International
Comparative
Legal Guides

Mining Law 2020
A practical cross-border insight into mining law
Seventh Edition

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World Association of Mining Lawyers (WAOML)
Mining Law 2020

Seventh Edition

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World Association of Mining Lawyers (WAOML):
An Overview

In 2014, leading lawyers in the natural resources sector from Europe and the Americas came together to found the World Association of Mining Lawyers (WAOML). Established as a membership organisation, WAOML aims to advance its members’ knowledge of mineral regulation worldwide by providing a global forum for the discussion and debate of legal issues faced by today’s mining industry. WAOML is currently managed by an Advisory Council, a 17-member body with diverse geographic distribution, which includes in-house counsel from international mining companies such as AngloAmerican, AngloGold Ashanti, Eurasian Resources Group, Endeavour Mining, Glencore, IAMGOLD, Navoi Mining, Newmont and NorGold, as well as partners from well-known law firms such as Carey, Chammas & Marcheteau, Fasken, Kimathi & Partners, Lawson Lundell, Norton Rose Fulbright, Simmons & Simmons and Vieira de Almeida.

In pursuit of its aim to stimulate discussion and debate around the increasing regulatory and policy challenges that are faced in the global natural resources sector, WAOML hosts a two-day conference each year. The Annual WAOML Conference brings together leading professionals, academics and policy makers, allowing delegates to exchange ideas and discuss the range of legal matters relevant to mineral exploration and mining, whilst forming and strengthening professional relationships across a global network. To date, the event has taken place in various cities throughout Europe and North Africa including London (UK), Chantilly (France), Toledo (Spain), Sintra (Portugal) and, most recently, Marrakech (Morocco) where 117 delegates from more than 35 different countries participated in the event.

As part of WAOML’s mission to enhance the understanding of legal matters in the global natural resources space, the Association aims to engage young professionals in the early stages of their careers, allowing them to gain insight from senior industry experts. This is primarily achieved via the provision of financial support for students from mineral law and policy programmes to attend the Association’s conference. Since WAOML’s inaugural conference in 2015, students from the University of Dundee’s Mineral Law and Policy LL.M. have attended the two-day event and in 2019 WAOML expanded its student programme further, providing support for individuals studying at Queen Mary, University of London, who joined their peers from Dundee at the conference in Marrakech. In the future, WAOML’s Student Committee, with the generous support of conference sponsors, is committed to expanding student engagement still further by collaborating with other universities and institutions in Canada, US, South America, Australia and South Africa.

As noted, the 2019 Annual WAOML Conference took place in Marrakech, Morocco, where subjects such as modern slavery, mining deal trends, occupational health and safety, streaming finance, executive reflections, transfer restrictions and mine closure and reclamation featured on the agenda. The opening morning of the conference programme was dedicated to the topic of artisanal and small-scale mining (ASM). It is estimated that more than 40 million people worldwide are engaged in artisanal and small-scale mining activities, with numbers increasing rapidly year on year. This growth, attributed in part to rising poverty levels and declining opportunities to gain sufficient income from agricultural activities, has resulted in increased efforts to formalise the ASM sector, attempts to address the array of social, environmental and economic questions raised in connection with ASM activities, and to find workable solutions for large scale mines (LSM) and ASM to co-exist. Delegates at the conference were able to hear, on the one hand, from leading subject matter experts from the OECD, Alliance for Responsible Mining and Solidaridad and, on the other hand, from in-house counsel with LSM companies, whose operations coexist with artisanal miners. Together, they provided insight on the ASM sector, the daily challenges posed by the interaction between ASM and LSM, and the role that companies involved in LSM can play in this complex area. The President of CONAPEM, Burkina Faso’s corporation of artisanal and small-scale miners, also addressed the conference audience, making an invaluable contribution to the discussion from the perspective of those engaged in ASM.

As part of this discussion on ASM, WAOML also took the opportunity to release for consultation the WAOML Draft Small-Scale Mining Regulations (SSM Regulations) – contributing to the work around the formalisation and regulation of ASM. The main principles and objectives of the SSM Regulations include: the provision of incentives for ASM participants to formalise; the creation of effective systems for reporting and discouraging the harmful effects of ASM activities; and methods for the upstream and downstream tracing of minerals. The draft SSM Regulations will remain open for public comment for a 12-month period, with WAOML working towards producing a final form of Model SSM Regulations by June 2020. Those interested in providing input on this topic are invited to contact the Association directly.

