LEGISLATIVE AND INSTITUTIONAL REVIEW

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AUA Center for Responsible Mining

For the
Republic of Armenia EITI Multi-Stakeholder Group

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"Support to Enhance Armenia's Capacity to Implement EITI and to Increase Transparency and Accountability in Mining Licenses and Contracts" Project funded by the British Embassy Yerevan

Note: The original version of this study is in Armenian. The English version is a translation. Reasonable attempts are made to make the English text idiomatic.

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INTRODUCTION

This study, called the Legal and Institutional Review and Action Plan, is commissioned to the AUA Center for Responsible Mining by the British Embassy Yerevan to support the enhancement of Armenia's capacity in the mining sector.

The scope of analysis is limited to review of following issues and offering recommendations with a view to implement the EITI standards:

- Overview of the legal framework and fiscal regime regulating the mining sector;
- Transparency of the process for mining license allocations and contracts;
- Disclosure of taxes collected by the public authorized bodies and taxes paid by companies (including disaggregation of these payments);
- The issue of retrospective effect with regard to the data published for the previous period;
- Extra-budgetary accounts (including municipal);
- Social spending and analyzing the concept of affected communities;
- Efficiency of oversight over the fulfillment of mining operators' social and economic expenditure commitments;
- Disclosure of beneficial owners of mining companies;
- Analysis of three directions, related to development of responsible mining, per scope agreed with the MSG:
    - The application of cost-benefit analysis in mining project selection,
    - Bridging the gaps with respect to environmental and social impact assessment in the mining sector, and
    - Bridging the gaps on environmental, community, and public health reporting and monitoring related to mining projects.

  There are many other issues relate to responsible mining. These additional issues are highlighted in section 9.3 below. Further analysis is required to study these additional and important topics.

The detailed scope of this study, approved by the MSG, is available in Annex 4. The study was conducted between July 2017 and August 2018. Specific recommendations were furnished in the framework of the Scoping Study and have served as grounds, in particular, for the package of amendments to the legislation adopted in March 2018. In this study, we refer to legislative acts that are no longer in force, given that under EITI the Independent Administrator shall cover the years of 2016-2017 in the first report.

1. LEGAL FRAMEWORK AND FISCAL REGIME GOVERNING THE MINERAL SECTOR

The key legislation governing the mineral sector includes the RA Mining Code, Law on Environmental Impact Assessment and Expertise, Civil Code, Law on Waste and other codes and laws.

The mining sector's fiscal regime is governed, specifically, by the RA Laws on Environmental and Nature Resource Use Fees, on Rates of Environmental Payments, on Taxes, on Profit Tax and the RA Mining Code. The RA Law on Targeted Use of Environmental Fees Paid by Companies regulates the procedure of disbursements to the community budgets from the environmental payments made by companies. From 1 January 2018 the RA Tax Code came into full force, codifying a series of laws existing in regulatory framework for taxation.

Thus, the environmental tax is a tax paid to the State budget that generates necessary funds for implementation of environmental programs. The nature resource use fee is the payment made to the State budget, which is aimed at effective and integrated use of State-owned natural resources, as well as for compensation of the use of natural resources, and royalty is a type of nature resource use fee, which is a payment made to the State budget of the Republic of Armenia for compensation of the use of metal minerals, as well as for the profit generated from sale of metal minerals and from products produced as a result of processing such metal minerals or mining waste.

Given that it was decided that under EITI the scope of Independent Administrator's activities will include the years of 2016-2017, the legislation existing before coming into force of the new Tax Code is also covered in this study. A large number of sub-legislative acts (e.g., government decisions, decrees, etc.) are part of the legislation governing the fiscal regime of the mineral sector and the environmental fees.

Mining is permitted for following two purposes:

1. Geological exploration
    a) Exploration (reconnaissance),
    b) Exploration for further exploitation;
2. Exploitation.

Exploration permits, whether for reconnaissance or further exploitation, are issued for 3 years and can be extended. Exploration permit is granted on the basis of exploration agreement (general geological exploration of the subsoil) or exploration permit for further exploitation, a contract, and an approved work plan.

Applications for both exploration and exploitation permits are submitted to the MEINR's Mining Agency, which acts as a "one-stop shop", coordinating with other agencies as necessary. As per Article 51(8) of the MINING CODE, *having received affirmative conclusions from expert review, the authorized body, within 180 days of registration of the application, shall take a decision on the application, about which it shall notify the applicant in written form*. As per Article 51(10) of the MINING CODE, if two or more persons have applied for exploitation permit for the same subsoil allotment or such allotments, which have a common area, the preference will be given to the "preferential applicant" that has conducted geological exploration of the site. Meanwhile, if two or more persons have submitted applications for the right to conduct geological exploration of the subsoil for further extraction of minerals, preference shall be given to the "first comer".

The right to exploit minerals is granted for a period of up to 50 years, with possibility of extension. The documents certifying the rights to mine are as follows:

1. Mineral permit (agreement, in case of geological exploration);
2. Land Use Act;
3. Approved operation plan, and
4. Contract with the RA MEINR.

Financial proposals and mineral fess, the obligations envisaged in the mine closure plan, the commitments undertaken in the field of social-economic development of the community, the environmental management plan, as well as the financial guarantees essential for waste management (and/or recycling) are integral parts of the contract, attached as annexes. It is worth noting here, that the MSG members have raised the point that while

environmental management plan is covered also in the EIA framework, further changes to this plan are made without additional EIA, since the former is an integral part of the contract.

The Mining Agency of the RA MEINR keeps a centralized register of mining rights, where information on such rights are registered, including the copies of the above-mentioned documents, as well as changes in the rights, transfers, the collateral, warning and termination. The procedure of obtaining information from the centralized register of mining rights is defined in accordance with the RA Government Resolution No 1147-N, dated as of 6 September 2012.[1]

Mining rights are transferable. The transfer of mining rights takes place with consent of the authorized body. Similarly, the consent of the authorized body is required, when in case of reorganization of a legal entity through split or separation, the mining right, by law on succession, based on the dividing balance sheet, is transferred to the newly created company. In this regard, one should note that in case of acquisition or merger the consent of the authorized body is not required for the transfer of mining right.

In case of alienation of the mining right, as well as in case of transfer of the mining right due to acquisition of a legal entity or merger of legal entities, an issue of concentration may occur. As per Article 8 of the Law on Protection of Economic Competition, acquisition of assets of one economic entity by another, if the acquisition per se or together with the assets already possessed by the acquirer constitutes 20 or more percent of the assets of such economic entity, shall be deemed as concentration of economic entities. In this regard one should note that the mining right, as such, has no book value. Thus, from the perspective of the RA legislation, alienation of the mining right only does not entail any limitations provided for under the RA Law on Protection of Economic Competition.

Mining rights can serve collateral. In this case, the collateral agreement between the mining operator and the entity accepting the collateral is concluded after informing the authorized body. In order to participate in public auctions held for forced alienation of the mining right, legal persons must obtain the consent of the authorized body. It should be noted, that as provided by the Mining Code, mining rights are sold exceptionally through public auctions, which implies that the procedure of applying confiscation to the pledged property, without filing with court, provided for under Article 249 of the RA Civil Code, may not be exercised in case of pledging the mining rights.

Defining a complicated procedure for transferring the mining right limits the possibility of such right to become a more active object of economic turnover. Moreover, the information to be submitted for obtaining the agreement to transfer relates to the company that wishes to sell it and its activities. Establishing a complicated procedure for mining right transfer may lead to a situation where companies in financial difficulties are not allowed to transfer the mining right to a third person and, later, in case of suspension of the right, the investor shall be deprived of the possibility to receive any compensation for the investments it had made.

It should be noted that in case of transfer of the shares or the stock of the company disposing of the mining right, no limitation is envisaged in terms of the relations between the company and the authorized body. The authorized body may not even be aware of the change in the owners of the shares or stock of the company. In other words, the RA legislation enshrines no legal implications in terms of the legal regime applicable to the mining right in cases of so-called "change of control".

In the metal mining sector, the following main types of direct taxes and fees apply:

- Royalties,
- Profit tax (set at 20% on profits),
- Personal income tax,
- State duty - for issuing certificates for export of mineral ore classified as 26 of the FEA CN (set at 3% of the cost calculated every time on the basis of metal content contained in the mineral ore and the average international market price).

For 2016 and 2017, these taxes and fees were based on following laws:

[1] http://www.arlis.am/DocumentView.aspx?DocID=78175

- RA Law on Taxes,
- RA Law on Profit Tax,
- RA Law on Income Tax, and
- RA Law on Natural Resource Use and Environmental Protection Fees (this law regulates the calculation of the natural resource use fees and royalties, in case of metal mineral extraction),
- RA Law on Environmental Fee Rates,
- RA Law on Waste;
- RA Law on State Duty.

The new Tax Code was adopted in 2016, but the main provisions came into force from 1 January 2018. The Code brings together in one document the key regulations governing taxation. The taxation rates for mining have remained essentially the same. The fiscal regime is thouroughly discussed in the Scoping Study conducted for Armenia's 2018 Extractive Industries Transparency Initiative (EITI) Report. However, we would like to reflect on the amendment made in March 2017, whereby the companies were given the opportunity to deviate from LME prices by 20%.

In this regard, the AUA Center for Responsible Mining addressed the Prime Minister of Armenia and, specifically, shared the views of Matthew Genasci, the AUA Center for Responsible Mining financial and tax advisor, with regard to the problematics of taxation of the mining sector in Armenia. Essentially following questions/recommendations were raised:

- Whether loosening this threshold is based on the wish to reduce royalties, or the argument that the threshold of 90% does not cover the difference between the LME price of the metal content in the concentrate and the actual sales. In other words, should one consider this change as a means of changing the royalty burden without changing the royalty interest rates?
- It was recommended to set the LME price exclusive of the established processing margin as the royalty base.
- It was recommended to implement a variable mechanism which will reflect the fact of sharp fluctuations in the mineral price, specifically it will grow during the period of high prices of the mineral and will automatically decrease in case of law level of revenue.

Comments of the consultant and responses recevied from the RA Ministry of Finance and Ministry of Economic Development and Investments are provided in Annex 1.

The above-mentioned Scoping Study provides detailed overview of the legal framework of the sector. As shown in the Scoping Study, in recent years Armenia has implemented a series of initiatives to reform the mining sector. Key amendments to the legislation related to management of mine waste, calculation of the royalty base, drafts to amend the Law on Environmental Impact Assessment and Expertise, and a few others. Moreover, the World Bank commissioned a report called “Armenia: Strategic Mineral Sector Sustainability Assessment” aiming “… to assist the Armenian government to gain a better understanding of key social and environmental challenges and future opportunities for the Armenian Mining Sector; and to support the development of a minerals strategy which is in line with international good practices and which contributes to sustainable development”. The report’s key recommendation is that the country should develop a “holistic policy for the sustainable development of the mineral sector”, and that this should tie in with its efforts under the EITI towards greater transparency and participation. Furthermore, the report recommends that a number of narrower diagnostic studies should be undertaken in order to inform policy decisions.

It is understood that two of these – a study on environmental and social issues and a study on economic and financial issues – will be prepared in 2018. It is expected that 2018 will also see the development of the government’s mineral mining sector policy and strategy. In this regard it should be noted that it will be more logical to develop a clear strategy, state policies guiding the governance of the sector, and only than amend and draft laws and regulatory acts that will serve only the purpose of implementing the elaborated policy and, more importantly, will follow the fundamental principles adopted in the sector. Otherwise, there is a situation with multiple legislative initiatives taken, which are chaotic and do not fit into one strategy, thereby making it difficult to project the prospects of sector development and potential developments in the legislation. The Report recommends refraining from non-urgent amendments to the legislation, until elaboration of the new policy. There is, however, no need to wait for the new policy strategy to prevent practices that, for instance, put human health at risk.

2. TRANSPARENCY IN MINING PERMITTING AND CONTRACTS

According to the RA Mining Code, mining rights consist of:

- Mining permit,
- Mining agreement (in case of geological exploration),
- Approved work plan (document on implementation of geological exploration works agreed with the authorized body) or
- Operation plan (which is the document designed for implementation of mineral extraction works and subjected to expert review in accordance with the procedure established by legislation);
- Land use act (document issued to the mining operator by the authorized body fixing the coordinates of borders of the subsoil allotment provided for the purpose of installation of mineral extraction complex, which is an integral part of the mining right) and
- Contract (written agreement concluded between the authorized body and the mining operator defining the conditions of granting mining rights (for geological exploration or exploitation), rights and responsibilities of the parties).

One should note that Article 4 of the Mining Code sets the foundations of legal regulations associated with mining and subsoil protection. Moreover, the same article declares the public disclosure of activities connected with mining as an overriding principle.

Issue I. However, one should note that neither the Mining Code nor any other legal act makes it explicit what the legislation means with "public disclosure of activities related to mining", as its scope is not clarified. There is only one article in the Mining Code related to public disclosure, Article 9, whereby "dissemination of information regarding the activities related to mining shall be carried out in manner established by the Republic of Armenia laws".

One should note that ensuring public disclosure of activities related to mining is provided for, as a function, under the Statute of the Ministry of Energy Infrastructures and Natural Resources of Armenia. Moreover, here the scope of transparency is not explicit, either (Decision No 654-N as of 15.22.2008).

Recommendation I. With a view to making the legislation explicit, we hereby recommend specifying the scope of public disclosure of activities related to mining, through amending the RA Mining Code, which will include provisions on public disclosure of permitting and contracts.

The review conducted in the framework of this study has shown that while the data in the process of mining permitting is disclosed to the public in some regards, the legal grounds for it are not comprehensible, since there is lack of consistency or adherence to principles in publishing such information. Moreover, information on mineral reserves, extraction volumes is not published.

According to EITI requirement 2.3, implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI report:

- License holder(s).
- Where decided upon, coordinates of the license area. Where coordinates are not decided, the government is required to ensure that the size and location of the license are disclosed in the license register and that the coordinates are publicly available from the relevant agency with reasonable fees and restrictions. The EITI Report should include guidance on how to access the coordinates and, if any, the cost of accessing these data. The EITI Report should also document plans and timelines for making this information freely and electronically available through the license register.
- Date of application, date of award and duration of the license.
- In case of production licenses, the commodity being produced.[2]

[2] It should be noted that EITI Standard requires disclosing the commodity being produced. It is not always the case that it coincides with the commodity indicated in the license. There might be cases when the mining operator has an exploitation license for copper, but later it finds copper in quantities of commercial relevance. While the mining operator has informed the competent authority, it might be the case that relevant change is not yet made in the license. Therefore, sometimes there is a mismatch between the competent authority's obligation to publish the list of commodities and the commodities indicated in the license.

The license register or cadastre is expected to include information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold. Any significant legal or practical barriers preventing such comprehensive disclosure should be documented and explained in the EITI Report, including an account of government plans seeking to overcome such barriers and the anticipated timescale to achieve those.

It should be noted that the recommendations furnished by the Center for Responsible Mining were largely accepted and implemented in Article 9 of the Mining Code, edited on 21 March 2018. In particular, as per Article 9 of the Mining Code, information subject to public disclosure includes the end-point coordinates of the mining allotment and the total surface, the amount of mineral stock for exploitation as per main and accompanying components, and the annual yield of the mine. Meanwhile, the authorized body shall also publish on its website the mining contracts concluded with extractive mining operators and the amendments made thereto.

According to the Mining Code, mining rights consist of the mining permit or agreement (in case of geological exploration), approved work or operation plan, land use act and contract. Currently, after the mining right is granted, all above-mentioned documents are registered and their copies are archived at the Mining Agency of the MEINR. The Mining Agency keeps the register of mining rights. The summary information kept in the register is currently also published on the websites of MENR (http://minenergy.am/en/page/422), Government (https://www.e-gov.am/lists), as well as in the recently established Geo-Fund website (https://www.geo-fund.am/hy/) in *Microsoft Word* and *PDF* formats. Public information is updated quarterly. Copies of documents or their full content, however, is not published yet, except for the work or operation plan, the initial versions of which are being published at MNP's website in the course of EIA public consultations (http://www.mnp.am/?p=315).

Following information with respect to geological exploration and exploitation rights is shared through the publicly available Register of Mining Permits:

- Name of legal entity receiving the mining permit;
- Reference number of the permit;
- Date of permit issue;
- Permit expiration date;
- Place of the operation (however, the area is noted without specific coordinates, though info on the coordinates is kept at the Mining Agency);
- Purpose of the operation;
- Reference number of the mining contract, contract's duration; and
- Other data in the "Notes" section (i.e. information about renewal of the permit, etc.)

Recently, Ministerial Orders issued by the Minister of EINR granting mining permits have also been published on MEINR website (http://minenergy.am/legislation/browse/cat_id/4).[3]

The EIA reports presented to the MNP for review are placed on MNP's official website (http://old.mnp.am/?p=200) along with conclusions of state expert review. The proposed work or operation plan as well as application for preliminary impact assessment are published on MNP website prior to the EIA public consultation process; however, they are not updated in a way to reflect comments received in course of EIA public consultations and the feedback provided to the public. According to the observations of some members of the MSG, the work plans are either not uploaded on the website or the latter do not meet the requirements of EIA. The findings of EIA review are published on the website after the approval of the work plan or are not published at all. It is also required by Law on Environmental Impact Assessment and Expertise to publish the minutes of public consultations on the MNP website. However, currently the website provides minutes only for 2015.

