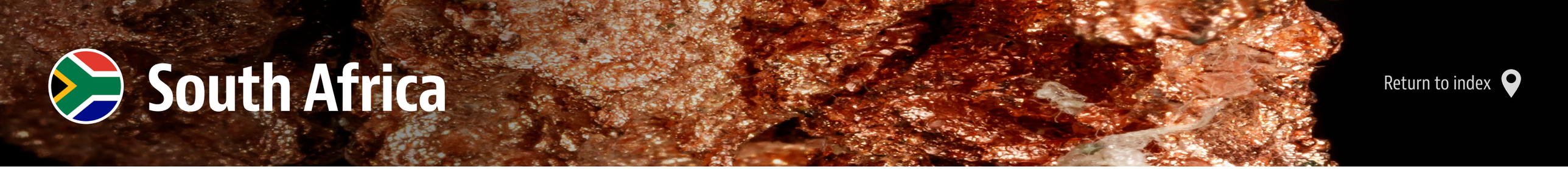
A mining license is typically granted for 30 years and can be renewed for further periods, each of which may not exceed 30 years at a time.

Use tenement as security

Yes.

Royalty payable to Government

Yes. The Mineral and Petroleum Resources Royalty Act 29 of 2008 ("Royalty Act") imposes obligations for the payment of royalties in South Africa. Once a mining right is obtained, the holder is obliged to pay royalties to the State in terms of the Royalty Act and the associated Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008. The Royalty Act applies to all Mining Rights holders, subject to exemptions for small, South African businesses. The Royalty Act provides that any person (whether natural or juristic) who wins or recovers a mineral resource (or on whose behalf such mineral resource is won or recovered) is obliged to pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource. Such mining royalty's liability arises when mineral resources which have been extracted within South Africa, are transferred. Transfer of a mineral resource includes the first disposal, consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during the mining process. Subsequent transactions in respect of a mineral will not attract the payment of a royalty. The royalties are determined on the value of the minerals and the royalty percentage rate, applied to the base amount. Royalties are capped and cannot exceed 5% for refined mineral resources and 7% for unrefined mineral resources, as distinguished by the Royalty Act. Mining royalties are deductible for income tax purposes in terms of the Income Tax Act 58 of 1962.



South Africa

Return to index

Classification system

The South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves ("SAMREC") and South African Code for Reporting of Mineral Asset Valuation ("SAMVAL").

Other key regulation / policy for critical minerals

Mine Health and Safety Act 29 of 1996 ("MHSA")

The MHSA and its regulations provide detailed standards and requirements for mine safety and aims to give effect to South Africa's international law obligations in this regard. The purpose of the MHSA, inter alia, is to provide for protection of the health and safety of employees and other persons at mines, to promote a culture of health and safety, to provide for the enforcement of health and safety measures, and to provide for appropriate systems of employee, employer and State participation in health and safety matters.

The basic premise of the MHSA is that government, employers and employees in the mining sector must subscribe to governance, health and safety priorities. Accordingly, employers are required to develop and implement systems to identify, assess and control health and safety risks so as to prevent accidents as far as is reasonably possible. Additionally, mines must be designed, constructed, equipped and operated in a manner that allows for a safe working environment. Employers are, further, required make certain statutory appointments in relation to mine management and health and safety monitoring. Reciprocal duties are placed on employees who are required to take reasonable care to protect their own health and safety as well as those of others and to comply with risk mitigation measures put in place by employers.

Compliance with the provisions of the MHSA is monitored by the Chief Inspector of Mines, who is obliged to compile and distribute health and safety information, advise the Minister on relevant issues, appoint a medical inspector and to determine annual inspection plans and reports on mine health and safety. The chief inspector is also responsible for monitoring environmental health on mine sites and is empowered to require all mines to prepare and implement hazard management, as well as health and safety systems.

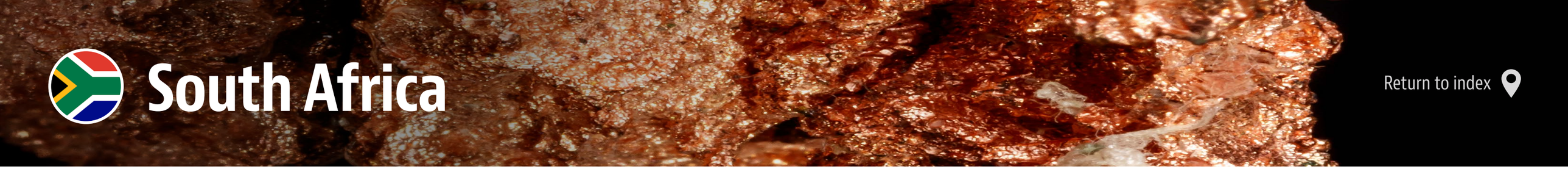
Failure by any person to comply with health and safety regulations at a mine, or to obey lawful instructions relating to health and safety issued by a person responsible for enforcement of the mine's health and safety rules and policies, constitutes an offence under the MHSA. Further, failure by an employer to take reasonable steps to ensure safe and healthy working conditions for its employees at a mine also constitutes an offence under the MHSA.

The Precious Metals Act 37 of 2005 ("PMA")

The PMA is the principal Act governing the precious metals industry in South Africa. Precious metals as defined by the PMA, include gold, any metal of the platinum group and the ores of such metals, as well as any other metal that the Minister has declared. The intention of the PMA is to provide for the acquisition, possession, smelting, refining, beneficiation, use and disposal of precious metals and to provide for matters connected therewith.

The PMA provides that no person may acquire, possess or dispose of, either as principal or as agent, any unwrought precious metal or semi-fabricated precious metal, unless:

- he or she is the holder of a refining licence and acts in accordance with the terms and conditions of his or her licence;



South Africa

Return to index

- he or she is an authorised dealer;
- he or she is a producer who has won or recovered the unwrought precious metal (or in the case of semi-fabricated precious metal, where such unwrought precious metal has been refined and made into such semi-fabricated precious metal);
- he or she has obtained a certificate from the Regulator authorising him or her to acquire or to dispose of such unwrought precious metal or semi-fabricated precious metal;
- such unwrought precious metal or semi-fabricated precious metal does not exceed a prescribed mass and is acquired in accordance with a special permit issued by the Regulator for scientific purposes;
- he or she holds a precious metals beneficiation licence; or
- he or she holds a jeweller's permit.

In terms of the PMA, no person may export any unwrought (unrefined) or semi-fabricated (refined) gold without approval of the National Treasury in terms of the Exchange Control Regulations, granted with the concurrence of the Minister. Further, export of unwrought or semi-fabricated metals of platinum requires written ministerial approval. Such approval must be granted subject to the promotion of equitable access to and the orderly local beneficiation of such metals. Beneficiation is defined in the MPRDA in terms of four stages of mineral extraction, recovering and refining.

The South African Diamond and Precious Metals Regulator ("Regulator") is responsible for administration of the PMA. Its objects in relation to precious metals are to:

- ensure that the precious metal resources of the Republic are exploited and developed in the best interest of the people of South Africa;
- promote equitable access to, and local beneficiation of, the Republic's precious metals;
- promote the sound development of precious metal enterprises in the Republic; and
- advance broad-based socio-economic empowerment as prescribed.

Applications for licences, permits and certificates in terms of the PMA are made and issued by the Regulator. The South African Police Service is responsible for clearance procedures in respect of applications, through consultation by the Regulator.

Electricity Supply

The availability, security and affordability of electricity is currently a challenge in the mining industry. Mining companies are investigating possible alternative options to diversify a portion of their electricity supply requirements.

Thailand

Return to index

Key metals and minerals

According to the Thailand Mineral Statistic Report (2017 – 2021), published by the Department of Primary Industries and Mines ("DPIM") on 29 November 2022, the key metals and minerals of Thailand are tin, zinc, limestone, granite, basalt and gypsum.

Legal System

Civil law.

Member of New York Convention

Yes.

Foreign investment regime

Foreign majority owned companies are restricted from owning mining business in Thailand. See below.

Local party ownership requirements

Yes. Although the Minerals Act, B.E. 2560 (2017) ("Minerals Act") does not specifically impose any restrictions on foreign investment in exploration and mining operations, the Foreign Business Act, B.E. 2542 (1999) ("FBA") governs foreign persons owning businesses in Thailand.

Under the FBA, foreign persons (as defined in the FBA, this includes a company in which 50 percent or more of the shares in the company are held by foreign individuals and/or foreign juristic entities) are prohibited or restricted from operating certain businesses, including mining businesses.

Foreign persons may only own mining business if there is permission from the Minister of Commerce with the further approval of the Cabinet. To seek this permission, the foreign person must have:

- at least 25 percent to 40 percent of the company's shares (depending on the decision of the Minister of Commerce with the approval of the Cabinet) held by Thai individuals or Thai juristic entities; and
- a number of Thai directors not less than two-fifths of the total number of directors.

Based on public records, no approvals have been granted for mining activities in recent years.

Many foreign companies enter into joint ventures with Thai parties to engage in mining business in Thailand.

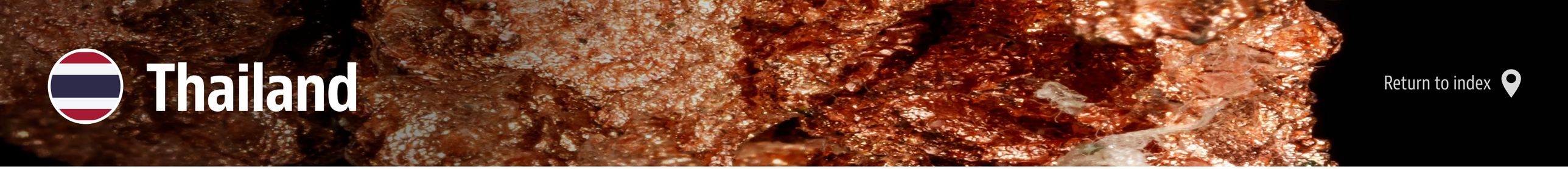
Contributors

Bulin Sanooj
+66 26662824#4012
bulin.sanooj@bakermckenzie.com

Ornsiri Samarnmitr
+66 26662824#4048
ornsiri.samarnmitr@bakermckenzie.com

Narawit Rujanant
+66 26662824#4550
narawit.rujanant@bakermckenzie.com

Sireethorn Weerawuthiwong
+66 26662824 #4406
sireethorn.weerawuthiwong@bakermckenzie.com



Thailand

Return to index

Indigenous and local community rights

No. There are no specific requirements under Thai law relating to indigenous people or other similar considerations.