The SSM Regulations are actually the latest in a series of model mineral regulations prepared and presented by WAOML. This is part of a concerted effort by the Association to stimulate debate and discussion with policy makers and industry stakeholders, in order to structure a healthy mining industry, where communities, the environment, government and mining companies are treated fairly and the appropriate regulatory tools are used to secure investor, government and community interests. In 2015, at WAOML’s inaugural conference, delegates engaged with the Association’s Advisory Council to discuss the potential for a model piece of legislation and in 2016 WAOML released the first draft of what would later become the WAOML Miners’ and Investors’ Modern Model Mining Code (MMC). The law was structured around 12 key principles, including appropriate licence allocation; the right to mine after exploration; a social licence to operate; balanced environmental approvals; state encouragement of mine development; unfettered priority to land.
and surface rights; and fiscal stability. In 2017, at the third Annual WAOML Conference, additional draft provisions for the MMC were proposed which focused specifically on anti-corruption and transparency measures. Following extensive engagement over a two-year period with a wide range of industry participants, who intelligently critiqued and commented on the MMC, the model law has developed into a workable piece of legislation which limits the role of discretion and provides a strong template for governments to use to inform their own mining laws and regulations. To date, it has been used by stakeholders in countries such as Malawi, Papua New Guinea, Australia and Brazil in order to engage with authorities on the drafting of new laws and regulations for their mineral resource industries. It is hoped that the SSM Regulations will prove to be a similarly useful tool and a strong starting point from which to initiate conversations around the regulation of ASM activities.

Looking to the future, 2020 will see the hosting of the sixth Annual WAOML Conference, which is due to take place in Croatia in early June. WAOML prides itself on its rich programme content and the Association’s Program Committee strives to address those topics which are of greatest relevance to the modern mining industry. There is perhaps no subject more topical, both at the industry level and generally speaking, than that of climate change and sustainability. With the world facing a climate crisis, there is growing pressure on governments and industries to take action to reduce the negative impact of human activity on our planet and to implement sustainable policies and practices which mitigate emissions, drive the transition to a lower carbon economy and focus on cleaner energy. Such measures will have a significant impact on the natural resources sector, both in terms of mineral demand and in terms of increased scrutiny on sustainability and environmentally responsible practices. International organisations have already begun to focus on addressing sustainability and climate change in relation to the mining industry, with the World Bank recently launching its ‘Climate-Smart Mining’ Initiative, with a facility established to help resource-rich developing countries gain the benefits from increasing demand for key minerals, whilst minimising the environmental footprint of mining. It is inevitable that over the course of the next few years, laws and regulations will start to emerge to provide regulatory frameworks in this field. As a result, WAOML will look to discuss climate change and sustainability and its impact on our industry at the 2020 Conference and provide attendees with leading insight on this critical, fast-developing area. Other subjects of focus for the organisation over the course of 2020 and beyond are likely to include mining in space, deep sea mining, government relations, tax structures and emerging mining jurisdictions. A newly formed Publications Committee will also work to provide relevant content on legal issues in the mining sector throughout the year.

WAOML is a not-for-profit organisation, the work of which would not be possible without the generous, ongoing support of its sponsors, the continued efforts of the Association’s Advisory Council, the commitment of its members and the contributions of those who share their expertise each year as speakers at the WAOML Conference. WAOML membership is open to all those in the legal profession, whether working in private practice or in-house with a mining or service company, as well as those involved in policy, consultancy and civil society with a focus on the mining sector.

Poupak Bahamin is a partner and Co-Head of Mining US at Norton Rose Fulbright and the current Chair of the World Association of Mining Lawyers. She is a corporate lawyer with an international background, currently based in Washington, D.C., having previously practised in Canada and France. She regularly advises companies involved in mining and on corporate and regulatory matters, the establishment of joint ventures, partnerships, mining conventions, PSAs, and the sale and financing of assets. She has been recognised by Chambers Global as a DRC Foreign Expert for general business law and corporate and M&A work. Poupak regularly contributes to mining journals, publications and conferences. She is fluent in English and French and speaks Farsi.

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