Brief descriptions of mines and ore occurrences (called passports) are also available online and uploaded on MEINR's and Geo-Fund's websites. However, these passports do not include coordinates of mines and ore occurrences. In addition, it should be noted, that passports that are either available or are being prepared do not meet the current requirements of passport issuance and need to be updated or revised. Therefore, information from the passports, as they are now, cannot be used as reliable data in the EITI process.

[3]http://minenergy.am/legislation/browse/cat_id/4

So, one can conclude that in terms of permits following pieces of information are not available to the public from among the data that EITI Standard requires to disclose:

- Coordinates of the site provided by the permit;
- Date of application; and
- Name of the mineral extracted in case of the mining permit.

We believe that in terms of compliance with EITI principles, the transparency of permitting and contracts, the importance of publishing the following information is specifically emphasized:

- Name of the operator;
- Reference number of the permit, year, month and date of issuance and the duration of permit;
- Coordinates of the end-points of subsoil allotment;
- Name of the mineral;
- Volume of provided reserves;
- Annual yield of the mine; and
- Planned volume of extraction.

The information under points 1 and 2 above is currently being published, so there is no need to consider possible barriers to public disclosure in terms of these aspects.

We find that from the perspective of said issue, EITI requirements and public oversight, it is especially important to identify the barriers associated with disclosure of information on the volume of provided reserves, annual yield of the mine and extraction volumes.

Issue II. Prior to amendments made in Article 9 of the 2018 Mining Code (previous wording), a legal question was raised whether the information on the volume of provided reserves, the annual yield of the mine and the planned volume of extraction constitute a commercial secret or not.

According to Article 141 of the RA Civil Code, information is a commercial secret, if:

a) It has an actual or potential commercial value by virtue of being unknown to third persons;
b) There is no free access to it on legal basis; and
c) The holder of information takes measures to maintain its confidentiality.

Other articles of the RA Civil Code also contain some provisions on commercial secret. Specifically, Chapter 68 of the Code refers to undisclosed information and protection thereof. As per Article 1164 of the Civil Code, such is technical, organizational or commercial information. One should note, however, that the abovementioned provisions of the Civil Code are included in the section on intellectual property. Hence, we believe that regulations thereon are not applicable to the relations under consideration.

The Law on Protection of Economic Competition also refers to undisclosed information. This law provides a broad definition of undisclosed information. Therefore, from formal perspective, we believe that information on the volume of provided reserves, the annual yield of the mine and the volume of extraction can constitute undisclosed information in the meaning of the Law on Protection of Economic Competition. Hence, in the context of Article 16 of the Law, production methods, chemical formulas, drawings, test samples, product sale and distribution methods, *contract forms, business plans*, details of contractual prices, professional activity fields (profiles) of consumers, advertising strategy, lists of suppliers or clients, computer software, databases, and others can be subject of undisclosed information.

Given the lack of clarity of the definition of commercial secret provided in the RA legislation, this study has attempted to find interpretations of the concept of commercial secret in literature. This showed that commercial secret, as usual, is interpreted as a regime of confidentiality of information, enabling the lawful holder of such information to increase revenues, avoid unjustified expenses, retain its position on the market of goods, works and services, or receive other commercial benefits in the existing or potential circumstances. Information constituting commercial secret is interpreted as any type of information (production-related, technical, economic, organization or other), including outputs of intellectual work in the field of research and development, as well as data on means of conducting professional activity, which, by virtue of being unknown to third persons, have

actual or potential commercial value, and which by virtue of the law are not accessible to third persons and with regard to which a regime of commercial secret is set (by the holder of such information).

Review also revealed that it is the rights of companies to regard certain information as confidential. This right belongs to the holder provided the latter does not breach the limitations defined by law. Operators are entitled to regard any information on their activities, organization of production, technological processes, and technique as commercial secret (save for those prohibited by law), and protect it from disclosure.

Hence, the holder of such information himself decides which types of information should be regarded as commercial secret and defines the rules for protection thereof. However, this legal competence is not unlimited. Any State is entitled to ensure the national and military security with a view to protecting the interests of the State and society, as well as define the types of information, which cannot be regarded as constituting commercial or other secret, with a view to precluding unfair competition and protecting consumers' rights.

Explanation I. Summing up the above-mentioned, we believe that the volume of provided reserves or the annual yield of the mine, as such, do not constitute a commercial secret, as they are the right the State has granted to the company and it has no relevance to the process of organizing the production or technological processes. We find that it is controversial to regard aforementioned information as commercial secret.

As regards the volumes of extraction, we think that the latter can be interpreted as processes directly relating to production operations of companies and can be regarded by the holder of information as commercial secret. However, one should note that extraction volumes are directly associated also with the volume of tax revenues from mining. Moreover, information on extraction volumes is needed for reconciling the provided reserves with the annual yield of the mine. In this regard, we think the State can set a disclosure requirement for the volumes of extraction, prioritizing the public oversight in the sector over the economic activities of any company.

Explanation II. As regards other information provided for under the Contract, specifically: (i) the mining operators' financial proposals for exploitation, (ii) monitoring payments made to the Environmental Fund and for the area exploited, the location of industrial dumps generated in course of mining activities and for ensuring the safety and health of the population in the nearby area; (iii) responsibilities under the mine closure plan, (iv) commitments undertaken for the social and economic development of communities, (v) essential financial guarantees for the measures planned under the mine waste reprocessing plans and for implementation thereof, etc., we believe that these also cannot be classified as constituting commercial secret, since they do not directly relate to the production processes of companies, but are rather guarantees for the commitments towards the State or relate to securing the safety and health of the population, which, by virtue of law, may not be confidential. To exclude the controversial use of the term "commercial secret", according to the legislative amendments of 21 March 2018 made at the recommendation of the AUA Center for Responsible Mining, the volume of reserves and the annual yield of the mine do not constitute a commercial secret protected by law - just the contrary; they are subject to publication by law.

As regards Articles 12 and 13 of the RA Mining Code, it should be considered, that the latter covers the procedure of providing geological information in general. We think that in terms of EITI, full disclosure of confidentiality of the geological information is not envisaged, henceforth, the article in question is not an impediment to document the EITI requirements until the mining permit is available.

Hence, the conclusion of the study is that for purposes of EITI geological information available at the time of issuing mining permit for exploitation is of interest. We find that confidentiality of geological information, until the mining permit for exploitation is available, shall not be an impediment in EITI processes.

Given the above stated, the recommendation is to make an exception as regards the confidentiality in Article 13, by defining that geological information should be disclosed in the scope of mining permits issued for exploitation.

Recommendation II. However, to avoid multiple interpretations of the legislation, the recommendation is to make amendments to the RA Mining Code, as well as to the RA Law on Protection of Economic Competition and the RA Government Resolution No 437-N, as of March 22, 2012, explicitly wording the requirement to publish the contracts and permits concerned. It should be noted that this recommendation of ours was accepted.

3. PUBLIC DISCLOSURE OF TAX PAYMENTS AND RECEIPTS (INCLUDING DISAGGREGATED REPORTING)

A. Public disclosure of Government receipts from taxes or mandatory payments made by companies

In terms of the question discussed, Article 24 of the RA Law on Accounting is remarkable. It states that large organizations are required to disclose their annual financial reports.

Moreover, for purposes of this law, large organizations are the ones, which meet at least one of the following criteria:

a) Proceeds of the reporting year (for which financial statements shall be issued) exceed one billion Armenian drams; and
b) Balance sheet value of assets as of the end of the reporting year (for which financial statements shall be issued) exceeds one billion Armenian drams.

Moreover, according to the accounting standards, financial reports disclosed by companies essentially include the taxes and payments made by the latter disaggregated by each type of tax. Review of the financial statement published by Teghut CJSC, found at http://vm.am/uploaded/Documents/Teghout_FS_2015-ARM.pdf can serve as an example.

Recommendation III. Given the fact that not all companies in metal mining can permanently be large organizations, we recommend enshrining the mandatory requirement to disclose the financial reports of companies engaged in mining in the RA Law on Accounting or the RA Law on Joint-Stock Companies and Limited Liability Companies.

B. Public disclosure of taxes collected by authorized public administration body responsible for tax collection (including disaggregated data on taxes)

The authorized public administration body responsible for tax collection is the State Revenue Committee adjunct to the RA Government. According to the Tax Code, following information should be published on the official website of the tax authority:

1. By inclusive of July 1 of the fiscal year following the reference fiscal year:
    a) Lists of taxpayers having declared tax losses and accumulated arrears in the fiscal year;
    b) Lists of taxpayers that have not registered hires of employees in manner specified by the legislation;
    c) Lists of taxpayers having paid profit tax of 50 million Armenian drams and more to the State Budget of the Republic of Armenia in the given tax year;
    d) Lists of tax agents having paid 10 million Armenian drams and more to the State Budget of the Republic of Armenia for the given tax year;
    e) The list of organizations and sole proprietors operation whereof was suspended in accordance with Article 384 of the Code; and
    f) Other information specified by the legislation of the Republic of Armenia.
2. By inclusive of 25th of the month following each quarter - the lists of top 1000 large taxpayers and the values of taxes paid thereby from the beginning of the fiscal year, calculated in ascending order.

Hence, if the company that is of interest for the study concerned does not meet any of the conditions for inclusion in the above lists, the tax authority shall have no obligation to publish any information thereon.

Moreover, the procedure of publishing the abovementioned information was set forth by the Government of Armenia in its Resolution No 783-N from July 5 of this year. This Resolution also sets the forms of publishing the information, which makes it apparent that the information, in fact, is published in disaggregated form - broken by profit tax, income tax, VAT, excise tax and other taxes and fees.

Recommendation IV. Summing up what was stated above, we find that existing legislation does not enable publishing of information on all companies engaged in metal mining, if the latter do not meet the requirements specified in Article 308 of the Tax Code. A mandatory requirement to publish information can be defined for all companies engaged in metal mining only if corresponding amendment is made to Article 308 of the Tax Code, followed by amendments to the RA Government Resolution No 783-N, dated as of 06.07.2017.

The following should be done:

- Amendments to the Tax Code enshrining the responsibility of the State Revenue Committee to publish (or, at least, to share with the Independent Administrator) disaggregated data on revenue streams of each identified company. The revenue streams, as well as mining projects should be disaggregated, if the legal entity is implementing more than one project. Currently the RA legislation does not provide for such opportunity. There should be earnest discussion on whether such amendment should be made to the RA Tax Code and/or Law on Taxes that was in force during the period under review.
- Amendments to legislation (according to the Scoping Study - amendments to the RA Law on Local-Self Government Bodies and/or the tax legislation), that will establish the responsibility of the local self-government bodies to publish (or, at least, share with the Independent Administrator) disaggregated data on land tax, property tax and other revenue streams received from identified reporting companies.
- Amendments to the RA Mining Code establishing the responsibility of the RA Ministry of Nature Protection to disclose (or, at least, share with the Independent Administrator) disaggregated data on the sums paid by companies to the Environmental Fund. It is necessary to convey that Article 308 of the Tax Code was supplemented with a new sub-point on 21 March 2018, per which the tax authority, with a view to informing the tax payers, in form and manner specified by the Government of the Republic of Armenia, publishes on its official website the lists of payments and taxes paid, the lists of products in value, in-kind and quantitative amounts exported in the year by the tax payers in the mining sectors that have obtained metal mineral exploitation licenses.

Disclosing the payments made by companies

- Amendments to the RA Mining Code defining the obligation of the reporting mining companies to publish (or, at least, share with the Independent Administrator) disagregated data on taxes and other payments made to following bodies:
    a) State Revenue Committee,
    b) Local communities,
    c) Ministry of Nature Protection (Environmental Fund).

Disaggregation must be done per revenue streams and mining projects if the legal entity has more than one project.

4. THE ISSUE OF RETROACTIVE EFFECT AS REGARDS DATA PUBLISHED FOR THE PREVIOUS PERIOD

In terms of the topic under discussion, Article 73 of the RA Constitution is distinctive, as it specifies that laws and other legal acts worsening the legal status of a person shall not have retroactive effect. Laws and other legal acts improving the legal status of a person shall have retroactive effect, if it is provided for under such acts. The same logic suggests that in accordance with Article 78 of the RA Law on Legal Acts retroactive effect may not be reserved to legal acts restricting the rights or freedoms of legal or natural persons, making stricter the rules of their existence or establishing liability or making the liability heavier or establishing responsibilities or establishing a procedure for the fulfillment of responsibilities or making it stricter, defining a procedure for control or supervision over the activities of legal or natural persons or making it stricter, as well as otherwise worsening their legal status. These provisions, per se, have not changed also in the Law on Regulatory Legal Acts.

Explanation III. We think that setting a requirement for publishing the companies' relevant reports from previous years by companies, as well as by the tax authority (although data for previous years are published on the official website of the tax authority, as well as on the websites of some companies) *cannot be in itself a provision somehow worsening the legal status of* or restricting the rights and freedoms of a person or making its responsibilities stricter.

5. EXTRA-BUDGETARY ACCOUNTS (INCLUDING THOSE OF LOCAL COMMUNITIES)

EITI Requirement 4 requires a comprehensive reconciliation of company payments and government revenues. As regards extra-budgetary accounts, they should be disclosed as per EITI Requirements 4.1 (b) (viii) and 4.6 as any payment made by the government and local self-government bodies. Therefore, where these payments are material, such information should be published at the request of the Multi-Stakeholder Group.

Relations associated with extra-budgetary funds are regulated by the RA Law on Budgetary System and the RA Law on Treasury System. Moreover, these laws also specify the cases of opening extra-budgetary funds. According to the mentioned law, extra-budgetary accounts can be opened in the name of both state and local institutions. They are opened:

a) in specific cases, for making and separated accounting of targeted budgetary revenues and corresponding expenditures;
b) for accumulation of resources from monetization of in-kind loans and grants provided by foreign states and international organizations to the Republic of Armenia;
c) in the name of the court of justice, pretrial body and judicial act enforcement body - for receiving monetary (also in foreign currency) resources that are being confiscated, taken away, seized, taken on deposit or pledged from legal and natural persons based on court trial and enforcement proceedings, and for ensuring further transfer thereof to the recipients determined based on law;
d) in the name of authorized state body - for depositing temporarily unused funds of the budgets, collection and depositing of funds generated from privatization of state shares held in commercial organizations;
e) in the name of state or community institution - to ensure the levy and return of advance payments associated with organizing auctions;
f) in the name of state institutions - for servicing the payments and settlements of legal entities;
g) in the name of state bodies - for accumulation of funds received from operators in form of payments or disbursements to finance the expenses associated with elimination of negative impacts and management of risks resulting from the economic operation implemented by individual operators in certain fields; and
h) in the name of state and community institutions - for accumulation of funds for other purposes from sources envisaged by law or the decision of the government (local elderly council).

In the existing legislation, there are a number of extra-budgetary accounts opened on following grounds:

- Extra-budgetary fund "Targeted Environmental Fund" of the Ministry of Nature Protection of the Republic of Armenia;
- The extra-budgetary account opened at the treasury unit of the Ministry of Finance of the Republic of Armenia servicing the "Judicial Project Implementation Unit" State Institution of the Ministry of Justice of the Republic of Armenia for managing the grant funds provided by the UK Ministry of Foreign Affairs for implementation of "Assistance to the Government of Armenia to improve the legislative and regulatory framework through anti-corruption strategy, to assist in establishment of effective system for protection of whistle-blowers" Project; and
- Extra-budgetary fund of the Road Police, etc.

Municipalities are also allowed to have extra-budgetary funds. An instance can be the waste removal fee, which is collected to the extra-budget of the municipality.

Pursuant to the RA Law on Budgetary System, based on decision of the elderly council of the community, extra-budgetary funds should be included in the state or community budgets, accordingly. Meanwhile the turnover of such funds and reflection thereof in the budget execution reports are in accordance with the RA Law on Treasury System. The same law states that extra-budgetary accounts opened in the name of municipal institutions shall be managed by local government bodies. To ensure the accounting of assets and liabilities of the Republic of Armenia and those of the communities, the Treasury shall ensure that the reports on balances (of assets and liabilities) of state institutions, financial flows (including generation and management of extra-budgetary funds) are received from the government bodies, and summed up and analyzed.

Pursuant to the RA Law on Local Self-Government, to provide services for addressing daily living issues of residents of the local community, such as water supply, water removal, irrigation, heating, waste removal and sanitary cleaning, maintenance of blocks of flats and other services defined by law, the elderly council of the community may set fees paid to the community budget. Moreover, if municipal institutions provide such services, the charged amounts shall be paid to the community budget, and if the services are provided by commercial organizations, these payments shall be made to the extra-budgetary account, which is an integral part of the community budget.

Pursuant to Article 92 of the same law, the funds in form of endowments or loans provided to the community by individuals or legal entities, at the request of these persons and with consent of the authorized state body and by way of decision of the elderly council of the community, can be placed on the extra-budgetary account in the treasury or in a bank.

Explanation IV. RA laws do not specify any obligation for the municipalities to disclose the estimates of extra-budgetary funds. In this regard, we deemed it essential to reflect on the RA Law on Legal Acts. As per the mentioned law, the decisions of the elderly council of the community are a part of the RA legal system and must be subject to disclosure in the municipal legal acts bulletin. However, a requirement for mandatory disclosure is enshrined only for norm-setting acts, while the estimates of extra-budgetary funds can be approved by individual decisions of the elderly council of the community, and RA legislation does not provide any mandatory requirement to disclose individual decisions. It should be noted that the Law on Legal acts is repealed.