However, the Minerals Act provides that, upon the determination of the mining area, the local mineral industry official shall hold a public hearing in the relevant community. In the case where residents in the community disagree with the determination and agreement cannot be reached between the mineral industry official and the community, the mineral industry official may hold a referendum amongst residents of the area.

Environmental protection regime

Highly developed. Under the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992), depending on the type of mining operations, all sizes of mining operations must have an Initial Environmental Examination ("IEE") Report or Environmental Impact Assessment ("EIA") Report prepared and submitted at the mining lease ("ML") application stage. In addition, there are some specific types of mining operations, which are classified as operations that may cause severe impact on natural resources, environmental quality, heath, sanitation, and quality of life of people in the community and an Environmental and Health Impact Assessment ("EHIA") Report must also be prepared and submitted. These reports must contain, for example, details of the operations' structure and activities, an assessment of these activities' environmental impact, and the proposed environmental protection measures.

Pursuant to the Minerals Act, when applying for a ML, an applicant is required to submit a plan for the rehabilitation, development, utilization and monitoring of the impact on the environmental quality and public health during the mine's operation and after the closure thereof.

The Minister of Industry is empowered to issue a notification to set out the rules regarding a buffer zone delineation for mining, preparation of basic information regarding the environment and public health, standards and methods regarding the control of pollution emissions or other things that may affect the environment and are derived from mining, minerals processing and metallurgy.

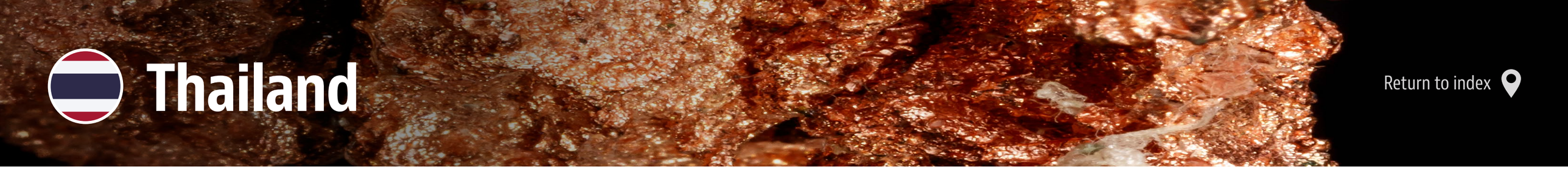
Additionally, the Minerals Act also imposes additional obligations on ML holders. For example, ML holders are required to: (a) refrain from any act or omission likely to result in toxic minerals or any other toxic substances to cause harm to persons, animals, plants, property, or the environment; and (b) rehabilitate the mining area in accordance with the plan mentioned above, as approved by the relevant authority.

Land tenure

The Minerals Act creates a system of mining tenure separate from land tenure. Therefore, landholders do not have any ownership rights to minerals, although they may be entitled to compensation for the loss of the use of their land due to mining activities.

Rehabilitation security

Yes. According to the Minerals Act, ML holders are required to place securities in the form of a government bond or bank guarantee, for the purposes of rehabilitating the mined area and providing remedies to persons affected by the mining, as well as, depending on the type of the mine, take out an insurance policy against liability for loss of life, physical damage and damage to third party property.



Thailand

Return to index

Exploration license

1–5 years, depending on the type of exploration license.

Mining license

Typically, 10 - 25 years to a maximum of 30 years.

Use tenement as security

No. An ML cannot be mortgaged, pledged or assigned as security under Thai law.

Royalty payable to Government

Yes. Mining operators must pay a mineral royalty tariff. This is a form of tax specifically collected by the state from mining operations. The applicable rates for the minerals royalty tariff are based on the price of metal in the respective ores. The rates are stipulated in the Ministerial Regulation, under the Minerals Act

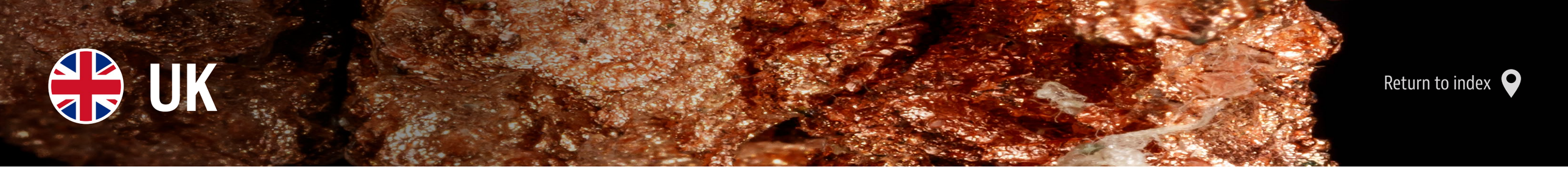
Classification system

None. There is no legal classification system for reporting mineral resources and mineral reserves.

Other key regulation / policy for critical minerals

Exports of tin ore, zinc and gypsum are subject to restrictions. Persons who wish to export these products must obtain a mineral export license.

For gypsum, in addition to the export license requirements, the export quota of gypsum mined domestically is also limited by the DPIM. The quota is only allocated amongst gypsum mining operators who have established sufficient capacity and gypsum reserve.



UK

Return to index

Key metals and minerals

In July 2022, the UK Government published its first critical minerals strategy ("Strategy"), aiming to improve the security of supply of critical minerals in the context of the energy transition. One element of the strategy is to have a clearly articulated and evolving list of critical minerals, reflecting the dynamic nature of relevant markets. Currently, this includes cobalt, graphite, lithium, magnesium, palladium, platinum, rare earth elements, silicon, tin, tungsten and vanadium. The list is to be reviewed annually.

In terms of domestic supplies, the UK has "promising projects" in lithium, tin and tungsten extraction in the SW of England, as well as pockets of rare earth magnet alloy elsewhere. Exploration is ongoing for lithium and other critical minerals. The country also has a growing capability for refining rare earth elements and other minerals.

Legal System

The UK is made up of three jurisdictions: England and Wales; Northern Ireland (both are common law-based); and Scotland (a hybrid of civil and common law).

Member of New York Convention

Yes.

Foreign investment regime

There are no specific rules particular to the mining sector governing foreign ownership of UK mining assets. However, investors and businesses may be legally required to tell the Government about certain sensitive acquisitions under the recently passed National Security and Investment Act 2021 ("NSIA"). The NSIA provides the Government with broad powers to challenge and block or cancel a "qualifying transaction" on national security grounds.

The new regime falls into two parts: (a) a mandatory regime; and (b) a voluntary regime. The mandatory regime requires qualifying transactions to be notified to the Government for approval before they take place, provided the transaction relates to 17 defined sensitive areas of the UK economy. As at January 2023, this does not include mining and a project carrying out traditional mining operations is unlikely to fall within the 17 areas. This could change in the future especially for mining operations relating to critical metals and minerals which the Government may consider of strategic importance to the UK.

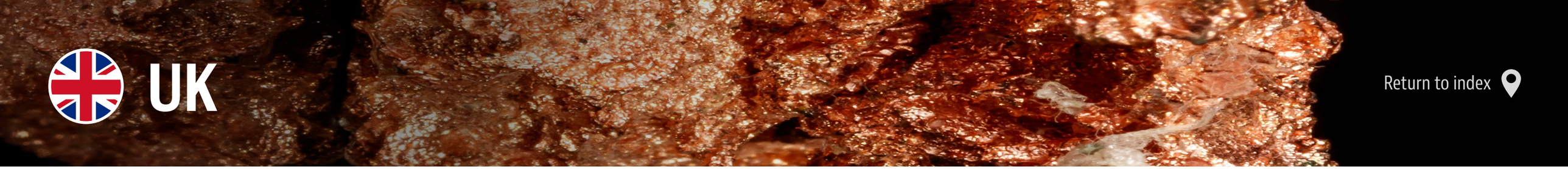
The voluntary regime applies to "qualifying transactions" which do not relate to the 17 areas. This allows parties to submit transactions for approval – and also allows deals to be called-in by the Government retrospectively and reviewed even if not voluntarily notified.

Therefore, a mining transaction that could conceivably risk UK national security could be reviewed by the Government under the NSIA and the parties may wish to make a voluntary notification to mitigate that risk.

Contributors

Richard Blunt
+447968612558
richard.blunt@bakermckenzie.com

Susie Davies
+442079191425
susie.davies@bakermckenzie.com



UK

Return to index

The meaning of "qualifying transaction" is very wide and could include minority investments, as well as intra-group transactions and (in the context of the voluntary regime) acquisitions of or transactions giving control over assets such as land or intellectual property.

Under the Strategy, the Government is developing an inbound foreign direct investment proposition for critical mineral projects. The Government has indicated that its primary goal is boosting investment.

Local party ownership requirements

No.

Indigenous and local community rights

No, there is no concept of native title in English law, although any planning permission could be expected to include conditions that relate to the protection of local communities and the environment.

Environmental protection regime

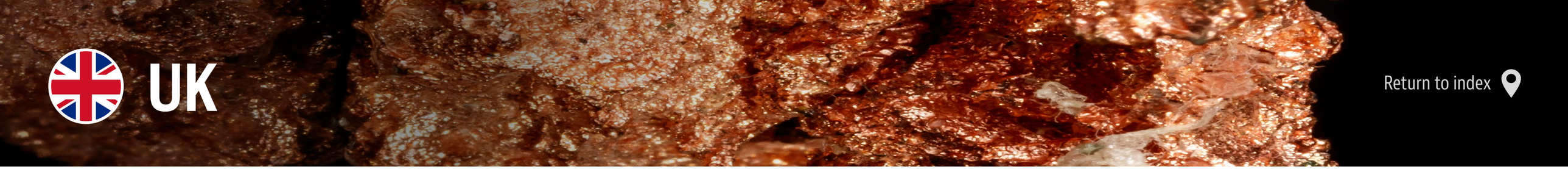
The mining industry is regulated by independent government regulators, in particular the new Office for Environmental Protection ("OEP"). Much environmental legislation in the UK originally derived from the EU and changes have been made so that the UK regime can continue to operate after Brexit.

