UK Mining Law

Relevant Authorities and Legislation

UK mining law is derived from various sources and is contingent on the type of mining activity being pursued - there is no single legislative regime or framework.

COAL

Coal mining in the 19th and 20th centuries was a big industry in the UK, however there is now increasing focus on renewable energy sources. The Coal Authority (sponsored by the Department for Energy and Climate Change) is a non-departmental public body established in 1994 by the Coal Industry Act. It owns (on behalf of the State) the vast majority of coal and coal mines in the UK. Its responsibilities include the licensing of coal mining operations in the UK and the administering of claims for coal mining subsidence damage.

OIL AND GAS

Oil and gas in the UK (both onshore and in territorial waters and the UK Continental Shelf) belongs to the Crown under the Petroleum (Production) Act 1998 and the Continental Shelf Act 1964. A licence is required in order to conduct onshore exploration. The holder of the licence has exclusive rights to exploit for, and develop, oil and gas onshore within Great Britain. The licences do not grant any rights of access, and the licensees must also obtain any consent under current legislation, including planning permissions. Created in April 2015, the Oil and Gas Authority, an Executive Agency of the Department for Energy and Climate Change, has responsibility for the regulation of offshore and onshore oil and gas operations in the UK, including licensing, exploration and production, and oil and gas infrastructure.

GOLD AND SILVER

At common law, gold and silver are the property of the Crown, with gold and silver mines known as “Mines Royal”. The Crown Estate grants exclusive options for leases of Mines Royal for a particular area. Leases are granted by Wardell Armstrong, the Crown Estate Mineral Agent. It is a requirement to obtain the permission of the Crown Estate to mine gold in any form, in addition to the need for rights of access from the owner of the surface of the land. The option is in a standard form and is for a one-year period (two in Northern Ireland).
OTHER MINERALS

The Crown/State does not own non-fuel mineral rights in the UK (with the exception of gold and silver). Generally, minerals are privately owned and the owner of the surface land is entitled to everything within or beneath it.

Though there is no specific licensing system for exploration and extraction activities, planning permission is required from the relevant mineral planning authority for the extraction of minerals. In addition, various environmental consents and safety requirements must be in place in order for a mining operation to be (lawfully) conducted.

OTHER APPLICABLE LAWS

Various other laws are also relevant when conducting mining operations, such as health and safety laws (including the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999), the common law duty of care to employees, general principles of nuisance, statutory nuisance pursuant to the Environmental Protection Act and occupiers’ liability. With effect from 6 April 2015, the Mines Regulations 2014 also apply (which replaces previous legislation relating specifically to health and safety in mines). The Mines Regulations 2014 and Quarries Regulations 1999 impose a wide range of duties on managers, operators and employees (and others) in relation to health and safety in mines and quarries.

Government bodies administering the mining industry

Mineral rights vested in the Crown are administered primarily by the Crown Estate, Coal Authority and Marine Management Organisation. The Marine Management Organisation is a subdivision of the Department for Environment, Food and Rural Affairs. The Land Registry holds information regarding minerals held in private ownership, along with details of the land surface ownership.

Planning authorities play an important role both at regional level (regional planning policies for mineral extraction) and at project specific level (granting permission for specific mining projects).

Environmental regulation is carried out by independent Government regulators (in England, the Environment Agency, though in certain circumstances the regulator will be the relevant local authority or Natural England). Natural Resources Wales is the environmental regulator for Wales, the Scottish Environmental Protection Agency and Scottish Natural Heritage are the regulators for Scotland and the Northern Ireland Environment Agency is Northern Ireland’s environmental regulator. The Department for Energy and Climate Change is responsible for the environmental regulation of the offshore oil and gas industry.

Acquisition of rights

Any UK mine will require planning permission and the conditions imposed through such permissions generally include operational environmental controls. In addition to planning controls, it is likely that multiple environmental permits will be required.

The rights required to conduct mining activities are dependent on the particular mineral or substance in question. For example, to mine gold or silver, a licence must be obtained for the exploration and development of the relevant mineral from Wardell Armstrong (the Crown Estate Mineral Agent). Applications are required to be accompanied by a proposed work programme and must specify the applicant’s financial resources and technical ability. The exploration licence may then be converted into a mining lease, dependent on the applicant’s prospects and progress. However, the exploration licence does not grant rights of entry, thus the applicant must agree access with the relevant owner of the surface rights and (if necessary) obtain planning permission from the local authority.
RIGHTS OF EXPROPRIATION

Compulsory acquisition of rights over land for mining and extraction is possible pursuant to the Mines (Working Facilities and Support) Act 1966. The procedure requires an application to the Government, who would then initiate proceedings in the High Court. Rights under the Act will not be granted unless the court is satisfied that the grant is “expedient in the national interest”. The relevant local planning authority may also acquire land compulsorily pursuant to the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) to facilitate the carrying out of development, redevelopment or improvement in circumstances where it is “likely to contribute” to the economic, social or environmental wellbeing of the area.

Environmental

As stated above, planning permission required for any UK mine will include the imposition of numerous environmental provisions, such as limitations on total quantities that can be extracted and limitations on numbers of vehicle movements.

A key environmental consent relating to mining operations is a mining waste permit to control extractive waste as required pursuant to the EU Mining Waste Directive (Directive 2006/21/EC), implemented in England and Wales under the Environmental Permitting (England and Wales) Regulations 2010. The Regulations also dictate other operational aspects of onshore mining and quarrying such as, discharges to water, emissions to air, quarrying and mineral crushing processes.

Other environmental legislation will apply, for example there may be a need to obtain a licence where mining activities will disturb species or habitats protected by conservation legislation.

Exporting of Minerals

Restrictions vary according to the type of mineral being exported. A licence is required for the export of certain controlled goods outside of the EU (only particularly sensitive goods require a licence for EU Member States). For example, an export licence will be required for the export of goods with military use (and possibly goods with a potential military use). The EU Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH”), in principle, applies to all substances. Certain substances are partially exempt from the requirements of REACH. In summary, Annex V of REACH contains generic exemptions from registration requirements under REACH for minerals, ores, ore concentrates, raw and processed natural gas, crude oil and coal which occur in nature (if they are not chemically modified).

Of course, there are many other aspects of UK law and process which would be relevant to potential investors and operators – we have only attempted to provide a brief, high level summary of some of the issues and practicalities in this article.

Mayer Brown’s UK mining experience

- Advised Wolf Minerals in its equity fundraising by way of an institutional placing for gross proceeds of approximately £100 million for the construction and development of the Hemerdon tungsten and tin project in Devon (expected in 2016).
- Advised Wolf Minerals Limited on its AIM listing and on the project financing for the construction and development of a tin and tungsten mine in Hemerdon, Devon.
- Advised the German equipment suppliers in connection with a dispute with its local JV partner relating to the Boulby Potash mine in Yorkshire.
About Mayer Brown

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