Recommendation VI. As a solution to the problem, we recommend amending the RA Law on Local Self-Government Bodies and envisage the requirement to disclose the estimated budgets of extra-budgetary funds approved by communities in form of individual legal acts.

Meanwhile, it should be mentioned, that brief information is published on the official website of the RA Ministry of Territorial Administration and Development on budget revenues and expenditures of the RA communities, which, however, does not provide an answer to above questions.

LIST OF PROPOSED AMENDMENTS AND SUPPLEMENTS TO LEGISLATION**

- *RA Mining Code*
- *RA Tax Code*
- *RA Law on Protection of Economic Competition*
- *RA Law on Local Self-Government*
- *RA Law on Joint-Stock Companies*
- *RA Law on Limited Liability Companies*
- *RA Law on Accounting*
- *RA Government Resolution No 783-N, dated as of 06.07.2017*
- *RA Government Resolution No 437-N, as of March 22, 2012*

*** Amending some of the legal acts included in this list is an issue of discussion rather than necessity.*

A reflection on draft laws on amending the RA Mining Code and Tax Code, the RA laws on Protection of Economic Competition and Local-Self Government and the rationale for such amendments are provided in Annex 3.

6. AFFECTED COMMUNITIES

This section considers the issue of defining affected communities. There are two aspects to this:

- Communities included in the EIA documents of the companies intending to engage in exploitation
- Communities eligible to apply for subsidies under the 2001 Law on Targeted Use of Environmental Fees paid by Companies[4].

Communities included in the EIA documents of companies intending to engage in exploitation

Currently, the definition of "affected community" is provided in clause 20 of Article 4 of the EIA Law:

> *The population (natural persons and/or legal entities) of community/communities who may be affected by the environmental impact concept document or by foreseen action affecting the environment.*

Further, "concept document" is defined in the same article of the EIA Law as:

> *A draft document (policy, strategy, concept, outline, scheme of exploitation of natural resources, project, map, urban design) having potential effect on the environment*[5].

RA legislation fails to provide a precise distinction between affected and not affected communities. In practice, the fact of being marked as "affected" in the EIA concept document automatically becomes a determinative factor. The experience of Amulsar mine project is a case in point. The company's EIA documents originally failed to mark Jermuk as an affected community, although Jermuk is a spa resort with a population of 5000, located only 12km from the mine. Subsequently, after appeals made to the company and the government, as well as court proceedings initiated by the activists, the company revised the EIA to include Jermuk in the list of affected communities.

Review of the international practice regarding the definition of affected community makes it apparent that a number of factors should be taken into consideration to avoid arbitrary decisions. Usually, the issue arises in connection with community development agreements (CDAs): if a community is included in a CDA, this is an indication that it is affected by the proposed development to such extent that it is appropriate for the implementing company to undertake development interventions in the community.

A paper issued by the Center for Socially Responsible Mining at the University of Queensland in 2011[6] sets out a range of criteria which come into play when assessing whether a community should be included in CDA or not. Issues include the extent to which the community in question is impacted by the project. The paper indicates that it is a matter of the significance of the impact, and that indicators of this significance can include:

- Loss of land or access to land,
- Livelihood disruption,
- Physical amenity impacts,
- Economic change,
- Cultural change,
- Health impacts, and
- Changes in social dynamics and power relations.[7]

Further, as well as recognizing that the aggregate range of impacts can define whether a community qualifies, the paper also recognizes that the extent of each type of impact is also relevant, and notes:

[4] According to the Law No HO-269-N on Amending the RA Law on Targeted Use of Environmental Fees paid by Companies, as of 21 December 2017, the word "fees" was replaced with "tax" in the title and text.
[5] It should be noted that concept documents are not subject to EIA, whereas according to Article 14(1) of EIA Law they are subject to strategic assessment and expert review.
[6] Good Practice Note – Community Development Agreements, published by the Center for Socially Responsible Mining at the University of Queensland, accessed at: http://www.eisourcebook.org/cms/files/csrm_good_practice_notes_on_cdas_document_final_260911.pdf
[7] Ibid, page 3. Interestingly, another research paper ("A two-stage approach to defining an affected community based on the directly affected population and the sense of community", Rick Wylie, Stephen Haraldsen& Joe M. Howe, September 2014) proposes that the immediately affected communities should take into account that some are "more affected than others as a result of living with the physical impacts of construction or the fear associated with perceived risk". Here the phrase "perceived risk" appears particularly relevant to the case of Jermuk.

- "The scale, nature and duration of impacts – and therefore the issues which must be addressed – can vary significantly between communities within a given 'zone of impact';
- An impacted community could include a densely populated region, where the resource project in question is only one of many industries and businesses that influence that area; and
- An impacted community could be a long distance from the project. For example, in South Africa the families of mine workers often reside in villages hundreds of kilometers away".[8]

The paper then discusses various approaches taken. In some cases, there is a desire to limit the geographical scope of the assistance to be given to impacted communities, and in such cases CDAs may be offered only to those communities that are immediately adjacent to the project or communities that have been affected by resettlement or land access issues. In other cases, a wider approach may be taken, based on "local or provincial government boundaries or natural boundaries such as valleys, rivers or islands."[9]

The paper also notes that companies may adopt a dual approach, offering mitigation measures the communities located closer to the mine and/or more severely impacted by it, while also engaging in more common development projects in a wider range of communities in the region.

Interestingly, the paper does not advocate a legal solution to the question of delineating inclusion. However, the issue of identifying affected communities in the EIA is wider than the issue of choosing the communities to be included in the CDA. In the former case, whether or not a community is included in EIA can influence the assessment of whether the project should go ahead or whether, conversely, the extent of the impact and the size of the population affected are such that the project should be rejected or, as a minimum, subject to enhanced safeguards.

RECOMMENDATIONS

Guidelines should be elaborated regarding the inclusion of communities in an EIA, and those guidelines should have legal status[10]. However, each community should be considered on case-by-case basis. The company must take into account the defined criteria and provide written justification for the exclusion of specific communities. For instance, the criteria of "all communities within radius of 20km distance from the mine" should be defined. On the other hand, it is necessary take into account local topography in each case and reasons the decision of excluding the given community. It should be noted that Gegharkunik Marz Administration has stated in its opinion regarding this study that there is no clear definition for determining "affected communities" and that in case of elaborating such definition one should take into account all circumstances causing any change in the eco-system in the administrative district of the community and impact on the health of the residents. In this case, the justification of calculations for the amount of subsidies to affected communities should be adjusted.

It is recommended to include a mechanism whereby the State will review and, if necessary, overturn a company's decision not to include a community in its EIA. This argument is based on the fact that the State's

[8] Ibid, Page 5
[9] Ibid, Page 5
[10] According to the letter from the Ministry of Nature Protection, the NP Ministry, taking into consideration the recommendations submitted by the RA Ministry of Territorial Administration and Development and the RA Marz Administrations, prepares the list communities affected by adverse impact caused by companies referred in Article 1 of the RA Law on Targeted Use of Environmental Tax paid by Companies and submits it to the RA Ministry of Finance and Ministry of Territorial Administration (in cases when there is more than one community affected by the adverse impact caused by companies, it also specifies the proportions of distribution of the environmental payments made by companies among the communities and the principles of calculation thereof). Principles of calculation are as follows:

- The proportions of distributions of environmental tax among the communities for hazardous emissions to the atmospheric air (% of the total) are determined based on the initial territorial rate-setting of the pollution. The proportions are distributed among the communities based on the volume of pollution and the number of population.
- When defining the proportions of distribution of the environmental tax among the communities for leakage of hazardous substances and (or) compounds into water resources and for disposal or storage of mining, production and (or) consumption waste the number of residents of such communities and the volumes of pollution of water resources in their administrative territory are taken as a basis.
- The proportions of distribution of the environmental tax among the communities were set taking as a basis the enlargement of a number of communities as per RA Law on Amending the RA Law on Administrative and Territorial Division of the Republic of Armenia.

evaluation of a company's EIA document could be significantly incomplete by the exclusion of a community from the EIA.

Communities eligible to apply for subsidies under the 2001 Law on Targeted Use of Environmental Fees paid by Companies

The law has been amended only twice since its adoption in 2001. In its current version it lists 18 companies, stating that the communities in the respective areas, which are adversely affected by their operations, are eligible to receive government subsidies from the environmental fees paid by these companies.

As discussed in the Scoping Study, the law does not entail a default right to government subsidies: communities have to go through a process of drafting projects and applying for funding. The law states that every year the list of communities and the amount of subsidies to be received is set out in the annual budget. In effect, communities apply for funding in advance, and if they are successful, they will be included in the next year budget.

Therefore, it is clear that there is in effect a 2-stage process for selecting communities. The first stage is based on the list of companies. As noted above, the law currently lists 18 companies, however only 5 of them (Zangezur Copper-Molybdenum Combine, Agarak Copper-Molybdenum Combine, Dino Gold – this is the former operator of Shahumyan mine in Kapan, Akhtala Mining and Processing Enterprise, GeoProMining Gold) are metal mines. This contrasts with the nine mineral mine operators that have been identified as active in 2017[11]. Although it includes most of the larger mines, it does not include Teghut. The requirement of specifying the list of companies in the law is a cumbersome one, since if a new mine comes on-stream, or a mine changes ownership, it may take months or years before it is reflected in an amendment to the law. For example, Teghut mine was originally owned by Armenian Copper Program CJSC; however, later it was operated by Teghut CJSC, whereas this change is not stated in the mentioned law in any way. This situation should be reviewed to assess whether a more flexible method of amending the list of companies (e.g. by government resolution) can be used.

It should be noted that in 2017 drafts of the mentioned law and, in parallel, also government resolutions were put on table, tying to transfer the authority to determine the list to the Government[12].

The second stage is the process whereby communities submit projects for inclusion in the state budget. However, the basis for eligibility of a community is not clear. In response to a request for clarification, the MNP stated in writing that: "disbursements from environmental taxes paid by companies are made and reflected as a separate line in municipal budgets of those communities, where the activities of the company concerned creates adverse environmental impact"[13].

Thus, it is not clear whether, in respect of each mine, the list of eligible communities is based on the list of affected communities as set out in the EIA or whether the MNP prepares some other list. The letter from the MNP sets out the lists of communities, which received funds in 2016 and 2017. This information can be publically accessed in the annual budgeting process. For 2017, for example, the list of communities and projects is set out in Annex 5 to the Law on the 2017 State Budget and includes 8 communities from Lori marz, 3 from Syunik and 3 from Tavush. There are none from Gegharkunik, where the Sotk mine (operated by GeoProMining Gold) is located. MNP states that there were no cases when a community applied but was not included.

[11] 7 companies are currently extracting from mineral mines, one company (Lydian Armenia) in the construction phase, and one license-holder (Armenia Copper Program) not currently exploiting the mine, but causing pollution through the operation of a smelting plant.

[12] The RA Ministry of Nature Protection prepared the draft of the RA Law on Amending the RA Law on Targeted Use of Environmental Tax paid by Companies, which was uploaded on www.e-draft.am on 3 May 2017. This is a common website under the Ministry of Justice where draft legal acts are uploaded. The draft envisages that the list of companies activities whereof entail adverse environmental impact, as well as the rules of calculating the proportions of distribution of disbursements specified by law among more than one communities (settlements) affected by adverse impacts caused by operation of these companies shall be specified by the Government of the Republic of Armenia. Hence it won't take long to make changes in the corresponding legal act if there are new mines or change of mine owners. In parallel to submitting the draft law, drafts of RA Government Resolutions on determining the affected communities receiving disbursements as per RA Laws "On determining the list of companies causing adverse environmental impact in the territories of communities" and "On targeted use of environmental taxes paid by companies", and on the rules of determining the proportions of distribution of disbursements defined by the same law among more than one communities affected by the adverse impact caused by the operations of the same companies were prepared. In addition to the companies included in the list specified in the RA Law on Targeted Use of Environmental Tax paid by Companies, the draft resolution of the RA Government on "Determining the list of companies causing adverse environmental impact in the territories of communities" also includes "Teghut", "Lydian Armenia" CJSCs, "Kavashen" LLC and other companies. The drafts are now in the process of refinement.

[13] Letter of the MNP to the AUA Center for Responsible Mining, dated as of 21 November 2017.

According to Article 3 of the RA Law "On targeted use of environmental fees paid by companies", draft projects are prepared by the community heads, based on local action plans or other policy and strategy documents for development (social-economic development) of the province or community or for protection of the environment, approved in manner defined by the legislation. The project is published by the community head, within fifteen days after which legal and physical persons may furnish written recommendations to the community head. The implementation priorities of planned measures and the funding proportions are coordinated with the authorized government bodies in nature protection and health. The community head submits only agreed projects to the elderly council for approval.

The process of selecting the projects, rejecting the proposals received, implementation of selected projects should be made as transparent as possible. Community heads must disclose project related written recommendations received from third parties, submit those also to authorized bodies, as well as disclose the grounds for turning down the proposals received from third persons, and make the process of implementation of approved projects open, specifically, the list of companies engaged, their beneficial owners, the selection procedure, etc. Nevertheless, now the framework of public disclosure is more restricted[14].

Further, it is not clear how decisions are reached regarding the amount of subsidies to be awarded to each community. In 2017, the largest amount awarded was AMD 30,051,000 (Hagvi), and the smallest was AMD 509,800 (Koghb). Decisions could be based on a number of criteria, for example:

- The severity of the environmental impact on the community
- The relative size of the community's population.

There is certain – albeit unstated – rationale to the second stage of the selection process. Requiring community heads to submit projects – as opposed to simply allocating extra money to each eligible community to spend as it wishes – ensures that the subsidies are used specifically for environmental or mitigation measures. However, this also has less desirable effects. Firstly, the population of communities with inactive mayors and unsuccessful projects, loses out. Secondly, not all of the revenue from environmental fees is used for the purpose of implementing environmental projects.

Summarizing the above, one can state that the key deficiencies are as follows:

- There are no guidelines or rules on the definition of an affected community
- There is no public list of eligible communities under the 2001 law
- There is no provision to ensure that the total sum of environmental fees received by the State and available under the 2001 law is actually spent on environmental projects
- There are no public criteria regarding the amount of subsidies that can be awarded to each community.

RECOMMENDATIONS

Consider alternative funding schemes, such as:

- Providing for a comprehensive list of eligible communities, together with a division of the total environmental fees (which can be expressed in terms of a community's % share of the total fees collected during the previous financial year – the percentage can be based on a formula which takes into account the community's population and the degree of environmental exposure)
- Providing that each eligible community be entitled to a share of the subsidies provided that it submits a project proposal, but that if it fails to submit a proposal, its entitlement is rolled over to the next year.

[14] According to Clause 7 of the Rules approved by RA Government Resolution No 197-N of 27 February 2014, the corresponding authority, before approving the project design documents, should inform the public within 15 days through:
- Mass media (including online media) (local and national radio, TV, newspaper);
- Events to show the projects and designs, publications, uploading on websites; and
- Public consultations.

7. LEGAL BASIS AND INSTITUTIONAL CAPACITY TO SUPERVISE SOCIAL-ECONOMIC COMMITMENTS OF MINING COMPANIES

In Armenia, the issue of the availability of information on social and economic spending has two aspects. Firstly, there is a requirement under contract or law to undertake social and economic spending and secondly, there is the issue of additional spending voluntarily done by or on behalf of mining companies.

The model contract established by the RA Government under the RA MINING CODE provides that the holders of exploitation license should specify their responsibilities in social and economic development of the communities. Annex 3 of the model contract provides for a list of actions that the company must undertake, indicating the deadlines and the amount of investment[15]. However, as the contract is not a public document, neither the affected community nor the civil society is necessarily informed of what the company has committed to. Nor does the MEINR undertake monitoring of the company's implementation of the commitments under Annex 3. The Environmental and Mining Inspectorate, established by RA Government Decision No 445-N adopted on 27 April 2017, through merger of the Mining Agency of the RA MEINR and the Environmental Inspectorate of the RA MNP, is called specifically to ensure that exploration and exploitation operations are conducted in accordance with the contracts concluded between the business operator and the MEINR, as well as the exploration work plans and operation plans. The checklists for risk-based inspections conducted by the Environmental and Mining Inspectorate of the RA Ministry of Nature Protection was approved by RA Government Decision No 1343-N of 19 October 2017. It should be noted though that to date verification of social expenditures under mining contracts was not the mandate of the inspectorate. Meanwhile, as per EITI Requirement 6.1, *where material social expenditures by companies are mandated by law or the contract, implementing* countries must disclose and, where possible, reconcile these transactions. In case such benefits are provided in kind, it is required that implementing countries disclose the nature and the deemed value of the in-kind transaction. In addition, in case the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed.

The powers of inspectorates are defined in the RA Law on Inspection Bodies, the RA Law on Environmental Supervision, RA Mining Code, other laws and regulations. The inspection body operates in accordance with the RA legislation and its Charter.

Authorities of inspectorate can be grouped into two main areas:

1. Supervision and
2. Imposition of sanctions.

Acting on behalf of the Republic of Armenia, the Inspectorate implements supervision and imposition of sanctions in following spheres:

- Environmental protection,
- Utilization and reproduction of natural resources; and
- Mining.