Key legislation includes:

- the Environment Act 2001;
- the Environmental Protection Act 1990;
- the Environmental Permitting (England and Wales) Regulations 2016 (as amended by the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 which corrected deficiencies in domestic legislation arising from Brexit);
- the Pollution Prevention and Control Act 1999;
- the Wildlife and Countryside Act 1981; and
- the Natural Environment and Rural Communities Act 2006 (in England and Wales).

Regulation is also devolved further, such as to local authorities. Importantly, common law rights and obligations, including in relation to nuisance and trespass may apply to mining operations.

Environmental requirements will also be imposed as conditions of any planning permission.



UK

Return to index

Land tenure

Minerals are privately owned aside from those owned by the Crown (see below). Rights of access to relevant land is required from the landowner. There is no country-wide extraction and exploration licensing procedure for privately owned land.

Rehabilitation security

No, there is no comprehensive framework although this is addressed in planning permissions and the relevant lease or license terms.

Exploration license

In relation to gold and silver, the Crown Estate may grant an option-to-lease (up to six years depending on proposals in the application). Options for longer periods are generally structured in three two-yearly stages. There is no typical duration of planning permission in respect of other minerals although any such permission will include conditions, which may impose time limits.

Mining License

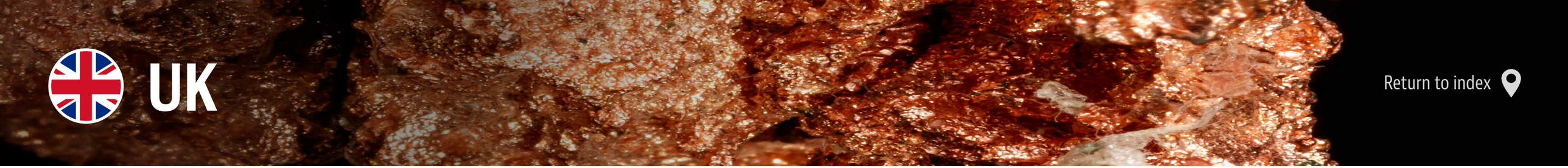
Ownership of oil, gas, coal, gold and silver is held by the Crown Estate and exploitation of these resources is overseen by the Crown Estate. Other minerals are within private ownership. There is no national licensing system relating to these minerals, although a local mineral planning authority must still grant adequate planning permission. A difference process applies in Northern Ireland.

Use tenement as security

If the mining interest arises in respect of a license, lease or permit, the interest will be mortgageable provided the underlying license, lease or permit comprises a mortgageable interest under applicable law.

Royalty payable to Government

No, although profits arising out mining activities are generally subject to the usual tax regimes (i.e., corporate income and potentially stamp duty levies). Royalties may be payable to the landowner where agreed under the terms of the relevant lease or licence.



UK

Return to index

Classification system

Still mirrors the EU with any of the seven main codes providing an acceptable standard (JORC, CIM Standards, PERC, SAMREC, Chile, NAEN, SME Guidelines).

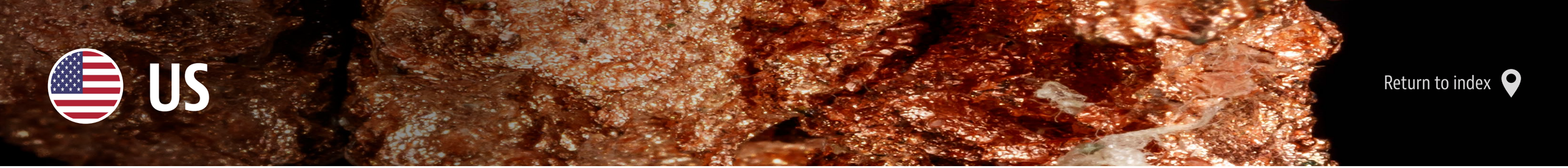
Other key regulation / policy for critical minerals

The Strategy represents the UK's approach to critical minerals as a country that is and will be relying largely on international mineral markets to supply the bulk of critical materials.

At its heart, the Strategy aims to:

- accelerate the growth of domestic capabilities (including by maximising domestic production and increasing recovery, reuse and recycling rates of critical minerals);
- collaborate with international partners (including diversifying supply, supporting UK companies to participate overseas in "diversified responsible and transparent supply chains", and developing diplomatic, trading and development relationships around the world to improve the resilience of supply to the UK); and
- enhance international markets to make them more responsive, transparent and responsible (including boosting global environmental, social and governance performance ("ESG"), reducing vulnerability to disruption and levelling the playing field for responsible businesses, developing well-functioning and transparent markets, and championing London as the world's capital of responsible finance for critical minerals).

A number of Government supported funds potentially provide financial support for UK critical mineral businesses including the Automotive Transformation Fund ("ATF"), Industrial Energy Transformation Fund ("IETF"), National Security Strategic Investment Fund ("NSSIF") and Energy Intensive Industries ("EII") schemes. Critical minerals funding may also be available from the UK Infrastructure Bank ("UKIB") and the UK Export Finance ("UKEF"), the UK's export credit agency.



US

Return to index

Key metals and minerals

The principal contributors to the total value of metal mine production in the US in 2021 were copper (35%), gold (31%), iron ore (13%), and zinc (7%). Other key minerals mined in the United States include, silver, iron ore, nickel, lead, cobalt, lithium, beryllium, magnesium, platinum, palladium, aluminum, barite, bentonite, helium, gypsum, salt, iodine, clay, and industrial sand.

Legal system

Common law, although subject to detailed regulations and statutes at the federal, state and local levels.

Member of New York Convention

Yes.

Foreign investment regime

Only US citizens or US companies can hold mineral rights on public lands in the United States, and foreign companies can form US subsidiaries to hold such rights.

In September 2022, President Biden signed an Executive Order that, among other things, directs the Committee on Foreign Investment in the United States ("CFIUS") to consider a covered transaction's effect on supply chain resilience and security of critical mineral resources. According to the Executive Order, these considerations include the degree of diversification through alternative suppliers across the supply chain, including suppliers located in allied or partner countries; supply relationships with the US government; and the concentration of ownership or control by the foreign person in a given supply chain.

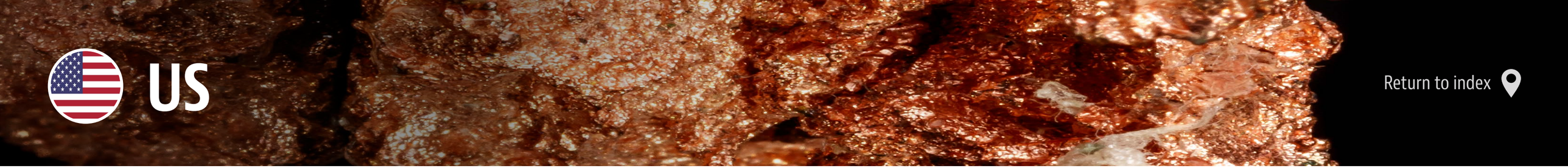
If CFIUS determines that an acquisition may pose a threat to national security, including due to its effect on supply chain resilience and security of critical mineral resources, it may impose conditions on the transaction or refer the transaction to the President, who has the authority to suspend or prohibit the transaction, or unwind a completed transaction.

If the parties submit a transaction to CFIUS, CFIUS will advise the parties in writing of the date that the review period started and the date on which the review period may end. Reviews typically begin with a 45-day investigatory period, which may be extended by an additional 15 days for a more intensive investigation. Notification of a transaction to CFIUS is largely voluntary (unlike the mandatory HSRA filings described below). However, CFIUS may institute its own investigations in certain cases.

There is also a "declarations" procedure that allows for an abbreviated filing or "light filing" process that could result in shorter review timelines (i.e., a 30-day assessment period). This process remains largely voluntary, and the parties may receive a potential "safe harbor" letter, which limits CFIUS from subsequently initiating a review of a transaction except in certain limited circumstances. In some circumstances, filing a declaration for a transaction is mandatory (i.e., for covered transactions where a foreign government is acquiring a "substantial interest" in certain US businesses and certain covered transactions that involve critical technologies.

Contributors

Lewis Popoff
+1 312 861 8160
lewis.popoff@bakermckenzie.com



US

Return to index

Local party ownership requirements

There are no federal or state government mandatory participation rights in a legal entity holding a mining right. Nor are there any requirements for local United States ownership, except that only US citizens or US companies can hold mineral rights on public lands in the United States (and foreign companies can form US subsidiaries to hold such rights), and subject to general foreign investment considerations.

Indigenous and local community rights

Yes. Mining is not expressly prohibited on Native American tribal lands in the United States. Tribal lands are considered held in trust by the United States (i.e., as fiduciary) on behalf of a particular Native American tribe or tribal federation. Mineral rights on tribal lands may be acquired by lease or other agreements with the relevant tribes and approved by the US Department of the Interior. The relevant lease or other agreement must comply with the applicable federal laws that govern such transactions with Native Americans.

In addition, mining projects located on or near Native American reservations and Native American lands require consultation with the relevant Native American tribes in connection with obtaining necessary permits under the National Environmental Policy Act ("NEPA"), the National Historic Preservation Act ("NHPA"), the Native Graves Protection and Repatriation Act ("NAGPRA").

Environmental protection regime

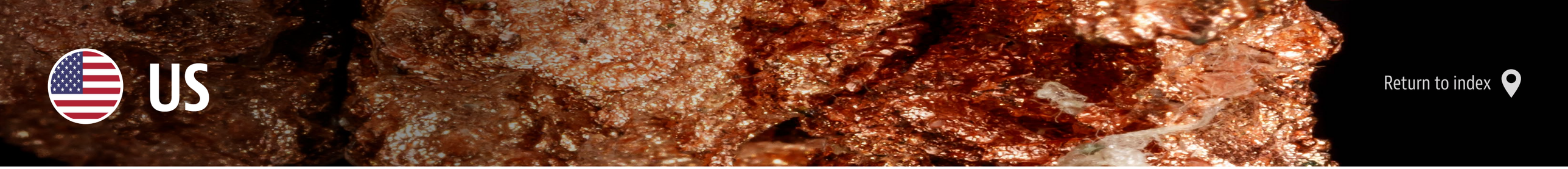
Highly developed. Mining operations in the United States implicate a comprehensive array of environmental regulations implemented by multiple federal and state regulatory agencies.