Main objectives of the Inspectorate are as follows:

1. Management of risks in the spheres of nature protection and mining, and supervision over the compliance with the requirements of the RA legislation;
2. Ensure supervision of implementation of measures to prevent or mitigate adverse environmental impacts, irrational use of natural resources; and

[15] No 437 Decision of 22 March 2012, which sets the model contract form, does not envisage any requirement as to how Annex 4 of the Contract should be filled in. In practice, some companies have defines their responsibilities vaguely - for instance, pay the tuition fees of 2-3 students, thereby making supervision over the fulfillment of their duties more complicated. In individual cases the methodology of selecting the beneficiaries is not prescribed - for instance, the students must be selected through transparent and open competition. The companies should be required to specify as clearly as possible the essence and the rules and conditions of fulfillment their responsibilities.

3. Provide reliable data on the structure of the subsoil, the quantity, quality and other features of minerals contained therein, based on comprehensive and integrated geological exploration.

To fulfill above-mentioned three objectives the Inspectorate, in accordance with its Charter and the RA legislation, exercises supervision in following spheres:

1. Conservation of atmospheric air;
2. Use and conservation of water resources;
3. Use and conservation of lands;
4. Use and conservation of subsoil minerals;
5. Use and conservation of flora and fauna;
6. Hazardous substances, production and consumption waste;
7. Ensure and implement the requirements and measures stated in documents that have undergone expert review;
8. Environmental and natural resource use fees; and
9. Administrative statistics.

Analysis of existing issues

Thus, as stated in the Charter of the Inspectorate, the latter is in charge of supervision over the mineral sector, specifically, over the fulfillment of contractual obligations set by the mining legislation of the Republic of Armenia.

Pursuant to Article 54(4) of the RA Mining Code, the mineral exploitation contract should provide for clauses on the volume of commitments undertaken in the sphere of social-economic development of the community and the timeline of implementation thereof, stated in the mining contract. In particular, according to RA Government Decision No 437-N of 2 March 2012, the model mining contract should have four annexes, two of which relate to the obligations undertaken by the mining operator in the sphere of social-economic development of the community. The annex should state following:

- Name of the commitments,
- Timeline of implementation of the commitments,
- Amount of investment made by the mining operator in the sphere of social-economic development of the community.

It should be noted that as per Clause 1(5) of Article 50 of the RA Mining Code, mineral exploitation without a plan that has undergone state expert review in defined manner shall be prohibited. Meanwhile the operation plan, as per the same article of the RA Mining Code, must include the social impact assessment of the operation plan, and the former must in its turn include guarantees for ensuring participation in the community's social-economic development process.

Henceforth, the obligations of the mining operators in the social-economic sphere of the community are defined in the RA Mining Code and stated in the clauses of the contract concluded between the government and the mining operator. It implies that the Inspectorate, in addition to its numerous functions, must also exercise control and impose sanctions vis-a-vis proper implementation of the social-economic obligations undertaken by the mining operator in the community.

The State Mining Inspectorate has never performed such function before. The currently reorganized Inspectorate's mandate includes supervision of the implementation of contractual obligations; however, a position of corresponding specialist is not included in the actual staff list of the Mining Supervision Department. The staff list envisages positions of five senior inspectors and three inspectors. Either the senior inspector's or the inspector's job description do not include any responsibility to oversee proper implementation of the commitments undertaken by mining operators in the local social and economic sphere, in terms of contractual obligations.

Recommendations

Based on the above-mentioned, I hereby recommend following:

- Revise the current position list of the Inspectorate and, if necessary, add a position of a specialist or inspector responsible for supervision over the mining operator's commitments prescribed by the contract or the RA legislation in the social-economic sphere of the community;
- If the existing capacities of the Mining Department of the Inspectorate are adequate to conduct the supervision over the mining operator's commitments prescribed by the contract or the RA legislation in the of social-economic sphere of the community, add a responsibility to perform such a function to corresponding job description;
- Develop a methodology for supervising the mining operator's commitments prescribed by the contract or the RA legislation in the local social and economic sphere;
- Incorporate the results of supervision in the information to be disclosed by the Inspectorate;
- In addition to the capacities, as well as in case of necessity to finance a new position, inform the authorized body.

8. DISCLOSURE OF BENEFICIAL OWNERSHIP

The RA Law on Combating Money Laundering and Terrorism Financing provides the definition of "beneficial owner". Moreover, the definition given in the CMLTF law is comprehensive, it includes almost any manifestation of qualitative influence and/or control. Further, CMLTF law outlines individual cases of disclosing the beneficial owners.

Pursuant to Article 40 of the RA Law on State Registration of Legal Entities, Separated Divisions of Legal Entities, Enterprises and Individual Entrepreneurs (hereinafter referred to as "Law on State Registration of Legal Entities"), in the Republic of Armenia, registration of data on holders of limited liability companies is ensured by the State Register Agency of Legal Entities of the RA Ministry of Justice (hereinafter referred to as "Agency"). The same Article establishes that the Agency shall not run a register of joint-stock companies. As per Articles 175 and 176 of the Law on Securities Market, Article 51 of the Law on Joint-Stock Companies and No 5/10 Regulation of the Central Bank of Armenia, the Central Depository Open Joint-Stock Company (hereinafter referred to as "Central Depository") is responsible for custody of equity shares and maintenance of registers of related issuing companies. The Central Depository runs the register of data on the owners and holders of securities, as well as keeps information on the quantity, type and category of the securities owned by the latter, as per the contract concluded with the issuer. The Central Depository and the Agency, as per Article 3 of the CMLTF Law, are reporting entities.

For limited liability companies, registration of the owners of shares is the responsibility of one body, i.e. the Agency. The function of registration of corporate actions and alienation deals connected with shares is reserved to the Central Depository, but, in fact, is implemented by a number of organizations - banks and investment companies, which operate based on different rules and request different volumes of documentation in their business relations.

Given the explanation of the term "beneficial owner" provided in Article 3 of the CMLTF Law, to disclose the beneficial owner it is necessary, first, to identify the composition of the shareholders and the owners of shares and review the competency of management bodies of the company. To that end, it is logical to review the procedure of setting up the board of directors of the companies and their competencies, agreements concluded among the shareholders, that would define certain procedures of voting by the shareholders on specific issues; in case of non-corporate investment funds, the rules of such funds should be reviewed to identify the scope of competencies of stockholders, etc.

Sometimes businesses choose intricate schemes of company ownership, which makes it problematic for the reporting entities to disclose the beneficial owners. The company director is not able to provide a document on the beneficial owners of the successive legal entities of the chain. Moreover, the parent legal entity may be registered in an offshore territory. The section "Frequently asked questions" on the website of the Central Bank provides an answer on how the reporting entities should act if there is a "never ending chain" of legal entities.[16] The Central Bank establishes that the company shareholders - those who exercise control, by virtue of their participation, in the statutory capital of the company should be found out first. Furthermore, if it turns out that there are no such shareholders or there are suspicions that natural persons exercise control over the legal entity concerned, the reporting entity must disclose such natural persons, who are not shareholders, but exercise control over the legal entity concerned. If, in the first two cases, it is not possible to disclose any natural person, then one should look into the natural persons holding senior executive positions in the company concerned.

Persons holding senior executive positions are the members of the company's board of directors and the executive bodies, who are responsible for strategic decisions and have radical influence on the overall focus of the business or the activities of the legal person, or are those natural persons who, through holding a managerial position, exercise operational control over the day-to-day or regular activities of the legal entity.

EXISTING PROBLEMS

When taking the above steps to disclose the beneficial owner, we encounter following obstacles and/or need to clarify some issues:

[16] https://www.cba.am/am/SitePages/fmchelporganizations.aspx, Website accessed as of 10.10.2017.

1. If complicated schemes for founding the companies were used, the RA legislation in any case does not require the authorized representative of the company to provide documentary evidence and disclose the chain of the company owners. Reporting investment companies content themselves with a statement provided by the authorized representative of the company. The latter is warned about legal consequences for provision of forged information.
2. The CMLTF Law obliges the Central Depository and the banks and investment companies acting on its behalf that the reporting entities should reveal and identify the person who is the beneficial owner. However, there are cases, when the CEO of the company discloses the beneficial owner, but has no possibility to present any identification document, which creates challenges in personal identification of the beneficial owners. In such case, there are controversies between the CMLTF Law and the Law on Joint-Stock Companies. Article 27 (1) and (2) of the CMLTF Law requires termination of business relations; in this case - termination of the contract on maintaining the register or custody of the share, while on the other hand, Chapter 6 of the Law on Joint-Stock Companies sets that availability of such contracts is mandatory and does not provide for an opportunity to terminate such contracts.
3. In identifying a person, the place of registration (where available) and residence should be mentioned. Here, too, the RA legislation does not enshrine any clear requirements and the reporting persons content themselves to the statement made to that end by the CEO of the company. However, in some foreign countries (Great Britain, France, etc.) the requirement is to submit receipts of utility payments, where the place of residence or excerpts sent by the banks to that address are specified.
4. There is no unified approach on the scope of documents required for disclosure of beneficial owners in the process of alienation of shares among the organizations acting on behalf of the Central Depository, on maintenance of the companies' register, custody of equity shares, and opening of security accounts. Some investment companies require, according to their own rules, submission of any document subject to state registration only after receiving the state registration prescribed by the RA legislation. The Central Depository has not established such a requirement in its rules on accounting of the securities and in application of the unified system of calculation. It seems that entities performing the same role can set different requirements to the companies. Similarly, reporting entities, most likely, will not have a single approach to the term "beneficial owner". For instance, the shareholder of the company is a charity organization and there is need to determine the beneficial owner of the charity foundation. ArmenBrok investment OJS Company, as evidenced by the internal auditor, regards the person responsible for the management of the given foundation as the beneficial owner; in other words, both those who benefit from the operations of the company and those who are responsible for management of the company can be beneficial owners.
5. There is a difference in the content of permanent monitoring implemented by the Agency and the Central Depository to disclose the beneficial owner. Article 66 of the Law on State Registration of Legal Entities specifies the cases when the legal person, in accordance with the procedure established by the CMLTF Law, must submit to the Agency a statement on the beneficial owner of the legal person. The exhaustive list includes the state registration, the change in the statutory capital or the composition of participants of legal entities. Pursuant to Article 17(2) of the CMLTF Law, at a periodicity determined by its own, the Central Depository must update the data collected within customer due diligence (including enhanced and simplified due diligence) to ensure that it is up to date and relevant. The periodicity determined for updating data obtained through identification and verification of identity of customers should be at least once a year.
6. Disclosure of beneficial owners of public and non-public non-corporate investment funds. In this case, there are three "players" - stockholders of the fund, shareholders of the managing company, and persons responsible for governing the managing company - CEO, executive body, and board of directors. The managing company receives a management bonus in form of a certain percentage applied to the net assets and/or increase thereof. The stockholders also directly benefit from the increase of net assets, since the value of their stock goes up. The stockholder is a quasi-shareholder and, according to the rules of the fund, certain powers are assigned to the stockholders, specifically, they must approve the changes made to the rules of the fund. The prevailing approach is to look into the shareholders of the beneficial owner, which is arguable, given the fact that in specific cases the stockholders might gain real levers, and in each case the rules of the fund should also be examined.
7. Lack of database on the members of the board of directors. The statutes explicitly provide for formation of the boards, and in case of having 50 and more shareholders, the formation of the boards is mandatory. The model statute of open joint-stock companies, largely in use in the RA, envisages holding the election of boards every year, whereas this requirement is not always observed. So it turns out that one level in the whole three-level system is not under any regulation.

8. The CMLTF Law establishes an exemption from the requirement to disclose the composition of the shareholders only in case of reporting issuers. However, in practice, the CEO of the company must refill the declaration on the beneficial owner of the company. As confirmed by the CEOs, the latter are obliged to indicate their names. Henceforth, it would be right if another legal regulation would apply in case of reporting issuers, given that the listed companies are subject to the requirements of corporate management regulations and the rules of corresponding regulated markets.
9. Alienation of shares of stock does not entail any tax liability, which makes it easy to involve placemen, replacing them with another person through numerous successive transactions.
10. Setting a high fee for the specialized operators acting on behalf of the Central Depository for access to the Agency database subject to disclosure. Registration of corporate actions is performed first at the Agency, where the amendment to the company statute is registered, and only then, the portfolio of documents specified by the rules of the latter is presented to the operator. Companies may submit different pieces of information, and most of the operators do not have an opportunity to compare the documents presented thereto with the database of the Agency.

RECOMMENDATIONS

Given the special aspects of metal mining in terms of disclosure of beneficial owners, the recommendation is to consider following steps:

- Apply the legal regulation or a similar mechanism for initial agreement/authorization to acquire significant participation in the banks, investment companies and, in general, in other companies licensed by the Central Bank, as per the laws on securities market, insurance and insurance activity, credit organizations, payment and accounting systems and payment and accounting organizations. The Central Bank, based on documentary evidence, shall disclose the beneficial owners, rather than content itself with a written statement made by the company CEO. Such approach is applied also in case of disclosure of companies registered in offshore territory.
- All founding documents of the company should be thoroughly studied, namely, the existing statute, corporate actions associated with the shares of stock - the procedure and conditions of allocation of additional shares of stock, the procedure of consolidation, the procedure of acquisition of the shares of stock, agreements concluded among the shareholders, rules of the funds, decisions adopted at the shareholders' general assembly (let us say, the powers of the board are terminated and the functions are distributed among the assembly and the director). Unlike the RF Law on Joint-Stock Companies, the RA legislation does not require any mechanism of publishing the agreements concluded among the shareholders. This document is not shared with the reporting persons, whereas review of these documents can largely facilitate the disclosure of beneficial owners. The person may have 10 percent share, while by virtue of such agreement, be endowed with board levers of control, or such agreements may prescribe different schemes for selling the shares of stock. In addition to the statutes, it is necessary to reveal if there are such agreements, and if so, they should be shared with the operators of the special accounts.
- In case of alienation of more than 20 percent of equity share, competent authority should be informed about it a while in advance. Such regulation is envisaged in case of SHPSs. However, in case of alienating a share or stock to a legal entity, it should be required that information on the beneficial owner of the latter is also disclosed. The MEINR recommended in its comments on this study to consider adoption of a mechanism to ensure that legal entities who have acted in breach of the mining license should be precluded from acquiring any equity share or stock or from participation in the management of the mining company anyways.
- Build a centralized register (it is preferable to assign this role to the Agency), which will contain brief information on the company, including on the members of the board of directors, its chair, the number of members, the procedure of election, on pledging the immovable and movable property of the company, on the licenses, permits and the conditions thereof. Moreover, it is advisable that the reports subject to publication as per the Law on Accounting are also delivered to this register. Otherwise, they are published and efforts should be made to disclose those. Severe penalties should be defined, up to stating that this obligation defined by law is a precondition for granting licenses, permits, so that the companies do not avoid publishing those, or unduly delay publication thereof. Finally, the investment companies and law offices should be given access to the Agency database on more affordable terms. The comments submitted by the Commission on Ethics of High-Ranking Officials also attach importance to determining and specifying the format of collaboration among the RA Ministry of Justice (State Register Agency of Legal Entities) and other competent authorities (RA Ministry of Energy Infrastructures and Natural Resources, etc.) and entities (Central Depository) in terms of data exchange.

- The deals of alienation of equity stocks and shares should be brought into the field of taxation, meanwhile each resident should be granted an exemption from paying taxes on the sale of the stocks and shares owned thereby within the limits of specific amount, throughout his/her life. In this regard, negative feedback is received from the RA Central Bank and the RA Ministries of Finance and Economy stating that this recommendation is in conflict with the tax policy for equity share alienation. We leave the recommendation as it is, since this tax is common in the western countries, and the recommendation can become a topic of discussion in the context of tax reforms.
- Furnishing of forged data on the beneficial owner should be considered as an act punishable by criminal law. Moreover, the offense shall be considered as completed from the moment of submitting explicitly forged data, irrespective of whether there are any elements of other crime (such as money laundering, terrorism financing, etc.).
- Design questionnaires that may help the reporting entities disclose or guide other competent bodies to the beneficial owners. Such questionnaires must contain following:
    A. Questions on the borrowings attracted from third persons, and on the terms and conditions thereof (interest-free, with no fixed-term, etc.);
    B. The composition of the board of directors should be indicated. Moreover, other organizations where the member of the board of directors of the company concerned is a member of the board, independent member, member of the review and/or executive body should be indicated.
    C. The disclosure referred to in point "B" should be applied to the company directors and members of the executive bodies.
    D. The key element of the contracts on lease, sub-leasing, gratuitous use of property concluded by the company, specifying, in particular, with whom/which organization such contracts are concluded, if there is any fee, etc. Sharing the same office with another organization and other aspects may suggest affiliation.
    E. Are there services of accounting, internal audit, legal services, etc. outsourced to a non-specialized company?
    F. Are there any put options as regards the stocks, promises to acquire the stock, pledging of the stocks and movable and immovable property of the companies to the benefit of other persons to secure the loans issued by them to the company, specifically when they are natural persons not engaged in business activities.
    G. Has the company pledged its property to secure the borrowings concluded by another party? If so, which are those companies? Similarly, whether third persons have pledged the property they own to secure the loans concluded by the given company.
    H. Are there services of accounting, internal audit, legal services, etc. outsourced to a non-specialized company?
    I. Has the company provided a guarantee to secure the loans concluded by the third person? If so, which are those companies?
    J. Does the biggest share of the turnover of the company belong to one company? It may suggest that there is control.
    K. Are there any significant exclusive contracts, say, for supply of raw, without which the operation of the mining company would collapse?
    L. Have there been any proceedings instituted by the State Commission for Protection of Economic Competition, which will enable disclosure of existence of common economic interest?
    M. Has the company given any borrowings to third persons and/or its shareholders? When the company has depreciable property and a possibility of costing large sums, the dividends payable to the shareholders decrease, despite the availability of financial resources. In such case, borrowing contracts are concluded with the shareholders or a third person so that the financial resources are brought out of the company. Such financial resources are granted in form of borrowing and remain unreturned for years. Such tools will help disclose the beneficial owner.

9. RESPONSIBLE MINING

The Work Plan adopted by Armenia's EITI MSG sets out the objective of forming a culture of social and environmental responsibility in Armenia's mining sector. For the purposes of the LIRAP, the MSG has agreed to the following scope with respect to responsible mining:

1. Examine the issue of the sector's contribution to sustainable development and the extent to which there exists data to assess this.

2. Analyze the following areas to identify major legislative and institutional gaps:
    a. Economic appraisal of mining projects by using the cost-benefit method;
    b. The Environmental and Social Impact Assessment process (ESIA);
    c. Environmental, community health, and occupational safety reporting/monitoring.

3. For the 3 topic areas in the previous bullet point (viz., cost-benefit assessment; ESIA process; and environmental, community health, and occupational safety reporting/monitoring), a Responsible Mining Preliminary Roadmap is recommended to specify those areas of mining legislative and institutional framework, as well as specific legal and regulatory acts (highlighting gaps and necessary changes) which should be further analyzed in detail. This will become the basis to implement further reforms in the specified areas, develop draft legal acts or changes to them, as well as analyze institutional framework and provide recommendations for reforms.

It should be noted that there are issues which relate to responsible mining, but are not directly connected with the above three topics (points 2.a., 2.b. and 2.c.). Some of these additional topics are identified in sub-section 9.3 of this Section. Further research should focus on these additional topics.

9.1. MINING SECTOR'S CONTRIBUTION TO SUSTAINABLE DEVELOPMENT IN ARMENIA

In international policy discussions, a commonly accepted framing of sustainable development has been development that balances economic, social, and environmental sustainability.[17] We will use this framing to examine mining sector's contribution to sustainable development in Armenia and the extent to which data exists to assess this. Our primary sources of analysis will be World Bank's 2016 assessment of Armenia's mining sector and AUA Center for Responsible Mining research. In addition, we refer to the environmental and public health research conducted by various academic institutions in Armenia including the American University of Armenia and the National Academy of Sciences of Armenia. We will also refer to data available through the RA Ministry of Nature Protections' Environmental Monitoring and Information Center SNCO (formerly known as the Environmental Impact Monitoring Center).

ECONOMIC SUSTAINABILITY

Mining and mineral processing constitute a small share of Armenia's GDP (about 3%) and a small share of the country's employment (about 3%). The employment numbers are in flux (about 3%). Employment figures should be revisited since the Teghut mine suspended operations in early 2018; as a result, 1200 people will no longer be

[17] These 3 components have evolved into a set of 17 Sustainable Development Goals (SDGs) with the aim of making sustainability more practicable. The United Nations adopted these goals in 2015. Armenia, along with the international community, has committed to achieve the SDGs it selects by the year 2030. The World Economic Forum along with a set of global partners developed an in-depth report called *Mapping Mining to the Sustainable Development Goals: An Atlas (2016)*(http://unsdsn.org/wp-content/uploads/2016/11/Mapping_Mining_SDGs_An_Atlas.pdf). This report offers a useful framework for analyzing the sector impact on each of the 17 SDGs. Within the scope of our LIRAP, however, using this framework would have required resources and data not available to us. The decision has been made to stay within the 3 broad components of sustainability: economic, social, and environmental.

employed.[18] The Amulsar mine, on the other hand, is expected to start mining operations by 2018-19 with 770 mining jobs.[19]

The industry in Armenia is dominated by one large mining operation, Zangezur Copper Molybdenum Combine (ZCMC). From 2010-14, this mine accounted for 60% of all turnover of active mines in Armenia.[20]Dependence on one company makes Armenia's mineral sector vulnerable to shocks (e.g., price fluctuations, accidents, and other emergencies), threatening its long-term economic sustainability.

A troubling aspect of the industry is that very few companies have shown to be profitable. Analysis of 5-year economic data shows that only 2-3 metal-mining companies out of the 14 active ones in that period have been more or less consistently profitable. The remainder has been operating at a loss - clearly an economically unsustainable situation.

What is more disturbing is that so many mining companies have been making losses during a period when commodity prices were relatively high and these companies paid very little for pollution control and environmental management.[21] Additionally, analysis by the AUA Center for Responsible Mining's Mining Legislation Reform Initiative indicates that in Armenia the combined royalty and tax burden on mining companies is average when compared to other countries with similar mining sector structure.[22] The World Bank assessment reaches a similar conclusion.[23]

The industry pays relatively high wages, though there is little or no information on the distribution of income within industry. Some data indicate that Armenian mining companies are lagging in hiring and promoting managers locally and purchase goods and services locally.[24]

The industry is a major source of export revenues for the country, constituting 20-45% depending on the year and method of calculation (specifically if the mineral exports estimates are calculated based on total exports or only merchandize exports). A caveat to keep in mind is that such a high share of exports may speak to the fact that Armenia is not exporting much else. This share may decrease if there is increased exports of food and beverages, tourism, IT, health, education, etc.

Finally, for many countries a key component of making the mining sector economically sustainable is by transforming a nonrenewable resource such as extracted minerals to a renewable financial resource for the country. This is often done through establishing a sovereign wealth fund. To date Armenia has not established such a fund. Currently, the royalties generated from the mining sector are entered into the general funds of the State budget and spent on current expenditures, which may not be preferred solution from the long-term sustainable development perspective.

In developing its mining sector policy and strategy, we recommend that Armenia would consider establishing a sovereign wealth fund for the country's mining royalty revenues. This will have to be planned and balanced against Armenia's needs to cover its current budget deficits. However, assessing the feasibility of such a fund for Armenia may be worth investigating in the short to medium term. This will enable Armenia to take a step toward making the mining sector a more sustainable part of Armenia's economy.

As way of background, by early 2018, there was USD 7.7 trillion in more than 80 sovereign wealth funds globally. An overwhelming majority is non-commodity (in foreign currency) or oil-&-gas-based funds. However, nine funds are based on minerals. Some of these funds may be instructive for Armenia.

[18]https://www.azatutyun.am/a/29015274.html
[19] https://www.lydianarmenia.am/images/Socio-economic_study_Factsheet.pdf
[20] World Bank, p. 58
[21] World Bank, p. 102
[22] http://mlri.crm.aua.am/?q=fiscal-regime-analysis
[23] World bank, p. 54
[24] World bank, p. 77

Country	Name of Fund	Assets in USD-billions	Origin	Linaburg-Maduell Transparency Index
Chile	Social and Economic Stabilization Fund	14.7	Copper	10
Chile	Pension Reserve Fund	9.4	Copper	10
US-Wyoming	Permanent Wyoming Mineral Trust Fund	7.3	Minerals	9
Botswana	Pula Fund	5.5	Diamonds and minerals	6
US-Utah	Utah-SITFO	2	Land and mineral royalties	n/a
US-Idaho	Idaho Endowment Fund Investment Board	2	Land and mineral royalties	n/a
Kiribati	Revenue Equalization Reserve Fund	0.6	Phosphates	1
Australia	Western Australia Future Fund	0.3	Minerals	n/a
Mongolia	Fiscal Stability Fund	0.3	Minerals	n/a

Source: Sovereign Wealth Fund Institute (https://www.swfinstitute.org/sovereign-wealth-fund-rankings)

ENVIRONMENTAL SUSTAINABILITY

The World Bank assessment plainly states that none of the existing mining operations in Armenia can be considered to have environmentally sustainable practices.[25] All mines emit large quantities of pollutants into the environment, including water, air, and soil. Acid rock drainage remains a source of pollution in some areas without any plans to address the problem. The most dramatic example of this is in the "abandoned" mine site in Kavart village, Syunik.

Ministry of Nature Protection data shows that the water quality of rivers downstream of mining communities are classified as poor or bad.[26] Some mining companies directly discharge mine tailings into the rivers. Because of Alaverdi's cooper smelter, weekly average concentrations of SO_2 and NO_2 consistently exceeded the legal norms in 2014. A study by the AUA School of Public Health shows that children in three communities adjacent to metal mining and smelting industries were exposed to lead, with the blood lead level of 84% of children in Axtala, 73% of children in Alaverdi, and 53% of children in Yerevan's Erebuni district exceeding the U.S. Centers for Disease Control and Prevention reference level.[27]Children's blood lead levels exceeding this reference level means that there is cause for concern and action is needed.

Though it is not clear how the issues with legacy mine and tailings sites will be addressed, the legislative revisions to the mine waste management components of the Mining Code require that mine operators produce and adhere to a mine waste management plan and adhere to Best Available Technologies consistent with EU Directives. There is need for rigor in implementation of the law and significant capacity building for industry and government. Furthermore, policy focus needs to be turned to legacy sites, some of which continue to be a source of significant environmental pollution and risks.

To date there have been inadequate mine and tailings closure plans and rehabilitation of sites. While the new changes to the mine waste legislation attempts to address some of these concerns, technical and enforcement capacity remains an issue. The Reclamation Fund that is expected to fund closures and reclamations of sites should the mine operator fail to do so is significantly underfunded. With the new legislation, there are some

[25] World Bank, p. 103
[26] World Bank, pp. 72-75
[27]Grigoryan, Ruzanna et al. "Risk Factors for Children's Blood Lead Levels in Metal Mining and Smelting Communities in Armenia: A Cross-Sectional Study." *BMC Public Health* 16.1 (2016): 945. *PMC*. Web. 4 May 2018. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015252/

financial guarantees that the mine operator has to post, but this is yet to be implemented and the financial guarantors themselves are not subject to any rating.

The World Bank report has raised concerns about the stability of the mine waste facilities in Armenia. All are constructed using the "upstream raise technique," which the report asserts is inadequate for seismic zones and contain an "excessive risk of waste facility collapse." Should a tailing facility collapse, there will be an environmental and social catastrophe that the country would need to deal with.

The key environmental governance tools of EIA, inspections, monitoring, and enforcement all have their weaknesses, some related to legislation, some technology, some corruption risks, and some human capacity. These weaknesses have to be addressed to enable Armenia to govern the mining sector within the limits of environmental sustainability.

SOCIAL SUSTAINABILITY

Social sustainability can be strengthened through ensuring inclusiveness, respect for diversity, adherence to human rights, fair and equitable distribution of economic opportunities, a prevailing sense of justice, and care for community wellbeing, among others. If social sustainability is not ensured, long term viability of development initiatives is under threat.

The World Bank report states that "in some communities, especially in Syunik, support for [mining] operations among local communities appears to be relatively strong … [however,] one cannot say there is a 'social license to operate' for miners in Armenia."[28] The report cites that this lack of widespread support may be based on the economic and environmental issues discussed earlier. Adding to these is a "culture of secrecy that is prevalent in the sector (on part of both companies and authorities)," which no doubt contributes to erosion of trust. Furthermore, in some communities the mine or smelter is the major or even single employer, creating an overdependence and fear of company retribution if there are complaints or grievances expressed by citizens or local governments.[29]Exacerbating these, has been the real or perceived conflict of interest when elected politicians engage in mining project development.

Moreover, the public participation and stakeholder engagement processes in Armenia have deficiencies. Local government representatives have stated grievances that after the public hearings on proposed projects, local governments and communities are left out of the process. They are not engaged in the final decisions and negotiations. They are not consulted on the agreements signed between the national government and the mining company, esp. on the social expenditure obligations of the mining companies. Once agreements are signed, the communities do not even know what social expenditure obligations mining companies have. The local communities have expressed their wish to discuss inclusion of local communities in the EITI multi-stakeholder group.

There are also concerns that local communities do not receive a fair share of the benefits of mining and instead are left with the environmental and public health burdens. Many of the buildings and improvements on the mining site are not paying property taxes to local governments. Equipment of some mining companies is registered in Yerevan, with property taxes being paid in Yerevan. The impact of this equipment, however, remains in the mining communities, which are also left with sites and waste from non-operating mines with no proper tools or legal means to prevent their further harm.[30]

Mining companies pay environmental fees to the central government, which then allocates the funds to communities based on environmental mitigation proposal presented by eligible communities. This process needs improvement with respect to transparency and inclusiveness. Many communities are not knowledgeable about the method to calculating environmental harm. In addition, some communities that are impacted by mining are not included the list of communities, which can apply for environmental mitigation grants.

As one last remark on social sustainability is that local communities would have a greater stake in the mining operation if higher paying jobs were for members of the local community. The World Bank report writes: "Although there exist a substantial number of qualified mine workers in Armenia, there appears to be a lack of

[28] World Bank, p. 103
[29] AUA School of Public Health/Blacksmith Rapid Assessment
[30] For details on local government representatives' comments, see Annex 5.

persons with more advanced skills (engineers, geologists, mining economists etc.). The lack of local management capacity is representing a constraint to the social sustainability of the operations."[31]

9.2. Analysis of Legislative and Institutional Gaps Related to Three Aspects of Responsible Mining

This section analyses the legislative and institutional gaps in the below-mentioned areas. The sectors reviewed are:

1. Economic appraisal of mining projects by using the cost-benefit analysis (CBA) tool;
2. The Environmental and Social Impact Assessment process (ESIA); and
3. Environmental, community health, and occupational safety reporting/monitoring.

There are issues, which relate to responsible mining, but have not been incorporated in the above-mentioned three topics. Some of these additional topics are specified in the end of this chapter. Further research should focus on these additional topics.

9.2.1. ECONOMIC APPRAISAL. COST-BENEFIT ANALYSIS

Cost-Benefit Analysis: International Context

Cost-benefit analysis (CBA) is a key tool for policy and decision-making used in many countries. For any project to be acceptable, the economic benefits should overweight the economic costs. The benefits are defined as growth in the human wellbeing, whereas costs as defined as decrease in the level of wellbeing. For any project or policy to be acceptable, the social (economic) benefits of the latter should overweight the social (economic) costs.[32]

The definition of benefits and costs makes it clear that the analysis is not about private, intrinsic costs and benefits that may well fit into the financial cost-benefit assessment in market economies. The CBA looks into the costs and benefits broadly, including the benefits and costs that are invisible in market deals (for instance, environmental impact, public health, cultural heritage, local wellbeing, etc.). In economic terms, the "non-market" costs and benefits include external signals, market interventions, etc.

CBA was conducted for all infrastructure projects in the US starting from late 1930s. In addition, from the 1980s, it also includes those regulations, which undergo cost and benefit analysis before adoption, and from then on, it has been done periodically. From then on during the rule of different US presidents the CBA scope was enhanced and clarified.[33] In the European Union (EU), the European Commission has always encouraged using the CBA for infrastructure projects in value of more than 50 million euro. In 2014-2020, the main CBA rules were for the first time incorporated in the secondary legislation and became compulsory for all EU beneficiaries.[34]

The CBA is different from the ESIA - a key environmental management tool, which seeks to identify the environmental or social impact of a project. Even if the environmental and social impacts are reflected in monetary terms in the ESIAs, the latter does not indicate any calculation of net benefit. The CBA requires monetization of the costs and benefits and calculation of net present value using relevant discounts.[35] The EISAs may largely facilitate CBAs and must be seen as additional instruments for decisions. The representatives of the civil society constituents and the Secretariat of the Armenian EITI MSG have requested to consider the CBA as a potential instrument for appraisal of mining projects in the framework of this legislative and institutional framework review and action plan. They argue that in most mining projects approval process focuses on the financial viability of the project without giving proper consideration of the environmental and social costs of the

[31] World Bank, page 104.
[32] *Cost-Benefit Aalysis and the Environment: Recent Developments (OECD, 2006).*
[33] *Weimer, D. և Aiden Vining. Policy Analysis: Concepts and Practice/ (Taylor & Francis, 2017թ.), see Chapter 17.*
[34] *Guide to Cost-Benefit Analysis of Investemtn Projects, Economic Assessment Tool for Policy 2014-2020 (European Commission, 2015).*
[35] For CBA, the " *Guide to Cost-Benefit Analysis of Investemtn Projects, Economic Asses5sment Tool for Policy" describes that there are financial discounts and social discounts. Social discount recognizes that some benefits and costs have long-term perspective. For 2014-2020 the Europan Commission recommends 5% social discount for major projects in countries of regional policy, and 3% for other countries (see page 55).*

projects. Therefore, it is not clear for the public policy whether mining projects are net benefits or net costs for the country. Moreover, most of these projects have really become net costs with marginal or zero return on equity creating minor or zero royalties, low or zero profit tax, insignificant number of jobs and creating social expenditures for the generations to come (see the discussion on sustainability given in the previous chapter). [36]

Using CBAs for making decisions on mining projects is relatively new. The study conducted by the AUA Center for Responsible Mining suggests that a number of countries have studies this approach and started to institutionalize its implementation in the mining sector. Below are cases of two countries (Australia and Mongolia), where CBA application has been used, and in the New South Wales (NSW) State of Australia it is already in the implementation phase.

AUSTRALIA: Australia's NSW State Environmental and Planning Department has adopted an integrated mining policy - a fully government program aimed at:

- Improving the regulation and appraisal of major mining projects;
- Balancing the significant economic benefits offered by mining with its potential impact on local communities and the environment;
- Supporting the management of environmental and social impacts of mining;
- Ensuring availability of relevant and timely information on mining projects to the local communities.