These regulations extend to the completion of pre-mining environmental assessments and the procurement of air and water permits required for active mining operations. Effective management of mining waste materials, including mine tailings and waste rock, is also required under federal and state environmental laws.

In many cases, a party wishing to construct a mine must first conduct a preliminary environmental assessment ("EA") and, if necessary, a comprehensive environmental impact statement ("EIS") under NEPA). NEPA environmental reviews are particularly important in connection with surface mining operations likely to impact wetlands and other waters of the United States. In most cases, NEPA assessments are conducted at the direction and oversight of the United States Army Corps of Engineers which has jurisdiction over the issuance of so-called Section 404 dredge and fill permits under the Clean Water Act. The Bureau of Land Management ("BLM") oversees all NEPA reviews for mining projects on public lands.

Preparing an EA/EIS is often a time-intensive process and increasingly subject to challenges from regulatory agencies and environmental groups. An EIS typically includes a description of the proposed project, a description of the affected environment, a range of alternatives to the proposed project and an analysis of the environmental impact of the proposed project. No permits will be issued until the EA/EIS process concludes in either a "Finding of No Significant Impact" from the relevant governmental authority, or the project proponent agrees to implement acceptable mitigation measures to address identified impact to the environment.

The initiation of mining operations following the successful completion of the NEPA process will require the procurement of air permits under the Clean Air Act and water discharge permits under the Clean Water Act. These permits are typically issued by state regulatory agencies. Air permits generally address the control and management of dust during active mining operations. Increasingly, however, methane and other greenhouse gas emissions are becoming the subject of regulation and required controls. Water discharges from mine-processing operations and resource storage impoundments are also managed through permits which impose treatment requirements and discharge limitations on the mine. Mine tailings and waste rock must also be managed and properly disposed of under state and federal waste management regulations.



US

Return to index

Land tenure

Land ownership in the United States can be separated into surface and subsurface estates.

With respect to privately owned land, as long as the mineral rights have not been severed from the surface rights, private landowners are generally free to develop the minerals on their own land in compliance with applicable environmental, safety, and state and local laws. The process for third parties to obtain mining rights from private landowners and mineral rights holders on privately owned land generally consists of negotiating the applicable terms of the lease or other agreement that will provide for the relevant mining rights.

A federal mining claim is a particular parcel of public land valuable for a specific "locatable" mineral deposit or deposits, over which an individual has asserted a right of possession. If a claim or site meets all applicable federal and state requirements, the claimant has an exclusive possessory right to the surface land in order to develop and extract the mineral deposits found on the mining claim. This right is similar to an easement because the United States retains paramount title to the land and may challenge the validity of the claim. The possessory right may be maintained by the claim holder indefinitely as long as the claim holder remains in compliance with applicable law, although the right may be abandoned in certain circumstances.

Prior to 1994, the federal mining claim holder was allowed to apply for a mineral patent, which transfers fee simple title to the claim (i.e., surface and subsurface rights) to the claim holder, making it private land. However, a moratorium on accepting patent applications has been in effect since 1994. No new federal mineral patents will be issued until the moratorium is lifted. Until patented, valid federal mining claims are typically referred to as "unpatented" mining claims.

Rehabilitation security

Yes (reclamation bonds).

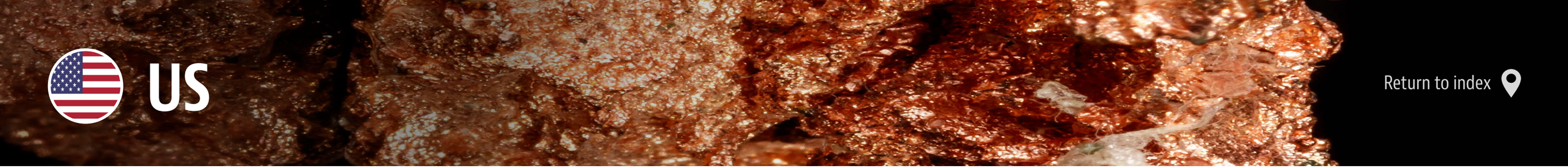
Exploration license

With respect to privately owned land, there are no terms or fees payable to third parties specific to mining exploration activities conducted by private landowners who hold fee simple title to both the surface and subsurface rights on their own land. The terms, renewal rights, fees and other rights with respect to exploration by third parties on privately owned land are generally subject to the terms of the lease or other agreements pursuant to which the exploration rights were obtained.

With respect to public lands, both a notice filing and a plan of operations (for activities greater than casual use) in connection with exploration activities remain in effect for a term of two years and may be extended for an additional two years. No annual fee is required but the rights holder must provide a financial guarantee sufficient to cover the costs of reclamation and any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements.

Non-coal prospecting permits issued under the Mineral Leasing Act remain in effect for two years. Depending on the type of mineral, these permits may be extended for up to four additional years. The permit holder is required to pay an annual rent at a rate based on the particular mineral.

Coal exploration licenses are valid for two years and may not be extended. These licenses normally cover 25,000 acres which must be contained entirely within one state. The applicant is required to post a bond prior to being granted the license in an amount sufficient to ensure compliance with the license and the exploration plan, and to cover compensation for damages to surface improvements.



US

Return to index

Mining license

As in the context of exploration rights, as long as the mineral rights have not been severed from the surface rights, private landowners are generally free to develop the minerals on their own land in compliance with applicable environmental, safety, and state and local laws. The process for third parties to obtain mining rights from private landowners and mineral rights holders on privately owned land generally consists of negotiating the applicable terms of the lease or other agreement that will provide for the relevant mining rights.

With respect to public land, under the General Mining Law of 1972, the locator of a valid mining claim or site on which the locator has discovered a marketable valuable mineral deposit, and who has performed all required acts of location, acquires the exclusive right of possession of the surface land to develop and extract the mineral deposits found on the mining claim. This right is similar to an easement because the United States retains paramount title to the land and may challenge the validity of the claim. The possessory right may be maintained by the claim holder indefinitely as long as the claim holder remains in compliance with applicable law, although the right may be abandoned in certain circumstances.

Prior to 1994, the federal mining claim holder was allowed to apply for a mineral patent, which transfers fee simple title to the claim (i.e., surface and subsurface rights) to the claim holder, making it private land. However, a moratorium on accepting patent applications has been in effect since 1994. No new federal mineral patents will be issued until the moratorium is lifted. Until patented, valid federal mining claims are typically referred to as “unpatented” mining claims.

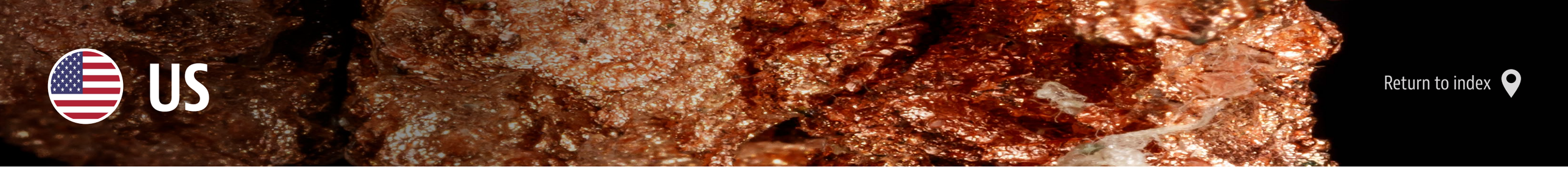
Federal leases for non-coal minerals have differing terms depending on the particular mineral. Sodium leases, for example, have 20-year terms and may be renewed for successive 10-year periods at the end of each term. Phosphate and potassium leases, however, have indeterminate terms which are subject to readjustment at the end of each 20-year period. The annual rental rate is specific to the particular mineral.

Use tenement as security

With respect to privately owned land, as long as the mineral rights have not been severed from the surface rights, they are considered real property of which a person’s interest may be transferred, purchased or conveyed to another.

Similarly, patented and unpatented mining claims (on public lands) are considered real property of which a person’s interest may be transferred, purchased or conveyed to another.

State laws govern transferring mining claims or sites.



US

Return to index

Royalty payable to Government

The US Government does not currently impose any royalties on hard rock minerals on public lands.

Private parties may impose royalties in connection with the sale or leasing of mining claims and rights with respect to privately owned lands.

Federal coal leases carry an annual rental rate of not less than USD3 per acre. Annual production royalties are payable at the rate of 12.5% of the gross value of the coal produced if severed by surface mining methods, and at 8% for coal severed by underground mining methods.

Holders of federal leases for non-coal minerals are also required to pay annual production royalties computed as a percentage of the quantity or gross value of the output of the produced mineral. Federal regulations establish minimum royalty rates but the royalty rate for a competitive lease is set forth in the government's notice of the lease sale.

Classification system

A registrant of securities in the United States (generally, a company that files documents with the US Securities and Exchange Commission) with material mining operations, is required to classify its mineral resources into inferred, indicated, and measured mineral resources, in order of increasing confidence based on the level of underlying geological evidence. The US securities rules (in particular, Subpart 1300 of Regulation S-K under the US Securities Act of 1933) define each class of mineral resources. This classification requirement is consistent with the classification scheme under the Committee for Reserves International Reporting Standards ("CRIRSCO").

Other key regulation / policy for critical minerals

On February 22, 2022, the US Department of the Interior created the Interagency Working Group ("IWG") to work on reforming hardrock mining laws, regulations and permitting policies in the United States. The group, which will inform potential rulemaking efforts on mining, will help support President Biden's vision for a whole-of-government effort to promote the sustainable and responsible domestic production of critical minerals.

Shortly after its formation, the IWG released a list of eleven Fundamental Principles for Domestic Mining Reform: (a) establish strong responsible mining standards; (b) secure a sustainable supply of critical minerals; (c) prioritize recycling, reuse and efficient use of critical minerals; (d) adopt fair royalties so taxpayers benefit; (e) establish a fully funded hardrock mine reclamation program; (f) conduct comprehensive planning; (g) provide permitting certainty; (h) protect special places; (i) solicit community input and conduct tribal consultation; (j) utilize the best available science and data; and (k) build civil service expertise in mining. The IWG was directed to submit its recommendations to Congress by November 15, 2022.