The integrated mining policy does not weaken the environmental standards or the requirements to consult the local communities. It has developed "Guidelines for economic appraisal of proposals to mine or extract mine gas (December, 2015) available on their website.[37, 38] One of the instruments described in these guidelines is the cost-benefit assessment. The guidelines focus on two central factors that the authorities should consider in making decisions - the collective public interest of the households in NSW and the potential environmental and social impacts of the project on the local district.

The Guidelines help those who submit proposals to mine or extract mine gas to provide consistent and complete information that would confirm the assurances regarding the environmental impact (this is the ESIA conclusion given by the public authority). In the NSW the CBA, as such, relies on ESIA findings and is considered associated assessment.

The NSW Government's Environmental and Planning Department has also published the design technical notes for the Guidelines on economic valuation of proposals to mine or extract mine gas (September 2017).[39]

The Technical Notes provide additional information about options and approaches for full and comprehensive economic valuation of environmental, social and transport impacts of the new mining and mine-gas extraction projects in the NSW. This issue can be further studies in subsequent research.

MONGOLIA: The UNDP's "Strengthening Environmental Management in Mongolia, Phase 2" (EG Phase II; MON/11/301) Project helped to conduct a cost and benefit analysis of Mongolia's mining sector. The analysis focused on developing a CBA model for mining operations in Mongolia. The aim of the Project was to create a CBA instrument enabling assessment of mining impacts on the sector as a whole, as well as at the level of individual mines.

Despite the fact that cost-benefit analysis is a standard instrument used by governments, the CBA tool prepared for this particular Project offers a unique instrument that assessed net benefits of mining projects. It

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[36] The civil society has encouraged using CBA for mining projects in other countries as well. See "*Metal mining and sustainable development in the Central America: Assessment of costs and benefits" (Oxfam America, 2008).* The author of this report for Oxfam America is Thomas Power, PhD in Economics at Montana University.

[37] http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/~/media/C34250AF72674275836541CD48CBEC49.ashx

[38] Abelson, Peter. "Cost-Benefit Evaluation of Mining Projects."/ The Australian Economic Review, vol. 48, no. 4, pp. 442–52 (2015)) showed how CBA can be used for mining projects. The main case is about coal mining, but the assessment process is more general. The Financial Department has adopted Abelson's views and approaches and after this the Environmental and Planning Department prepared the above-mentioned Guide.

[39] https://majorprojects.accelo.com/public/8537cfb91ab38859ea2f1d6ce8a30416/Draft%20Technical%20Notes.pdf available at: http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/Integrated-Mining-Policy?acc_section=the integrated mining policy part of the nsw planning system|guidelines for the economic assessment of mining and coal seam gas proposals|indicative secretary s environmental assessment requirements sears |annual review guideline|independent audit guideline

lists, monetizes, applies discounts and compares external economic, social and environmental signals from the perspective of the local community, as well as the private sector with a view to give a maximum broad picture of costs and benefits of mining.

The structure of the model enables analyzing the project's return on equity, the economic, social and environmental impacts of the latter or all the Project benefits for the local community. It also enables making overtime comparison using discounts and referring to the baseline rates of financial streams. These parameters can be modified to build different scenarios that will help pilot these changes in policies and in the environment. The model is applicable for all types of commodities and during the UNDP Project implementation it was used for valuation of two pilot mines.

The CBA model developed in Mongolia gives a chance to study various scenarios depending on the nature and level of internalized external costs. In developing new policies, one should consider two options - the business-as-usual scenario (BAU) and sustainable ecosystem management (SEM) scenario.

- The Business-as-usual scenario looks into it without taking into consideration the external factors, natural resources, equity and technologies used in the mining operation, and various taxes and compensations paid by mining companies.
- The sustainable ecosystem management looks into a model where sufficient costs of external effects have been internalized, with a view to generating stable net revenue for Mongolia.

When researching and developing specific cost-benefit analysis for Armenia the UNDP's practice in Mongolia can be used, if policy makers in Armenia decide to take this path. It is worth noting that CBA is not yet used in Armenia in decision-making on regulations, policies or large infrastructure projects. Moreover, other instruments used in such decision-making have methodological challenges and complexities. In this regard the capacities and institutions required for CBA implementation should be developed.

Economic Appraisal: Cost-Benefit Analysis, Regulations in Armenian legislation

1. **RA existing procedures on economic appraisal of investment projects. Does the legislation specify or allow making cost-benefit analysis of investment projects, in particular, mining projects?**
2. **Are there any legislative impediments for including economic appraisal, namely CBA in project appraisal and approval processes?**

Using CBA in regulatory impact assessment procedures

The foundations for impact assessment were introduced back in 2008. In particular, in those years amendments were made to the RA Law on Legal Acts, establishing that regulatory impact assessment of a regulatory legal act to be adopted in the analysis of potential changes. It was established that the body facilitating the regulatory impact assessment of the draft submits it to relevant national executive bodies as prescribed by the Government of the Republic of Armenia (hereinafter, "impact evaluator") to do the mandatory regulatory assessment of the costs, environmental, social, health, economic impacts associated with administration that natural and legal persons may face, including also in the fields of small and medium entrepreneurship, competition, anti-corruption, budget.

The impact evaluator must issue an opinion on the regulatory impact assessment of the draft. The opinion covers:

1. Outcomes of regulation;
2. Outcomes of impact assessment in the sector concerned, if the planned legal act is not adopted;
3. when the impact evaluator believes, and based on estimations and research, a more favorable option of regulation is recommended for the sector concerned - this option with corresponding justifications;
4. The time schedule of projected implications of application of the regulatory legal act;
5. Analysis of the policy in the sector, as well as of comparative statistics.

To ensure implementation of the provision of the Law, the Government of Armenia has adopted regulations to conduct regulatory impact assessment in corresponding sectors. In 2011, the Government of Armenia approved a system for improving the RIA framework indicating the key RIA principles:

a. Social, economic, environmental and, depending on the content of the Draft, the regulatory, mandatory and further impact assessment on potential sectors (benefits and/or costs);
b. Consideration of public interests in addition to State interests;
c. Consideration of alternative regulatory instruments and solutions;
d. Informing the public on political decisions prior to adoption of the legal act and other regulatory instruments;
e. Validation of the outcomes of previous impact assessments.

Hence, it was the first time that the act approved by the Government of Armenia reflected on the need to use the CBA instrument in regulatory impact assessment.

It is worth noting that on 21 March 2018 Law on Regulatory Legal Acts was adopted establishing that in manner and cases established by the Government and the public administration body that has elaborated the draft law or the draft Government Resolution shall organize the regulatory impact assessment of the draft. The procedure, timelines and cases of conducting regulatory impact assesment per sectors, the requirements to the opinion provided are defined by the Government. The new law, however, does not stipulate any other provision. Moreover, it reflects only superficially on CBA institutes. Furthermore, currently regulatory impact assessment is not conducted given the fact that there are no regulations to be defined by the Government according to the new law. With regard to the new law, the Ministry of Economic Development and Investments has submitted in its comments on this Study a concern that if decisions are to be taken on economic appraisal of investment projects, corresponding amendments should be made to the RA Law on Regulatory Legal Acts, as according to the latter the regulatory impact assessment is an analysis of potential changes depending on adoption of the regulatory legal act, and according to the RA legislation, per se, current investment programs are not subject to regulatory impact assessment.

Comment 1:

It should be noted, however, that despite such provisions, as a basic step in the CBA process the Drafting authority does not identify any options for addressing the issue and does not perform any assessment of the potential impacts of the prepared Draft based on the selected option using the "cost-benefit analysis, "Standard cost model" or any other assessment tools and check lists with information on potential impact.

In fact, the process of policy analysis and assessment is not yet well-developed in the Republic of Armenia, as well as there is a lack of institutional framework. Policy analysis and assessments are performed separately, there is lack of capacities and expertise. Nevertheless, the Government attaches importance to this process.

Hence, in the sphere of regulatory impact assessment CBA is, per se, not conducted.

Using CBA in appraisal of investment projects

Private investments

Regulations connected with economic appraisal of private investments in Armenia are commonly irregular and are decentralized or address certain objectives (for instance, granting tax exemptions). Agencies responsible for the sector sometimes furnish opinions or conclusions on investment projects for different sectors. However, it is not possible to state that assessment of investment projects, including also by using the cost-benefit analysis, is conducted based on a methodology *clearly* specified by the legislation.

Relations connected with investments are regulated by several legislative instruments which, as mentioned, mostly relate to granting some exemptions /for instance, exemption from customs duty on import, deferment of VAT payment, etc./. However, some relations connected with allotting state-owned property or land plot to investors have been regulated. Such privileges are mostly granted when the Government of Armenia or a commission established in a particular sector approves an investment project or the Government of Armenia chooses one.

Moreover, RA Government resolutions set the rules of approving investment projects in specified sectors. Nevertheless, one should note that even these rules lack references to the instruments for appraisal of

investment projects. These rules mostly specify the investment appraisal criteria, regulate procedural relations and refer to the methodology only in few cases.

Hence, for instance, as per Article 79 of the RA Tax Code, the VAT calculated for import of goods under investment projects of companies and private entrepreneurs selected by the resolution of the Government of the Republic of Armenia can be deferred for three years. To ensure implementation of the mentioned provision of the Code, on 05.10.2017 the RA Government adopted Decision No 1225-N that established the rules of selecting the companies and private entrepreneurs implementing investment projects. While this regulation does not refer to implementation of the CBA, however, the assessment of envisaged indicators, per se, indirectly implies that CBA assessment tool shall be used. In particular, the assessment shall be based on results indicators, such as the multiplier effect on the economy, enhancement of employment, export orientation, the average labor compensation to be provided by the project, etc. It should be noted, however, that the assessment conducted by relevant agencies goes without comments and often it is not clear why the project receives a specific score. For instance, below is a reference on appraisal of "Vansevan" LLC's investment project.

REFERENCE **On appraisal of the investment project implemented by "Vansevan" LLC**					
Scoring criteria	RA Ministry of Economic Development and Investments	RA Ministry of Finance	RA GoA State Revenue Committee	RA Ministry of Agriculture	Final score
Multiplier effect on the economy (7)	4	4	3	4	3.8
Enhancement of employment (10)	2	2	2	7	3.3
Innovation and productivity enhancement (10)	4	0	4	0	2.0
Export orientation (10)	9	9	4	7	7.3
Average labor compensation provided by the project (10)	8	9	5	6	7.0
The person's compliance with the classification provided in the RA Law on State Aid to SME (3)	3	2	3	3	2.8
Total	**30**	**26**	**21**	**27**	**26.0**

According to the regulation, if the investment projects get 26 and higher final score, a RA Government resolution is drafted to grant exemption.

In the given case, however, it is not clear what is the principle based on which, for example, the RA Ministry of Economic Development and Investments has scored it 30 or the SRC has scored it 21.

Studies have shown that the high score given by the RA Ministry of Economic Development and Investments to the projects is mostly conditioned by the expediency to ensure final score of at least 26 for the project, rather than the need to give a high score to any indicator, since the final score is often jeopardized by the low score given by the SRC. Moreover, the SRC gives low score not because of non-feasibility of results indicators or lack of justification of the investment project, but simply to avoid adverse impact on the net government revenues. As a result, the need for such an assessment framework is essentially incomprehensible, since the agencies make the assessment based only on the interest of the agency. It should be noted that analysis have shown that irrespective of the content of the investment project and the results indicators the investment projects submitted to the RA Government in the framework of this decision have been approved by the RA Government without exception.

In another case, when the customs duty exemption is applied, the corresponding decision of the RA Government is based on the conclusion issued by corresponding commission.

Below is a practical case of the conclusion issued by the corresponding commission for applying the exemption from customs duty.

CONCLUSION
ON THE APPLICATION TO ENJOY THE EXEMPTION FROM CUSTOMS DUTY ON IMPORT BY 'VANSEVAN' LLC IN THE FRAMEWORK OF THE RA GOVERNMENT RESOLUTION NO 1118-N OF 17 SEPTEMBER 2015

Governed by the RA Government Resolution No 1118-N of 17 September 2015 and having regard to the application submitted by "VANSEVAN" LLC to enjoy exemption from the customs duty in the framework of the RA Government Resolution No 1118-N of 17 September 2015, as well as the comments received from stakeholder agencies, the RA Ministry of Economic Development and Investments conveys following regarding the application submitted by "VANSEVAN" LLC to enjoy the exemption from customs duty on import of main equipment, their component and spare parts, raw and materials imported in the framework of the investment project implemented in the priority sector:

"VANSEVAN" LLC has submitted following documents:

1. *Application*
2. *Investment plan, as per the form specified in Annex No 1 to the RA Government Resolution No 1118-N of 17 September 2015, as well as additional information about the project at discretion of the applicant.*
3. *List of main equipment, their component and spare parts and (or) raw and materials and their technical specifications, as per form specified in Annex No 2 to the RA Government Resolution No 1118-N of 17 September 2015.*
4. *Statement that the main equipment, their components and spare parts and (or) raw and materials will be used exceptionally in the territory of the Republic of Armenia, as per form specified in Annex No 3 to the RA Government Resolution No 1118-N of 17 September 2015.*

According to the long-term Armenia Development Strategy 2014-2025 adopted by RA Government Resolution No 442-N of 27 March 2014, the Export-Let Industrial Development Strategy adopted by Protocol Resolution No 49 in the RA Government session on 15 December 2011, wine production is a priority sector.

The goods imported by "VANSEVAN" limited liability company will be used in wine production.

The project plans investing AMD 150 million and creating 7 jobs with AMD 160 000 average salary.

In the third year of project implementation production volumes will amount to approximately AMD 684 million, of which produce of AMD 17 million will be sold in the RA, produce of AMD 152,6 million will be exported to the countries of Eurasian Economic Union, and produce of AMD 514,4 million - to third countries.

Imported goods are not imported from the EEU member states, since they do not meet the technical and quality standards company needs.

Taking account of the above-stated and summing up the feedback from stakeholder agencies, we deem it expedient to concede to the application brought by "VANSEVAN" LLC, which meets the requirements prescribed by RA Government Resolution No 1118-N of 17 September 2015.

As shown in this case, there is no clear evidence of commission's analysis on CBA assessment of the project. It only states the data furnished by the business operator in the investment plan. Conclusions also are formal. In addition, study shows that exemption from customs duty or deferral of VAT payment has been granted to all applicant companies. Hence, it is evident that proper and broad-based analysis, comprehensive and in-depth appraisal of investment plans are not conducted.

In the sphere of alienation of state property, Article 22 of the Law on Management of State Property prescribes that state property can be directly sold to a buyer known beforehand, if the latter has submitted a business/investment plan. However, there is no other legislative act specifying how such investment plans are assessed.

Other legislative acts also prescribe a requirement to submit investment plant, specifically, the RA Land Code, the RA Water Code, the RA Law on Free Economic Zones, the RA Law on Lotteries and Casinos, etc. Despite the requirement stated in the above laws to submit investment plans, one can claim that the legislation lacks a unified, clear provision on the use of tools or methods to be used in assessing investment plans/projects. However, it should be noted that the RA legislation has no ring-fences in terms of assessing the investment plans via any standard tool. The opposite is true that if corresponding line ministry provides assessment of investment plans based on standard techniques, including CBA assessment, the results of such analysis are often included in justifications attached to the drafts, as additional facts making the case for adoption of the draft. However, as mentioned above, this is not compulsory and regular.

<u>Public/government investments</u>

For the topic under consideration, we deem it appropriate to pay attention to issues related to assessment of those investment plans that somehow affect the State budget revenues or expenditures.

Hence, it is noteworthy that back in 2011 the strategy for implementation of government/public investments in Armenia was approved by RA Government Protocol Resolution. The latter provides details of the existing gaps in assessment of public investments in Armenia, as well as institutional challenges and detailed overview of international best practices. The document explains the need to introduce a Public Investment Assessment Framework (PIAF). The requirement to introduce such a framework is defined in the Development Policy Operations plan implemented by the RA Government and the World Bank. To that end the RA Government, represented by the RA Ministry of Economy, and with World Bank, support has undertaken the implementation of the PIAF in Armenia. It should be noted that despite the strategy reflects intensively on the implementation of the framework, as well as the need to use the cost-benefit analysis, it is limited to following scope:

Table 1. Scope of the PIA framework

Basis for investment planning	Source of finance	Sectors	Total thresholds
• **RA State budget** • **RA municipality budgets** • **Extra-budgetary or special accounts**	• Tax revenues • Grants and other budget revenues • External and internal credits and loans • Government guarantees • PPPs	All spheres of public sector, except for defense and national security	• For capital projects - AMD 1 billion and more • For initiatives - AMD 1 billion and more for upcoming 3 years • For intangible assets - AMD 750 million and more for upcoming 3 years

Hence, it is evident that there is no statutory requirement prescribed for private investment projects to be guided by the Strategy.

Findings of the study show that there is no statutory requirement specified in the existing legislation of Armenia to use the cost-benefit tool in assessing investment plans/projects in any sector. As mentioned, in different spheres of legislation there are, however, different criteria for assessing investment plans, during comprehensive assessment whereof the tools mentioned can be indirectly used.

It should be noted that from the perspective of existing institutional capacities the cost-benefit tool is deployed only by the "National Center for legislative regulation" Foundation. In its assessments, the Foundation makes a thorough reflection on potential benefits of a particular regulation, while estimating also the costs. However, the Foundation conducts regulatory impact assessment only for the projects/drafts envisaged in its own annual plan, as well as for the projects/drafts assigned by the RA Prime Minister. Hence, there is no statutory requirement for the Foundation to assess private investment plans/projects. The analysis of the latter relate mostly to potential impact of legislative regulations.

Summing up the above-mentioned, a conclusion can be made that while there are some mechanisms for assessing investment plans in different spheres of RA legislation, they are not unified, centralized and clearly enshrined, and there is no statutory requirement to assess the plans by using the cost-benefit tool, and even if an agency uses such tool in assessing the plans and projects, the findings are not publicly available.

The only entity which uses the cost-benefit tool explicitly and publicly is the NCLR; however, the latter does not conduct assessment of investment projects. According to its charter, the main task of the Center is to assess the regulations, during which it applies this tool.

It should be noted that while there is no statutory requirement to use the cost-benefit tool in assessing the investment projects /including in mineral sector/, there is no barrier to using it. Moreover, its use is encouraged in terms of making the projects better reasoned.

Hence, the study reveals that there is an impediment to conducting CBA is not in the legislative framework, but it is mostly a matter of lack of institutional capacities.

Recommendation on Institutional Framework and Capacity to Conduct Economic Appraisals and Reviews

As already mentioned, the obstacle to conducting CBA assessment is essentially a matter and challenge of institutional capacities.

Implementation of CBA framework implies establishment of a new institutional framework to ensure implementation of the assessment process. To facilitate the assessment process, a new entity should be formed to implement the assessment process and issue conclusion.

Selection of the institutional model of assessment was based on the problems existing in the sector and the need to assess the investments /including in the mineral sector/.

Summary of the key issues to be addressed by the new assessment framework is as follows:

- Ensuring maximum alignment with the social and economic priorities of the Government in course of preparing the plans, strengthening the link between the strategic programs and implemented programs;
- Using comprehensive assessment of potential impact of projects, their usefulness and impact on public when choosing among projects;
- Defining precise institutional responsibility of agencies responsible for all-encompassing assessment of projects and plans;
- Ensuring strong analytical capacities of agencies involved in the assessment process;
- Ensuring monitoring and evaluation frameworks for projects under implementation; and
- Ensuring content-based review and verification of outcomes of completed projects.

In the context of these standards and principles, establishment of a separate entity is presumed, ideally with a status of independent body or a body fully detached from the ministries. Nevertheless, this option is considered too expensive and very difficult in terms of institutional development. On the other hand, given its operational dependency from the government structure, in practice it is not advisable. The option of outsourcing this function to the private sector could also be considered. Moreover, it is possible for the private investment companies to conduct such analysis, as well as giving assessment to the analysis furnished by the mining operator. In case of this option the government will make significant savings that would have been used for establishing such a department, and on the other hand, private-public partnership would enhance, and the assessment will be conducted by the investment company, selection of which will be kept confidential from the mine operator. \

Let us discuss the advantages and disadvantages of more acceptable options (Table 2).

Table 2. Analysis of formation of the body conducting CBA

Status of the body conducting the CBA	Advantages	Disadvantages
Option 1. **Corresponding subdivision in the administration of the RA Ministry of Nature Protection or the RA Ministry of Energy Infrastructures and Natural Resources (for mining) or any other ministry**	• Institutional set-up is easy; • Great potential to integrate with public-private partnership projects; • Certain values underpin the activities	• Weak institutional arrangements to ensure independence and self-regulation • Almost non-existent arrangements for effective participation of non-government sector • The process of development of new culture, know-how, capacities will be slow • Lack of essential resources and expertise • Possible conflict of interest.
Option 2. **Corresponding subdivision in the administration of the RA Ministry of Economic Development and Investments**	• Institutional set-up is easy • Ability to provide professional assessment • Ability to ensure maximum alignment among the long-term investment plans, priorities and strategic programs • Experience of partnering with the donor community, experience of coordinating large investment programs • Good understanding of industries • The ministry used to have a Mining department	• Maximum motivation to attract investments that might lead to superficial CBA, prioritizing attraction of more investments
Option 3. **NCLR**	• Ability to act independently, exclude conflict of interests, to engage the public sector and make professional	• Efficient alignment with long-term plans and strategies is not secured • Need to set up a new entity

	assessment • Ability to transfer related expertise (in CBA)	• Increase funding from the budget
Option 4. **Engaging investment companies**	• Ensuring independence and autonomy, confidentiality of the selected company • Engaging the non-governmental sector • Excluding conflict of interests, engaging an independent assessment provider • Incorporating the best practice, attracting specialized entities • Ease the burden of the Government • Enhancing public-private partnership	• Lack of capacities among private investment companies (although in case of such requirement the private sector, thanks to its flexibility, will cover this gap more quickly by engaging corresponding specialists) • Setting additional charges for mine operators, as it implies that mine operators will be paying for the assessment conclusion fee

Having reviewed these options, the first one is definitely turned down, since it does not meet the key principles, such as independence and objectivity of assessment, as well as the resources and expertise needed are not available. In particular, while international best practice suggests that conclusions on environmental impact assessment or regulatory impact assessment in social and health care sectors include also CB assessment, we believe that from the perspective of institutional capacities, relevant competent authorities of Armenia will not be able to conduct thorough and professional CB assessment.

If it is decided to engage the governing body, the line ministries submit their project proposals to the RA Ministry of Economic Development and Investments. The latter conducts economic appraisal of investment project by using the CBA. At the same time, the interim outcomes of the appraisal can be sent to corresponding ministries to get relevant feedback and comments. Having summed up the findings of the assessment, the Ministry prepares a conclusion and provides it to the applying ministry. Even if the assessment process would be assigned to investment companies, the public administration body could keep following key functions:

- Elaboration and definition of project development forms;
- Preparing a schedule of project assessment;
- Extending methodological advice in project elaboration process; and
- Consultancy on defining a framework for developing project monitoring framework and indicators' framework.

Legislative and regulatory acts recommended to amend in order to incorporate CBA in the decision-making on mining projects

In order to incorporate CBA in decision-making on mining projects, following legal acts should be amended:

- RA Mining Code: provisions should be defined in the Code establishing the requirement to conduct economic appraisal with use of CBA in the spheres of mineral use and conservation, except for environmental impact assessment of mining activities and technical safety expert reviews. Moreover, in the Code, the mandate to define the rules of economic appraisal should be reserved to the Government of Armenia;
- Adoption of a Government Resolution whereby the rules of economic appraisal of investment projects in mineral use and conservation sector will be defined;
- Amendments to the Code enshrining that exploitation without a plan that has undergone economic appraisal shall be prohibited;
- Where needed, adopt a decision/order on approving the CBA guideline by way of order of the RA Minister of Economic Development and Investments or the Protocol Resolution of the RA Government; and
- In order to clarify the statutory tasks and functions of the RA Ministry of Economic Development and Investments, make changes in corresponding Government Resolution, if it would be decided to reserve that function to the public administration body or develop sub-legislative acts whereby the investment companies will be involved in assessment of the analysis, by defining the rules of selection, compensation of the investment companies, the elaborated methodology, etc.

The issue of institutional capacities related to CBA, that are recommended to include in the preliminary road map for responsible mining

Summing up the above-mentioned, it is recommended to include the issues related to institutional capacities in the preliminary road map:

NN	Issue	Expected outcome
1	Revision of the regulatory framework, adoption of necessary legal acts	There is a mandatory requirement established in the mining sector to conduct economic appraisal, save for expert reviews prescribed by law
2	Implementation of economic appraisal functions in the corresponding subdivision of the RA Ministry of Economic Development and Investments (establishment of a detached unit is a more complex process given the policy of optimizing the government structure; therefore we recommend assigning corresponding functions to the Investment Attraction and Coordination Department of the Ministry)	There is a corresponding body responsible for economic appraisal of investment projects in mineral sector, such as in the case of mining expertise implemented by the RA MEINR
3	Recruitment or training of specialists in corresponding departments	Development of capacities of Departments
4	Assigning the function to investment companies	Conducting analysis by team of professionals or review of already conducted assessment
5	Publishing CBA guidelines for economic appraisal	Clearly explained criteria and methodology for economic appraisal is available

9.2.2. ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND STRATEGIC ENVIRONMENTAL ASSESSMENT: LEGISLATIVE AND INSTITUTIONAL REVIEW

There are following gaps in the ESIA and SEA processes:

- **Gaps in report preparation;**
- **Gaps in conducting state expert review of the reports;**
- **Gaps from the perspective set up of a primary database on environmental pollution;**
- **Gaps from the perspective of community health impact assessment; and**
- **Gaps from the perspective of public participation.**

The obligations to conduct ESIA and SEA, the requirement to assess health impact in the mentioned processes, the need to ensure public participation derives from the international commitments undertaken by Armenia, specifically under Aarhus (1998) and Espoo (1991) Conventions. In the framework of Espoo (environmental impact assessment) and Aarhus (availability of environmental data, public participation in decision-making and access to justice) Conventions, a number of changes in the regulatory framework were made. Attaching importance to enhancing public participation and awareness, identification and assessment of project impact on affected community health is highlighted. Aarhus Convention (1998) on Access to/Availability of information on environment, in public participation in decision-making and access to justice was ratified by Armenia in 2001. In the trans-boundary context, Armenia ratified Espoo Convention on Environmental Impact Assessment in 1997. The Strategic Environmental Impact Protocol of the Convention prescribes obligations to:

a) Ensure that environmental, including health-related aspects are fully considered in developing plans and projects;
b) Promote inclusion of environmental, including health-related aspects in policy and law making;
c) Create simple, transparent and efficient procedures for strategic environmental assessment;
d) Ensure public participation in strategic environmental assessment; and
e) Use these means to include environmental, including health-related aspects in future development activities and arrangements.

This is mostly reflected in the RA Law on Environmental Impact Assessment and Expertise. It should be noted, however, that while this Law sets that it shall apply to any agency developing, adopting a concept document or planning to engage in any activity with potential impact on the environment and human health, and that human right to have favorable environment for health, normal living should be included as a principle for assessment and expert review, it also enshrines that during evaluation and expert review the health factors connected with

impacts shall also be taken into consideration. However, Article 1 of the Law, which specifies the content of reports on Environmental and human health impact assessment, does not refer to taking into account the analysis of health impact or other factors in the content of the report.

Report preparation process and state expertise of the reports

The RA Mining Code and the RA Law on EIA and Expertise prescribes a requirement to conduct ESIA in mineral use and conservation sector. The RA Mining Code, in particular, prescribes a mandatory requirement for mining operators to provide EIAs for their proposed projects when they request mining permits. The Government in its turn implements EI expertise. The requirements to EI assessment and expertise are enshrined in the RA Law on EIA and Expertise".

According to the Law, the initiator does the assessment. In the impact assessment phase:

1. The potential environmental impact implied from the provisions of concept document and planned activities are assessed;
2. The alternatives for approaches stated in the concept paper and the solutions for planned activities are identified and their impact on the environment, human health and social-economic situation is assessed;
3. Environmental-economic analysis of alternatives for the planned activity is conducted and the case for preferred option is made;
4. Environmental measures are developed, including impact monitoring plan to prevent, reduce or exclude any environmental impact;
5. The degree of impact is estimated having in mind the geographic location of the affected area, population size, potential for the impact, its complexity, degree, duration, frequency and the cumulative nature of different impacts; and
6. During assessment the aggregate environmental impact caused by other activities planned in the area are taken into consideration.

According to the Law, the assessment methodology should have been approved by the Government of Armenia.

However, the latter has not been adopted. Moreover, the action to adopt this methodology was not included in the list of actions ensuring the implementation of the RA Law on EIA and Expertise/ RA Prime Minister Decision No 782-A of 19.08.2014/.[40]

Meanwhile, we recommend including the valuation of ecosystem services in the EIA processes.

The raised issue becomes more important in cases when the environmentalists point to practically used approach, when changes in the material conditions of the mining licenses, changes in the coordinates specified in the land use act or registration is done without complying with the additional EIA procedure.

There are no other acts related to the procedure of environmental impact assessment in the RA legislation. The mentioned law simply enshrines a requirement of EIA implementation by the initiator of the project; therefore, there is no opportunity to reveal the gaps in the mentioned process. In fact, the businesses determine the EIA implementation methodology, the criteria and the procedure on their own /in cases defined by the

[40] With regard to availability of EIA methods, it should be noted that the RA Government Resolution No 29 of 29 July 2016 approves following guidelines for enforcement of provisions on environmental impact assessment on:

- Preparing the application for initial environmental impact assessment in the process of requesting exploration and exploitation permits;
- Preparing the report on main environmental impact assessment in the process of requesting exploration permits for further exploitation and mining permit;
- Preparing mine closure plans;
- Preparing the report on aggregate environmental impact in the process of requesting exploration permit for further exploitation and mining rights;
- Preparing the report on social and economic impact assessment in the process of requesting exploration license for further exploitation and mining permits; and
- Evaluating the comprehensiveness of the report on main environmental impact assessment submitted in the process of requesting exploration license for further exploitation and mining permits.

legislation of the Republic of Armenia, in accordance with the terms of reference provided by the authorized public administration body/ and submit to the public administration bodies only the findings, including the results of public consultations.

As regards the expert review (expertise) of the environmental impact, the RA Government Resolution No 399-N of 09.04.2015 enshrines the procedure of expert review of the concept document and the EI of the planned activity. According to this regulation, the expert review is conducted in two stages - initial and main. In the initial and main phases of expert review, a legal entity or physical person of the sector can be engaged on contractual basis as expert to prepare a professional opinion and submit it to the expertise center. In case of expert review of the concept documents, the Ministry of Health of the Republic of Armenia is involved in the process and provides a conclusion or comment.

While the regulation provides adequate level of details on expert review process, we believe that it has certain challenges. In particular, it establishes that if there is no comment or conclusion from the public administration bodies provided within 10 days during the initial stage of expert review and within 20 working days during primary stage, the concept paper or planned activity shall be considered as **affirmative.**

Given the fact that the matter of concern is essentially public health, we find that, for instance, in case of failure by the Ministry of Health to provide corresponding conclusion within the set deadline, it is impermissible to recognize it is affirmative. The recommendation is to provide the expert conclusion without taking into consideration the above-mentioned impact in case of failure to provide the opinion or conclusion within specified deadline, rather than consider the conclusion or opinion as affirmative. This is even sharpened in cases when there is no accountability mechanism in place for failure of the competent authority /in this case by the competent authority responsible for health/ to provide an opinion or conclusion within specified deadline.

Moreover, there are no criteria for the opinion and conclusion of the public administration bodies regarding the papers or planned activity, which implies that the viewpoints of these bodies can be unclear or contradictory.

In addition, it is noteworthy that the body in charge of expert review, per se, being the body endowed with critical functions in the process of decisions on mining operations, nevertheless, lacks sufficient institutional and professional capacities.

The regulation describes the requirement of organizing public consultations, and the deadlines for provision of the terms of reference and conclusion of the expert review.

There is no provision on the legal status of the conclusion of the expert review either in the regulation or in the RA legislation. Meanwhile in the court practice the latter has been recognized as a document, which is not an administrative act, and in this case, problems arise in terms of arguing the lawfulness of such document. It should be born in mind, however that at initiation of the RA Ministry of Nature Protection, amendments have been proposed to the RA Law on EIA and Expertise /the draft is already submitted to the NA/, according whereto the expert review conclusion of the competent authority shall be an administrative act, and if is appealed, no legal issues will arise in relation to its status.

Public participation in the ESIA/SEA process

Relations connected with public participation in the EIA process are regulated in the same Article 26 and the RA Government Resolution No 1325-N of 19.11. 2014, which defines the procedure of public notification and consultations. The regulation specifically defines that public notification and consultations are held during initial and main stages of environmental impact assessment, as well as in the initial and main stages of expert review. These instruments define the obligation of the initiator of the project, corresponding provincial administration, heads of administrative districts and the public administration bodies to carry out public awareness campaigns and properly organize consultations. It defines that in the stages of environmental impact expert review, the Center of Expertise shall upload on its official website the soft copies of documents related to the concept document or the planned activity or a summary of these documents in non-technical language.

The affected population also is given the opportunity to submit comments, recommendations or questions within set deadline, which should receive proper response. Moreover, when conducting the assessment pursuant to the Law, the comments and recommendations of the participants of the process are taken into consideration. Where these comments are not accepted, corresponding justifications are provided in the report. It is defined

that in the impact assessment process the initiator may consult the competent authority, the public administration bodies, the heads of affected communities and the interested public at large.

Gaps in practice are mostly encountered in terms of failure to provide complete documents for public consultations, failure to publish certain information, failure to provide complete response to the questions raised by affected population or partial inclusion of such information in EIA, as well as in terms of failure to address public concerns.

With regard to legal regulation of how the EIA is conducted, specialists point to the lack of option to suspend the set deadline in the main stage as a gap in legal regulation. In addition, in practice only one expert is involved in the process, which again jeopardizes the credibility of the EIA.

Regulations on assessment of impact on community health

In accordance with the Republic of Armenia Government Resolution № 399-N, in the case of an expert review of concept documents, the Ministry of Health of the Republic of Armenia is also engaged in the process through submission of a conclusion or comment. However, if no comment or conclusion is submitted on the foreseen action or the concept document, then such comment or conclusion shall be deemed as **affirmative**. We believe that if the ministry fails to provide a conclusion in relation to the health impacts within the defined time, it is unacceptable to deem its position on the matter as affirmative.

At the same time, it should be noted that Republic of Armenia legislation does not provide the methodology for the assessment of health impacts of given projects. There are no impact assessment standards, nor are there mechanisms envisaging distinct cooperation between the authorities carrying out the EIA and the health impact assessment. Even if the relevant assessments are conducted by using international standards, these are not carried out publicly.