Additionally, on August 16, 2022, President Biden signed the Inflation Reduction Act ("IRA") into law, which contains several green energy tax incentives, as well as incentives designed to strengthen the US supply chain for critical minerals. In particular, mining companies extracting any of the fifty critical minerals listed in the IRA that are then sold to an unrelated person may seek a production tax credit equal to 10% of the costs incurred to produce the minerals.

The fifty critical minerals listed in the IRA are (in 2021 the US was a 100% net importer of the minerals in italics): aluminum, antimony, *arsenic*, barite, beryllium, bismuth, cerium, *cesium*, chromium, cobalt, dysprosium, erbium, europium, *fluorspar*, gadolinium, *gallium*, germanium, *graphite*, *hafnium*, holmium, *indium*, iridium, lanthanum, lithium, lutetium, *magnesium*, manganese, neodymium, nickel, *niobium*, palladium, platinum, praseodymium, rhodium, *rubidium*, ruthenium, samarium, *scandium*, *tantalum*, *tellurium*, terbium, thulium, tin, titanium, tungsten, *vanadium*, ytterbium, yttrium, zinc and zirconium.

Vietnam

Return to index

Key metals and minerals

On 10 February 2022, the Political Bureau of Vietnam issued Resolution No. 10-NQ/TW ("Resolution") on the strategic orientation of geology, minerals and the mining industry to 2030, vision to 2045. The Resolution sets out the key policies for the mining industry in Vietnam, including, among others, the plan for mainstream metals and minerals exploitation and processing. In addition, the general strategies for the mining industry are also set out under the national master plans such as master plans for exploration, exploitation, processing and utilization of general minerals and minerals for construction materials. However, at the end of 2022, these master plans were still in working drafts.

From the strategies under the Resolution the Political Bureau of Vietnam and the drafts of the two national master plans referred to above, the key metals and minerals for exploration and exploitation in Vietnam in future years are as follows:

- Regarding all types of minerals, the key minerals (according to the volume planned to be mined) are, among others: (a) bauxite for aluminium production; (b) iron for steel production; (c) white stone for stone powder processing and paving stone production; and (d) rare-earth elements serving high-tech industries such as 5G network systems, artificial intelligence technology, solar photovoltaic panels, wind power, electric vehicles, etc.
- Regarding minerals for construction materials production, limestone and clay are key minerals. Specifically, it is planned to exploit (a) limestone for cement, glass and lime production; and (b) clay for cement production.

Contributors

Thanh Hai Nguyen
+84 24 3936 9606
thanhhai.nguyen@bakermckenzie.com

Legal system

Civil Law

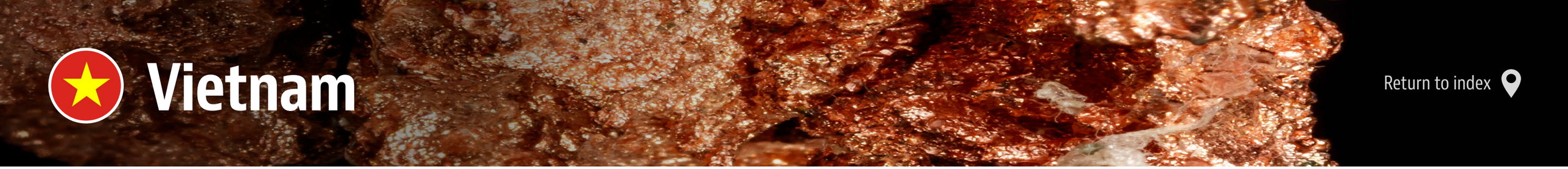
The legal system of Vietnam is civil-law based. However, case law is still recognized as a valid source of Vietnamese laws. Up until 31 December 2022, there have been 56 decisions with the force of law officially issued by the Chief Justice of the Supreme People's Court.

The mining industry in Vietnam is mainly regulated by the Law on Minerals 2010 and its guiding documents. Relevant laws also include those on land, water resources, environmental protection, royalties, taxes, planning and investment.

The Constitution of Vietnam provides that mineral resources, resources in territorial waters and air space, and other natural resources fall under the ownership of the entire people of Vietnam. The Law on Minerals provides that the Government (i.e., the administrative body of the State) is in charge of the management of mining activities in the country, with various authorities being allocated different powers.

The key regulatory bodies that administer the Law on Minerals include:

- The Ministry of Natural Resources and Environment ("MONRE"), which manages mining activities at a nationwide level such as: (a) promulgating or making proposals on regulations implementing the Law on Minerals; (b) drawing up and proposing the mining strategy and master plans for geological baseline mineral surveys to the Prime Minister for approval; (c) determining and issuing mineral areas under its authority; and (d) issuing mining-related licenses for mining projects (except for certain mining projects of smaller scale or less importance).



Vietnam

Return to index

- The Ministry of Industry and Trade ("MOIT"), which is in charge of technical and commercial aspects such as: (a) drawing up master plans for mineral exploration, exploitation, processing, and utilization to submit to the Prime Minister for approval; (b) regulating mine designs; and (c) supervising mineral exports.
- The Ministry of Construction ("MOC"), which is in charge of minerals being construction materials such as: (a) drawing up master plans for exploration, exploitation, process and use of minerals as construction materials to submit to the Prime Minister for approval; and (b) supervising export activities for these materials.
- Provincial people's committees ("PPCs"), which manage mining activities at a provincial level such as: (a) promulgating or making proposals on regulations guiding minerals and mining activities within their own territorial jurisdictions; (b) making proposals on areas subject to mining prohibition or temporary prohibition in the relevant provinces to the Prime Minister for approval; and (3) issuing mining-related licenses for mining projects on minerals being construction materials, or small-scale projects.

In addition, investment projects in the mining industry are also subject to the investment law, with the Ministry of Planning and Investment ("MPI") and the provincial departments of planning and investment ("DPIs") being the authorities in charge.

Member of New York Convention

Yes.

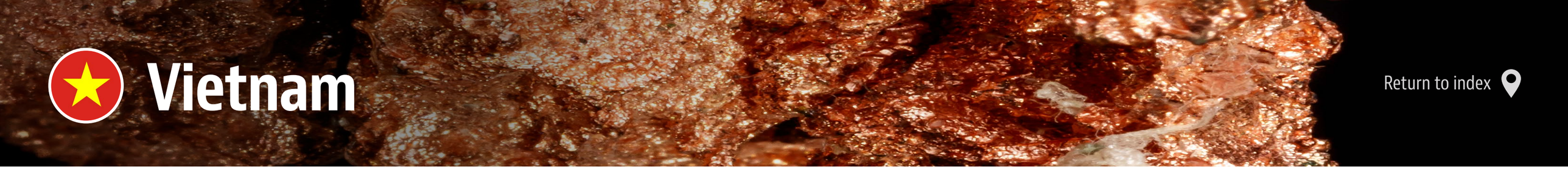
Foreign investment regime

Yes.

Under international agreements, Vietnam's commitments related to mineral exploitation and exploration are as follows:

- Vietnam's World Trade Organization ("WTO") commitments do not cover mining activities. On the other hand, for services incidental to mining (excluding supply of equipment, materials and chemicals, supply base services, offshore/marine support vessels, accommodation and catering, helicopter services), under WTO commitments, Vietnam commits to allow 100% foreign-invested companies in this sector. In addition, Vietnam's WTO commitments also specify that these commitments do not prevent the Government of Vietnam to set out the necessary regulations and procedures to regulate the oil and gas related activities carried out within the territory or jurisdiction of Vietnam.
- Under Vietnam's commitments in EU-Vietnam Free Trade Agreement ("EVFTA"), the extraction of crude petroleum and natural gas, mining of metal ores, and other mining and quarrying are unbound.
- Under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP"), Vietnam has announced that foreign investment into the exploitation of minerals shall not be accepted unless the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Vietnam. Vietnam's CPTPP commitments provide the list of 6 factors for competent authority (i.e., MONRE and PPCs) to consider whether the foreign investment is likely to be of net benefit to Vietnam with the notes that foreign investors do not have to comply with all the criteria to obtain the required mining licenses.

Under Vietnamese laws, minerals exploration and exploitation are in the list of business sectors in which foreign investors are subject to conditional market access.



Vietnam

Return to index

Restrictions-foreign ownership ratio

There is no express provision on foreign ownership restrictions under the Law on Minerals 2010 . This gives the authorities certain discretion to decide whether to approve foreign ownership in a project or not. The minerals related master plans are among the bases for the authorities' assessment of mining projects. These master plans often contain the policy on foreign investors' participation in the mining sector. Normally, foreign investment is sought in large-scale projects that need strong financial capacity or high technology to develop, especially those associated with an investment in processing to the final products or intermediate products with high value of high technology or advanced equipment and technology implemented in Vietnam for the first time.

Required investment related licenses

To invest in projects in Vietnam, foreign investors and foreign-invested enterprises (e.g., enterprises in respect of which foreign investors hold more than 50% of charter capital) must obtain investment registration certificates from provincial DPIs. If foreign investors would like to purchase shares or capital contribution in an enterprise operating in mineral exploration/exploitation and such transaction increases the foreign ownership in the target company, there must be a prior approval from provincial DPIs.

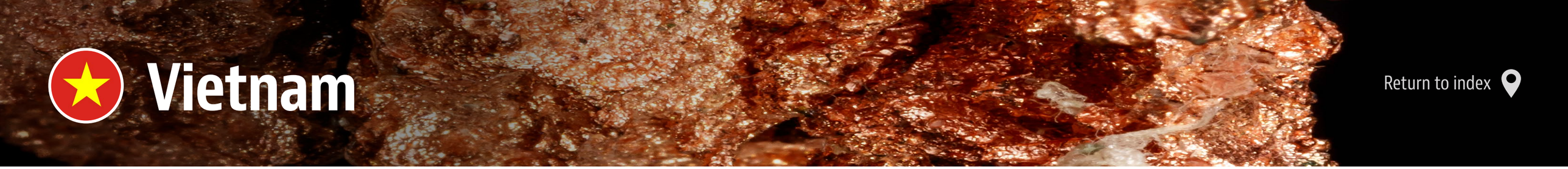
Local party ownership requirements

No. There are no requirements for government or local participation, except for the oil and gas sector. Specifically, to be permitted to participate in oil and gas activities (e.g., oil and gas prospection and exploitation, field development), the investors must sign an agreement with Vietnam Oil and Gas Group ("PetroVietnam" or "PVN") which is a State-owned enterprise.

Indigenous and local community rights

Yes. The Law on Minerals 2010 provides certain rights for the indigenous and local communities in the mining areas, including:

- local labor must be prioritized to be hired for mineral exploitation activities and related services;
- the investors in minerals exploitation are responsible for: (a) compensating people residing or farming on the mining land (if any) for their interests in the land as part of the site-clearance process; (b) constructing certain social welfare works for the localities where minerals are exploited, and (c) coordinating with local authorities to ensure job change for people whose land is recovered for mineral exploitation; and
- the localities where minerals are exploited can receive a part of the State budget revenues from mining activities for the purposes of socio-economic development.



Vietnam

Return to index

Environmental protection regime

Highly developed. Investors must prepare: (a) environmental impact assessment ("EIA") reports for exploitation licenses; and (b) environment protection commitments for toxic minerals exploration licenses pursuant to the environment regulations. These documents must be approved by the competent environmental authorities and included in the application dossiers for relevant licenses.

After the completion of the construction of environmental protection works (if any), the investors must send notification of such completion or submit application for environmental license (as applicable) to the competent environmental authorities.

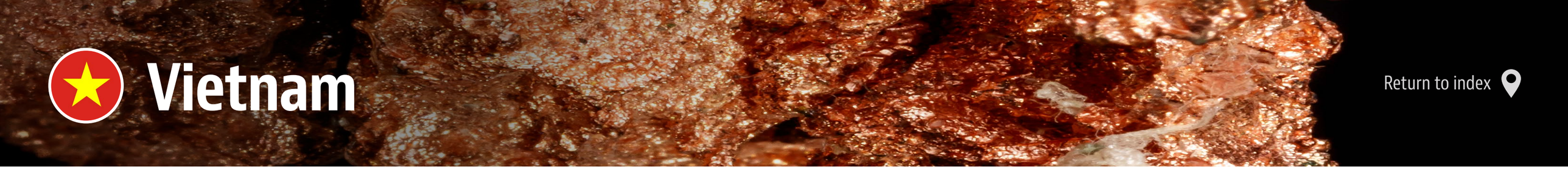
Before conducting mineral exploitation activities, the license holders must pay a deposit for environmental rehabilitation and restoration to the Vietnam Environment Protection Fund or relevant provincial environment protection funds to guarantee their obligations to rehabilitate and restore the environment at the end of the project. The deposit amount is determined by investors under the environmental rehabilitation and restoration plan which is appraised by the MONRE or PPCs together with the EIA report.

Land tenure

Mining rights are separate from surface rights. The Constitution provides that mineral resources, resources in territorial waters and air space, and other natural resources fall under the ownership of the entire people of Vietnam. Until it is legally extracted, the minerals are the property of the entire people of Vietnam under the management of the Government of Vietnam. The mining regulations separate mining tenure from land tenure, under which landholders have no private ownership rights to minerals. They are, however, entitled to some compensation for the loss of any use of land as a result of mining activities.

Rehabilitation security

Yes.



Vietnam

Return to index

Exploration license

Typically, 48 months, with extensions for another maximum period of 48 months. Upon each extension, the licensee must return at least 30% of the exploration area stated in the granted license.

A person wanting to apply for an exploration license must prepare an exploration proposal plan compatible with the relevant master plans in accordance with the Law on Master Planning and seek appraisal and approval by MONRE or the PPCs.

A person can apply for an exploration license subject to certain principles, namely

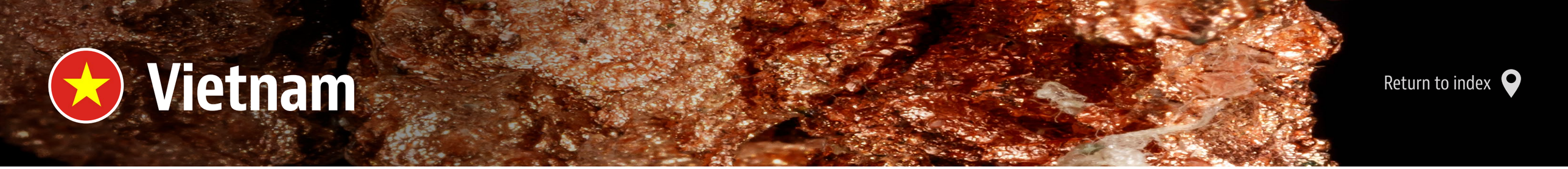
- mineral exploration licenses shall be granted only for areas in which no party is lawfully conducting mineral exploration or exploitation, and which are not banned or temporarily banned from mineral activities, national mineral reserves areas or areas in which geological baseline surveys are being conducted for minerals of the same kind of minerals being applied for; and
- each organization or individual shall be granted no more than five mineral exploration licenses, excluding expired ones; the to-be-explored total area for a specific mineral under all licenses must not exceed two times the maximum exploration area under a single license as stipulated under Law on Minerals 2010.

The size of an exploration area under a specific exploration license for a kind or group of minerals is stipulated as follows:

- not exceeding 50 square kilometers for gemstone, semi-gemstone and metallic minerals except bauxite;
- not exceeding 100 square kilometers for coal, bauxite and non-metallic minerals on land, with or without water surface, except minerals to be used as common construction materials;
- not exceeding 200 square kilometers for minerals of all kinds in the continental shelf, except minerals to be used as common construction materials;
- not exceeding two square kilometers on land or one square kilometer in water surface areas, for minerals to be used as common construction materials; and
- not exceeding two square kilometers for mineral water and natural thermal water.

The current fees payable for issuance of an exploration license is from VND 4 million to VND 15 million (approximately USD 200 to USD 750), depending on the size of the exploration area.

Where the license has expired but the dossier for extension is being verified by the competent state authority, the organizations and individuals involved must postpone the work until the license is extended or refusal to grant a license extension is issued.



Vietnam

Return to index

Steps to acquire an exploitation right

For areas subject to auction of the exploitation right, the persons winning the relevant auctions will be entitled to apply for exploitation licenses for the relevant areas.

For areas not subject to auction of the exploitation right, the licensing authorities will select the entities to conduct a mineral exploration on the basis of application and, if there is more than one entity applying, will conduct an evaluation in terms of: (a) previous involvement in baseline mineral surveys in the to-be-licensed areas; (b) equity capital; (c) current utilization of advanced and modern mining technology and equipment; (d) current strictly compliance with regulations on environmental protection and financial obligations; and (e) commitments to use the minerals for domestic use according to the relevant approved master plan. A person that is ineligible to conduct mineral exploration must sign contracts with eligible organizations. A person applying for an exploration license must have equity capital of at least 50% of the total estimated investment capital for the implementation of the project in the relevant area.

Having completed the application filling requirements, the license will be issued within 90 days by the competent state management agencies i.e., MONRE or the PPC where the mine is located.

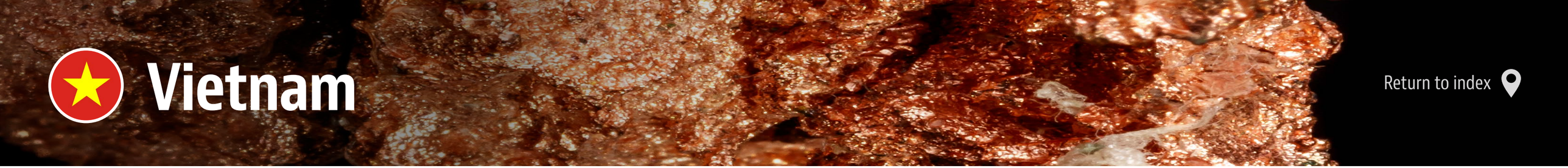
Relationship with landowners

In Vietnam, the land is owned by the entire people of Vietnam as represented by the State. Therefore, entities engaged in mineral activities must rent the land from competent government authorities according to the land law, unless they do not use the land surface layer or their mineral activities do not affect the use of land surface of organizations and individuals that are lawfully using such land. A land lease contract will terminate upon the expiration of the relevant mineral exploration license or mineral exploitation licenses and will be correspondingly adjusted upon the return of the part of the mineral exploration or exploitation area. People residing or farming on the land (if any) would normally be compensated for their interests in the land as part of the site clearance process.

Obligations of the holder

An exploration license holder is subject to the following obligations:

- to pay a licensing fee and fulfil other financial obligations provided by law;
- to strictly comply with the mineral exploration license and implement the approved exploration project;
- to report to the licensing agency for consideration and approval changes in exploration methods or volumes which result in an increase of over 10% in estimated expenses;
- to compensate for damage caused by exploration activities;
- to notify the exploration plan to the PPC of the locality where they will conduct mineral exploration before implementation;
- to collect and store mineral-related information and report exploration results to state management agencies in charge of minerals; and report other activities to competent state agencies under law;
- to perform site and environment recovery, among other works, when the mineral exploration license expires; and
- other obligations provided by law.



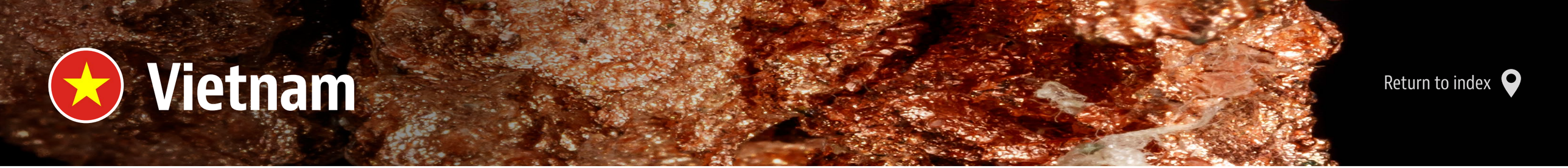
Vietnam

Return to index

Rights of the holder

An exploration license holder is entitled to the following rights:

- to use mineral-related information pertaining to the exploration purpose and area;
- to conduct exploration according to the mineral exploration license;
- to take away from the exploration area, even abroad, specimens with volume and types suitable to the characteristics and requirements of analyses and experiments under the approved exploration project;
- to be prioritized to obtain a license for exploring minerals in the exploration area;
- to request the extension of the mineral exploration license, to return it or return part of the exploration area;
- to transfer the mineral exploration right;
- to lodge complaints or lawsuits against decisions revoking the mineral exploration license or other decisions of the competent state agencies; and
- other rights provided by law.



Vietnam

Return to index

Mining license

Typically, 25–30 years with extensions for another maximum 20 years.

Development operation of a mine can only occur after an exploitation license for that mine has been issued.

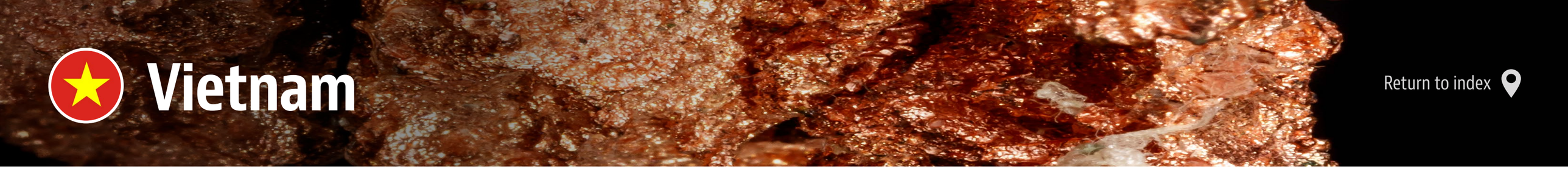
Licensing fees

Depending on the type of minerals, the exploitation capacity and area, the fees for issuance of an exploitation license currently range from VND 1 million to VND 100 million (approximately USD 50 to USD 5,000). In addition, holders of exploitation licenses also must pay a fee for the grant of exploitation right as approved by the MONRE or PPCs on a case-by-case basis. This fee is calculated pursuant to the following formula and regulations guiding Law on Minerals (as amended):

$T = Q \times G \times K_1 \times K_2 \times R$

in which:

- T is the fee for the grant of exploitation rights (VND)
- Q is the mineral reserves (m3/tons/kilograms/other units)
- G is the price of mineral (VND per m3/tons/kilograms/other units);
- K_1 is mineral recovery coefficient, specifically K1=0.9 for pen-pit mining; K1=0.6 for underground mining; and K1=1 for other circumstances
- K_2 is the coefficient related to areas with difficult and extremely difficult socio-economic conditions, specifically $K_2 = 0.9$ if mines are located in areas having extremely difficult socio-economic conditions; $K_2 = 0.95$ if mines are located in areas having difficult socio-economic conditions; and $K_2 = 1$ if mines are located in other areas
- R is the rate of charge for granting mineral exploitation rights which ranges from 1% to 5%, depending on the types of minerals.



Vietnam

Return to index

Duration

An exploitation license is valid for 30 years at most and may be extended multiple times with the total extension period not exceeding 20 years. The area and depth-based boundary of an exploitation area will be considered on the basis of the mining investment project suitable for mineral deposits permitted for mining design.

Where the license has expired but the dossier for extension is being verified by the competent State authority, the organizations and individuals involved must postpone the work until the license is extended or refusal to grant a license extension is issued.

Transition from exploration/holding right to mining right

For areas subject to auction of the exploitation right, if the areas have not been explored, the winners of the auctions will have the right to conduct exploration.

For areas not subject to the auction of exploitation right, organizations and individuals licensed for exploring minerals are prioritized to obtain exploitation licenses for the approved mineral deposits.
The priority right to conduct exploitation is only applied for mineral deposits that have already been explored under the exploration licenses and approved by the competent authorities. The time-limit of the priority right is six months after the expiration of the mineral exploration licenses. No specific administrative fee is attached to the exercise of the priority right. If an organization or individual fails to apply for an exploitation license within the above-mentioned time-limit, the priority right will be lost. If the authorities grant exploitation licenses to other organizations or individuals, such organizations or individuals must reimburse the exploration expenses corresponding to the licensed deposits to the organizations or individuals that have conducted the exploration.

If the organizations or individuals that wish to explore minerals need to conduct field surveys and take surface specimens to serve the selection of areas for the elaboration of mineral exploration projects, they can only do so after obtaining written approval from the provincial people's committees of localities in which the to-be-explored areas are located.

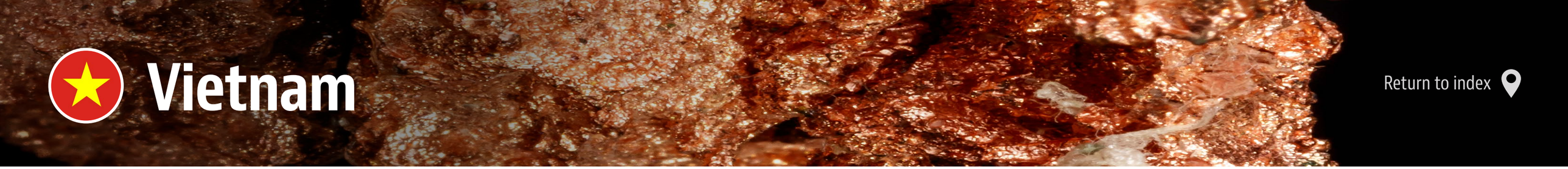
Steps to acquire a right

Vietnamese authorities divide mineral activity areas into (a) areas subject to auction of the exploitation right; and (b) areas not subject to auction of the exploitation right, based on certain criteria.

For areas subject to auction of the exploitation right, exploitation licenses are granted to the winners of relevant auctions organized by the authorities. For areas not subject to auction of the exploitation right, exploitation licenses are granted on an application basis. As mentioned above, organizations and individuals licensed for exploring minerals are prioritized to obtain exploitation licenses for the approved mineral deposits.

Relationship with landowners

In Vietnam, the land is owned by the people as represented by the State. Therefore, entities engaged in mineral activities must rent the land from competent government authorities according to the land law, unless they do not use the land surface layer or their mineral activities do not affect the use of land surface of organizations and individuals that are lawfully using such land. A land lease contract will terminate upon the expiration of the relevant mineral exploration license or mineral exploitation licenses, and will be correspondingly adjusted upon the return of the part of the mineral exploration or exploitation area. People residing or farming on the land (if any) would normally be compensated for their interests in the land as part of the site clearance process.



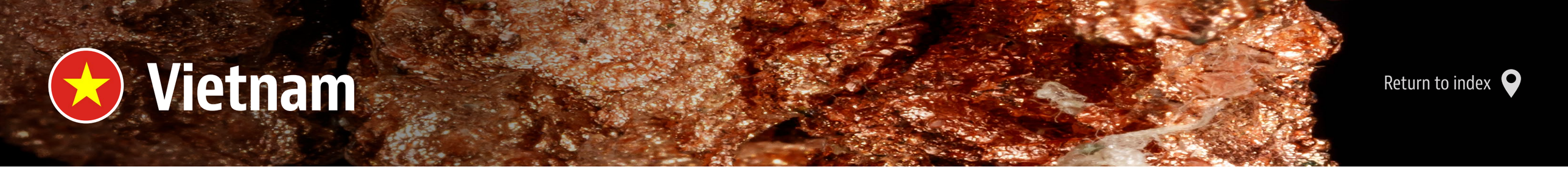
Vietnam

Return to index

Rights of the holder

Organizations and individuals licensed for minerals exploitation have the following rights:

- to use mineral-related information pertaining to the exploitation purpose and area permitted for exploitation;
- to exploit minerals as permitted under the exploitation license;
- to further explore mineral deposits within the permitted area and depth and, before exploration, notify the volume and duration of such exploration to competent licensing state management agencies;
- to store, transport, sell and export the exploited minerals under law;
- to apply for an extension or return of the exploitation license, or return part of the exploitation area;
- to transfer the exploitation right;
- to lodge complaints or lawsuits against decisions revoking the exploitation license or other decisions of the competent state agencies;
- to rent land under the land law according to the approved exploitation investment project or mine design; and
- other rights provided by law.



Vietnam

Return to index

Obligations of the holder

Organizations and individuals licensed for exploitation have the following obligations:

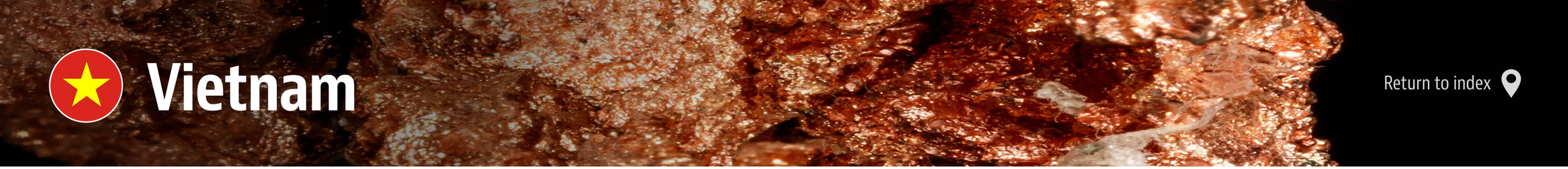
- to pay a fee for the grant of the exploitation right, licensing, royalties, taxes, and charges, and fulfill other financial obligations under law;
- to ensure the schedule of mine infrastructure construction and exploitation activities stated in the exploitation investment project and mine design;
- to register the date of the commencement of mine infrastructure construction and the date of the commencement of exploitation with the competent licensing state management agencies and notify them to the people's committees at all levels in the locality where the mines are located before construction or exploitation;
- to exploit to the maximum all main and accompanied minerals; to protect mineral resources; to ensure labor safety and sanitation and take measures to protect the environment;
- to collect and store information on the results of further exploration for mineral deposits and exploitation results;
- to report exploitation results to the competent state management agencies under MONRE regulations;
- to compensate for any damage caused by exploitation activities;
- to create favorable conditions for other organizations and individuals to conduct scientific researches permitted by the state in the exploitation area
- to close mines, restore the environment and rehabilitate the soil when the exploitation license expires; and
- other obligations provided by law.

Use tenement as security

Yes.

Regarding minerals exploitation rights, Vietnamese mineral law does not clearly recognize the right of license holders to use granted minerals exploitation rights as security. However, in practice, the license holders still mortgage their exploitation rights to the financial institutions.

Regarding land use rights, license holders may mortgage their land use rights and assets attached to the land pursuant to the land law.



Vietnam

Return to index

Royalty payable to Government

Yes. The natural resources tax rate depends on the type of minerals. Currently, it generally ranges from 6% to 27% of the sale price (excluding value-added tax).

Classification system

None. In addition to the reports on exploration results, exploitation results, and changes in exploration methods or volumes as mentioned above, license holders must also comply with an annual reporting requirement to reflect the progress of their minerals activities. The reporting period is calculated from 1 January to the end of 31 December of the reporting year.

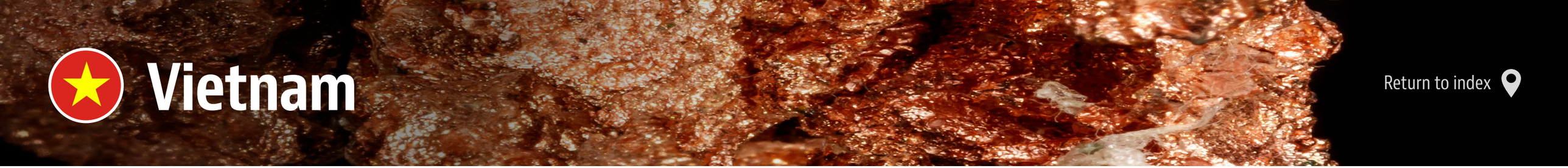
During the exploitation process, the license holder must report any new minerals in the approved exploitation areas. Before the application for an extension, the return of the license or part of the mining area, or the assignment of the mining rights, license holders must prepare a report on the current situations of the mineral activities to the competent mineral authorities to prove the fulfilment of the relevant obligations at such point in time.

Other key regulation / policy for critical minerals

Usual structure of venture

Foreign investors may invest in mining in Vietnam by either direct investment (setting up new companies under the form of 100% foreign-owned or joint venture with local partners, contributing capital to existing companies, or signing business cooperation contracts with local partners without setting up a legal entity) or indirect investment (purchasing shares in existing companies).

Foreign shareholders currently may not own more than 50% of the total shares in public companies operating in minerals exploration and exploitation as a business line in which foreign investors are subject to conditional market access.



Vietnam

Return to index

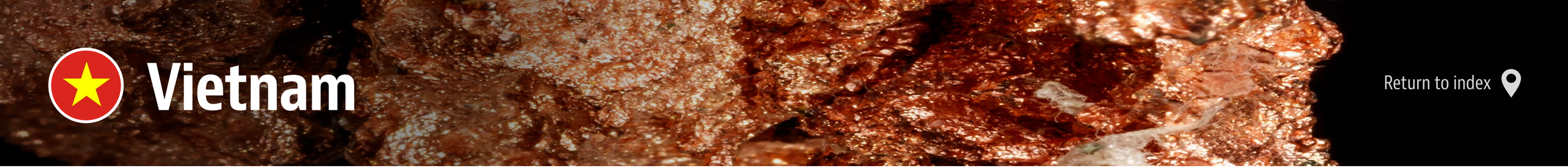
Taxes

A holder of exploitation rights in Vietnam is subject to certain main taxes and fees as follows:

- enterprise income tax;
- value-added tax;
- natural resources tax;
- import/export duties;
- fees for the issuance of exploitation license;
- reimbursement of the mineral exploration costs;
- fees for environment protection;
- deposit to environmental protection fund;
- fees for the grant of exploitation right;
- fees for use of geological and mineral documents;
- fees for participation in the mineral exploitation right auction (in case of participating in an auction); and
- land rental (in case of leasing land).

Water licenses

The exploitation of water for mineral activities purposes must be licensed by the competent state authorities, i.e., MONRE or the PPCs. Parties using water resources for exploiting and processing minerals must take measures to collect and process used water to meet technical regulations and standards on sewage quality before discharging into water sources.



Vietnam

Return to index

Skilled labor and visa

The policy of the Government is still to limit the use of foreign nationals in positions/jobs which can be handled by Vietnamese persons. As such, foreign nationals cannot take manual jobs in Vietnam. In the past, the Government imposed a cap on foreign employees and required employers to train local employees to gradually replace foreign nationals. Now, to prevent low-quality foreign labor, the Government asks for the pre-approval of a foreign labor usage plan before the official submission of work permit applications. Therefore, the authorities have a chance to refuse use of foreign nationals in a job/position that a Vietnamese person can handle. Contractors are also required to give priority to Vietnamese employees in their projects in Vietnam. In practice, there have been cases where the relevant authority did not allow companies to recruit foreign nationals for certain positions. However, there is no clear criteria on jobs that can be handled by Vietnamese employees.

In addition, among the various criteria for a work permit, a foreign worker must be a manager, executive, expert or technician. The work permit application for managers and executives must include documents proving that foreign nationals are managers, executives, experts, and technician. They can be work permits, labor contracts, or appointment letters showing that they work or have worked in managerial/executive positions.

Most foreign nationals who wish to work in Vietnam must obtain a work permit unless they qualify for any of the exemptions. In certain circumstances stipulated under labour regulations, even when foreign nationals are exempted from work permits, the employers are still required to obtain documents form the State authority confirming such exemption. In general, the provincial-level Department of Labor, War Invalids and Social Affairs has the authority to grant work permits to foreign nationals working for a company located outside an industrial zone and an industrial zone authority will issue work permits to foreign nationals working for companies located in an industrial zone.

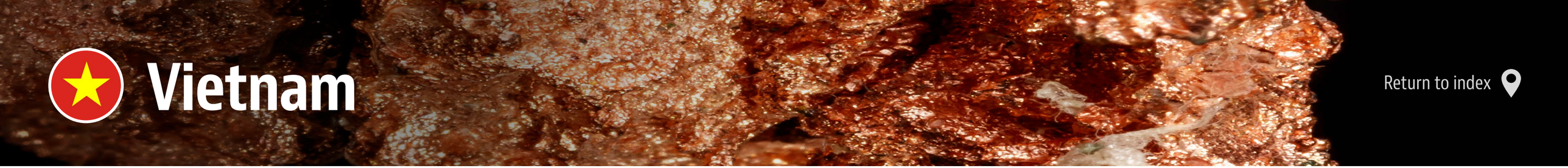
Master plan

All mineral activities must be compatible with the relevant master plans in accordance with the Law on Master Planning.

Master plans for mining activities include: (a) master plans for geological baseline mineral surveys; (b) master plans for exploration, exploitation, process and use of general minerals; (c) master plans for exploration, exploitation, process and use of radioactive minerals; and (d) master plans for exploration, exploitation, process and use of minerals for construction materials. These master plans are classified as national industry master plans and are prepared by relevant ministries (i.e., MONRE, MOIT, and MOC) as well as inspected and approved by the Prime Minister. The preparation of these master plans will be based on national general master plans as well as national marine spatial and land-use master plans.

The preparation of master plans for geological baseline mineral surveys will take into account the implementation results of master plans for geological baseline mineral surveys in the previous year and any indications of newly discovered minerals.

The preparation of master plans for exploration, exploitation, process and use of general minerals, radioactive minerals, and minerals for construction materials will take into account the overall demands of minerals from industries, results of the geological baseline mineral surveys, the scientific and technologies advances in exploration, exploitation of minerals and implementation results on the previous year as well as results on strategical environmental assessments.



Vietnam

Return to index

Security of tenure

As discussed above, an exploration license holder has a priority right to apply for exploitation of approved mineral deposits. However, an exploration license can be withheld by the authorities if the holder fails to conduct exploration within six months following the effective date of the license (unless it is due to force majeure), or the holder commits certain violations without curing them within 90 days from the written notification of the State authority, or the exploration area is declared to be banned or temporarily banned from mineral activities.

An exploitation license can be withheld if the holder fails to build mine infrastructure within 12 months following the effective date of the license, or fails to conduct exploitation within 12 months of the proposed commencement date, unless due to force majeure events, or the holder commits certain violations without curing the same within 90 days from the written notification of the State authority, or the exploitation area is declared to be banned or temporarily banned from mineral activities.

In case an exploration or exploitation area is declared banned or temporarily banned from mineral activities, the license holder will be compensated for the damages that the license holder suffers from such declaration.

Protection for foreign investors

The Law on Investment of Vietnam provides for a number of measures on investment protection, notably the following:

- Guarantee regarding the investors' assets, under which investors' lawful assets will not be nationalized or confiscated by an administrative measure. In the event that the state makes a compulsory purchase or requisition of the property of an investor, due to reasons of national defense or security, or due to national interest, a state of emergency, or to combat or prevent natural disasters, the investor will be paid or compensated in accordance with the provisions of law concerning compulsory purchases and requisitions of property and the provisions of other relevant laws.

- Guarantee regarding the change of law, under which if a new law provides greater investment preferential treatment, the investor will be entitled to enjoy the preferential investment treatment under the new law.

If a new law provides lesser preferential investment treatment, then depending on the actual situation, the investor is entitled to continue applying the investment preferential treatment under the previous law. This protection does not apply to a change in legal regulations for reasons of national defence and security, social order and safety, social morals, the health of the community or environmental protection. In this case, the investor is entitled to submit written requests within three years from effective date of the new regulations for taking certain measures to protect its interests, such as deducting the investor's actual damage against taxable income, adjusting the operational objectives of the investment project, or obtaining certain assistance to remedy the damages.

- Guarantee regarding the remittance of foreign investors' assets to foreign countries, under which the investor, after having fully performed the financial obligations towards the State of Vietnam, is entitled to remit the following assets abroad: invested capital, proceeds from the investment liquidation, income from the business investment activities, and monies and other assets in the investor's lawful ownership.

Baker McKenzie delivers integrated solutions to complex challenges.

Complex business challenges require an integrated response across different markets, sectors and areas of law. Baker McKenzie's client solutions provide seamless advice, underpinned by deep practice and sector expertise, as well as first-rate local market knowledge. Across more than 70 offices globally, Baker McKenzie works alongside our clients to deliver solutions for a connected world.

bakermckenzie.com