International best practice on community health impact assessment of mining projects

During the review of international practice on health impact assessment in the mining sector no independent institution was identified that deals exclusively with health impact assessment. International practice shows that issues related to impact on health are incorporated in EIA conclusions and particularly in conclusions of social impact assessments.

It is worth noting that the International Council on Mining and Metals (ICMM) that brings together the world's leading mining companies has developed a Good Practice Guidance on Health Impact Assessment, which we recommend adapting to the Armenian regulatory framework and consequently urge the Armenian Ministry of Health to follow the aforementioned guidance when providing relevant conclusions or feedback during the process of environmental impact assessment.

In addition to that, in order to ensure full application of the RA Law on Environmental Impact Assessment and Expertise, a number of sub-legislative acts, guidelines, and in particular methodologies on human health impacts, cumulative environmental impact assessment, as well as a clearly worded requirement and assessment methodology for the evaluation of the damage to human health and compensation thereof .

Opportunity to initiate litigation for CSO's

Comparative analysis of article 9 /access to justice/ of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and provisions of relevant national legislative acts regulating given public relations /particularly, Republic of Armenia Law on Administrative Action and Administrative Proceedings, Administrative Procedure Code, Law on Freedom of Information, Law on Environmental Impact Assessment and Expertise/ point to the conclusion that Armenian legislation does not fully ensure the right to access to justice for representatives of non-governmental organizations to be able to challenge decisions, actions and inaction of national and local governments through corresponding judicial procedures.

Restrictions of the right to access to justice and its implementation are primarily of legal nature. Both Civil Procedure Code and Administrative Procedure Code of Armenia allow for concerned physical or legal entities to appeal to court if their rights have been breached.

In 2001, the Republic of Armenia ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Article 9(2) of which states the following:

Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) Have a sufficient interest or, alternatively,

(b) Considered to have a violation of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention.

In 2013, the United Nations Economic Commission for Europe published the Implementation Guide to the Aarhus Convention, which addressed the interpretation of the above-mentioned provisions noting that, "This provision obliges Parties to foresee the public's right to challenge adopted decisions, implemented activities or inaction, all the while reserving Parties the right to decide on status of a public concerned and circumstances of the impairment of the right."

Addressing this issue in its SDO-906 decision of September 7, 2010, the Constitutional Court of the Republic of Armenia stated the following:

Taking into account the role of non-governmental organizations in the life of the state and the civil society, guided by the consideration for the improvement of efficiency of the activities of both the state and the civil society, the Constitutional Court finds that the Administrative Procedure Code of the Republic of Armenia may define the cases and order in which concerned non-governmental organizations (with relevant statutory jurisdiction) can as legal entities apply to court to restore rights impaired, considering the current European development trends with regard to the *actio popularis* institution of complaints. Such a legal regulation would not only contribute to the protection of impaired rights and legal interests, including the efficiency of judicial protection, but also would increase the role of non-governmental organizations as components of civil society. Moreover, while defining the cases and order for the application of the right to apply to court or other authorities and officials aiming to restore the impaired rights of others, it will be necessary to take into consideration only those non-governmental organizations whose goals include protection of specific collective or community interests. This position is in line with section 3 of paragraph 1 of article 15 of the Republic of Armenia Law on Non-governmental Organizations, according to which for the purpose of implementing its statutory goals the organization has the right to represent and protect its rights and legal interests and those of its members in other organizations, courts, national and local government bodies in a legally defined manner.

Research of international practice related to the right to appeal to a court of law for the protection of the rights of others (*actio popularis*) shows that this institution is not usually prevalent in European countries in the classical sense of its application. At the same time, as a result of such research, the Constitutional Court notes that in a number of countries the main criterion for bringing an administrative action is the "legal interest." In legal court proceedings, this term has received so many interpretations, which enable non-governmental organizations or civic initiatives and other associations that operate in a legally defined manner to carry out protection of a collective right of a certain group if said activity lies within the specific goals of that association.

In its decision № VD/3275/05/08 of 30/10/2009, the Court of Cassation of the Republic of Armenia ruled: "Ecodar NGO involved in the present case has been registered in a legal order defined by the Republic of Armenia Law on Non-Governmental Organizations, meets with the standards foreseen by national legislation and, taking into account the statutory goals and objectives of the organization, has been dealing with issues of environmental protection, thus from the standpoint of the Aarhus Convention it shall be regarded as a public concerned."

In its decision №747, the Constitutional Court of Armenia ruled that the phrase "person concerned" is a phrase subject to assessment and for each specific case, based on the specific circumstances of the case, the court

hearing the case has the authority to assess the phrase and identify whether the given entity has a legal interest in the case.

In the context of these norms, it is necessary to highlight the international experience in relation to the right to appeal to a court for the protection of the rights of others (*actio popularis*).

Recommendation (2004) 20 of the Committee of Ministers of the Council of Europe on Judicial Review of Administrative Acts defines that Member states are encouraged to examine whether access to judicial review should not also be opened to associations or other persons and bodies empowered to protect collective or community interests (Principle 2, point a.).

Referring to this provision, Explanatory Memorandum of Recommendation (2004) 20 encourages to enable non-governmental organizations or those empowered to protect community interests, associations, other persons or bodies to protect these rights and appeal to the court for this purpose. This refers to administrative acts that are related to the interests of not an individual but groups of persons. Moreover, the term "administrative act" implies separate and normative legal acts that have been adopted by the administrative authority and can affect the rights of physical and legal entities, rejection of action or cases of inaction when the representative of the administrative authority is obliged to initiate a proceeding upon a request.

Based on the application of the Human Rights Defender of the Republic of Armenia, the Council of Court Chairmen of the Republic of Armenia (hereinafter CCC) adopted decision № 127 on the Judicial Practice of the Application of Article 79 of the RA Administrative Procedure Code, in which it stated the following: "Persons may not petition the court to carry out any administrative evaluation that does not personally relate to them solely for the reason that they are generally interested in the legally proportionate actions of administrative bodies." The CCC decision also discusses the following: The European Commission for Democracy through Law (the Venice Commission) has the following position on the issue: "It is a priority that every individual has the right to challenge the decision on the grounds that it impairs their rights. If the decision has not directly violated the rights of the individual, then ensuring the opportunity to challenge it is an issue to be regulated by domestic legislation."

The principle of *actio popularis* has been applied differently in different countries. Article 4 of the Administrative Procedure Code of the Russian Federation states that any concerned individual who believes their rights were violated or are about to be violated has the right to appeal to court for the protection of the rights of other individuals or a collective interest if this is stipulated by law and other legal acts.

Article 21 of the Code of Administrative Procedure of Lithuania also provides a similar provision while noting that legal entities have the right to take a case to court for the protection of a public interest if such a liability is assigned to them by law.

According to paragraph 1 of article 64 of the German Federal Act on Nature Conservation and Landscape Management, a recognized nature conservation association may challenge decisions pursuant to Article 63 (1) Nos 2 through 4 and (2) Nos 5 through 7, if the association:

1. Insists that the decision contradicts provisions of this Act, legal provisions issued or remaining in force on the basis of this Act, nature conservation laws of the states or other statutory provisions that are to be observed in connection with the decision and that at least are intended to also serve the interests of nature conservation and landscape management,
2. Is affected in its scope of tasks and activities as set forth in its statutes, provided the relevant recognition refers to that scope,
3. Was entitled to participation pursuant to Article 63 (1) Nos 2 through 4 or (2) Nos 5 through 7 and the association expressed an opinion in the matter or was given no opportunity to express an opinion.

Thus, for the protection of public interests, environmental organizations in Germany are entitled to bring forth cases that directly refer to violations of environmental laws.

In its case-law judgments, the European Court of Human Rights has addressed this issue stating that the dispute has to be real and specific in nature. The dispute may not be slightly or remotely connected to the civil rights and responsibilities of the individual, but those rights and responsibilities must constitute the subject of the lawsuit and the potential resolution of the dispute must have a decisive and direct significance and impact on the rights and liberties that are being defended (Le Compte. Van Leuven and De Meyere v. Belgium).

Complete analysis of above-mentioned norms warrants the conclusion that the Aarhus Convention obliges the Parties to ensure the right of non-governmental organizations to appeal to court, while at the same time reserving the Parties the right to define concrete standards for enjoyment of that right of access to justice by stipulating a mandatory standard through Article 9 of the Convention –sufficient interest.

The standard of sufficient interest has been defined by the Constitutional Court of Armenia as well. It also exists in the legislation of a number of other countries as a prerequisite to the implementation of the right to access to justice. However, the review of international practice with regard to *actio popularis* allows us to conclude that this institution is neither wholly nor in its classical sense applied in practice in European countries.

It is worth noting that the Civil Procedure Code of the Republic of Armenia that was developed by the Armenian Ministry of Justice and subsequently adopted by the National Assembly of Armenia in February of 2018 has foreseen a new institution titled "Proceedings of cases based on collective claims." This provision defines that a case brought by at least 20 co-claimants is considered a collective one if the case is initiated against the same defendant (co-defendants) and the matter as well as the grounds of the case are the same. Any claimant, human rights NGO or attorney of that collective claim who has the appropriate authority to present a case in court may act a representative of the case in the court of law.

The draft passed a second reading in the National Assembly on February 8 and was voted on and adopted entirely on February 9.

It is also notable that the Law on Non-Governmental Organizations also foresees an opportunity for NGOs to represent beneficiaries' legal interests in the area of environmental protection in the court of law.

Article 17 of the same law identifies the concept of organization beneficiaries, according to which beneficiaries of the organization are considered individuals or groups of individuals foreseen in the Charter of the organization, for the benefit of whom the organization conducts its activities.

To this end, we believe that the given definition of beneficiaries leaves room for contradictory interpretations and may restrict the right of NGO's to represent cases in courts.

Recommendation on legislative and institutional reforms seeking to eliminate current shortcomings in the process of ESIA/SEA

The following is recommended for the solution of issues raised in the present Chapter:

1) In article 18 of the Republic of Armenia Law on Environmental Impact Assessment and Expertise, which establishes the contents of reports of environmental and human health impact assessments, it should be distinctly stated that the contents of the report must also address the analysis of the health impacts, potential negative impact of the project, damages, etc.[41]

[41] Health impact assessment is a relatively new instrument. Developed countries started addressing this issue in a more coordinated manner only towards the end of the 1990's. Nevertheless, professional literature as well as relevant specialists in the area are already abundant. The study of these issues is out of the scope of the present research. We recommend that the government engages specialists in the sector to discuss ways of including health impact assessment into the ESIA and SEA frameworks. Useful resources can be found below:

- World Health Organization (WHO) webpage dedicated to Health Impact Assessment (HIA).
- Gothenburg Consensus Paper; *Health Impact Assessment: Main Concepts and Suggested Approach* (1999). This is one of the first internationally adopted documents attempting to clarify and offer preliminary guidance to this field.
- WHO Regional Office for Europe. *Health in Impact Assessments: Opportunities Not to Be Missed* (2014). Offers examples of Estonia, Sweden, and Norway, among other related discussions.
- Pan American Health Organization and WHO Regional Office for Americas; *Health Impact Assessment: Concepts and Guidelines for the Americas* (2013). Offers discussion of HIA its methodology and tools. Give example of US and Europe.
- International Finance Corporation (IFC). *Introduction to Health Impact Assessment* (2009). This document provides guidance to practitioners for conducting a health impact assessment for projects. This guidance supports IFC's Performance Standards on Social and Environmental Sustainability.
- World Bank. *Guidance on Environmental and Social Framework 4: Community Health and Safety* (2018). Addresses the health, safety, and security risks and impacts on project-affected communities and the corresponding responsibility of Borrowers to avoid or minimize such risks and impacts. Emphasizes the project life-cycle.
- European Observatory on Health Systems and Policies and WHO. *The Effectiveness of Health Impact Assessment: Scope and Limitations of Supporting Decision-Making in Europe* (2007). Offers critical evaluation of experience with HIA.

2) For the implementation of the aforementioned law, ESIA methodology should be established through a government resolution.
3) Amendments to the concept document and order of implementation of environmental impact expert review defined by Republic of Armenia Government Resolution №399-N of 09.04.2015, which will establish that if no relevant conclusion is submitted by the Ministry of Health during the given period, the expert review of EIA is issued without a conclusion on health impacts or is not issued at all and disciplinary or administrative liability is applied to authorized officials for not submitting the noted conclusion within the given period.
4) Undertaking measures towards localizing ICMM's Good Practice Guidance on Health Impact Assessment in Armenia by recommending that the country's health authorities be guided by that document when submitting conclusions or feedback during the process of environmental impact assessment.
5) Making changes to the RA Civil Procedure Code by reducing the requirement for the number of 20 co-claimants and empowering not just human rights NGO's to represent collective claims in court. It is worth noting, however, that the institution for bringing collective claims to court is significant progress in terms of complying with international obligations /Aarhus Convention/ and changes in this area may be postponed until after monitoring of the practice of collective claims in courts is conducted.
6) To ensure the participation of civil society in court proceedings, it is recommended to consider adapting the regulations foreseen in German legislation into the Armenia one.
7) Making changes to the Republic of Armenia Law on Non-Governmental Organizations removing the restriction for NGOs to represent in court the legal interests of only their beneficiaries regarding matters of environmental protection.

9.2.3. MONITORING ENVIRONMENTAL, COMMUNITY AND PUBLIC HEALTH EXISTING INSTITUTIONAL CAPACITIES AND REGULATIONS ON MONITORING OF THE ENVIRONMENT, COMMUNITIES AND PUBLIC HEALTH

Environmental monitoring

Analysis of Armenian legislation reveals two types of environmental monitoring:

1. Monitoring implemented by businesses, the results of which are submitted to the relevant authorities and
2. Monitoring implemented by the Environmental Monitoring and Information Center state non-commercial organization

The latter was formed by Government Resolution № 1277-N of December 15, 2016 as a result of the merger of the following state non-commercial organizations: Waste Research Center, Center for Hydro-geological Monitoring, Center for Environmental Impact Monitoring, and Information and Analytical Center.

It should be taken into account that according to official information, monitoring of environmental pollution has been regulated by the government since the 60's. Monitoring has been done for atmosphere of residential areas, chemical pollution of surface waters – rivers, lakes and reservoirs. Episodic sampling to determine levels of soil pollution was done in the end of the 80's but was not continuous, and the samples were tested outside of Armenia.

Some measures have been taken lately towards improving the monitoring system. On May 18 of 2006, a government protocol decision adopted the Concept Paper on National Monitoring of the Environment in Armenia. On the basis of this document, on February 15, 2007, the government adopted a 2007-2011 program on the implementation of the issues stemming from the concept paper, which plans to introduce clear monitoring mechanisms in different environmental sectors.

The main objective of the Environmental Monitoring and Information Center SNCO is the development and implementation of state policy and strategies ensuring ecological security within the overall context of national security of the Republic of Armenia, organization of monitoring and research (observations, projections, assessments) of man-made impacts and their consequences on the environment to ensure nature protection and permissible use of natural resources for the purpose of summarizing, regulating and coordinating its activities and

those carried out by other organizations in the sector aiming to provide relevant information to state authorities, organizations, as well as the public.

EMIC publishes information on the ecological situation of the country on a monthly and yearly basis as well as prepares weekly and monthly maps of air pollution distribution. In cases of high and extraordinary high levels of pollution, the RA Ministry of Nature Protection is notified through corresponding messages.

As for the monitoring done by businesses, the obligation for conducting those is defined by the Mining Code of the Republic of Armenia. According to the Code, in order to obtain a mining permit, in addition to the environmental impact assessment, the company has to also submit an environmental management plan and monitoring programs and until no later than February 20 of each year has to submit to the authorized body for nature protection summary annual reports on the results of planned monitoring for the prevention of irreversible impacts, reduction of environmental losses due to mining that have been evaluated in accredited laboratories with relevant certificates.

Resolution № 191 of February 22, 2018 of the Ministry of Nature Protection of the Republic of Armenia approved the order for the submission of reports on the results of planned monitoring for the prevention of irreversible impacts, reduction of environmental losses due to mining that have been evaluated in accredited laboratories with relevant certificates. Said order notes in particular that the indicators for the monitoring for the purpose of reducing environmental losses and preventing irreversible impacts due to mining are developed concomitant with the work plans of geological exploration and extraction of minerals based on the indicators fixed in the plan of geological exploration works, the preliminary environmental impact assessment claim and in the report on impact assessment. The baseline data from the preliminary environmental impact assessment claim as well as the data from the primary report on the actual level of environmental pollution are considered for the development of a monitoring plan. The monitoring plan is developed for all natural components of the environment, including soil cover, atmosphere, surface and underground waters, vegetation and fauna.

In cases of negative deviations from the indicators fixed in the project/program documents, preliminary environmental impact assessment claim and/or primary assessment report that were presented in order to obtain a mining permit, the mining companies have to undertake necessary measures to eliminate those deviations. Quarterly communications on monitoring results (in the cases of metallic minerals) and annual summary reports are submitted by mining companies to the authorized body in hard copies or electronic format. The draft also requires the authorized body to sum up and upload the quarterly communications and summary annual reports onto the official web site of the ministry within 10 business days following their submission. According to the draft, the work plan for activities aiming to reduce environmental losses due to mining and prevent irreversible impacts and the monitoring indicators for the implementation of those activities have to be revised by the mining company and agreed with the authorized body every 5 years.

At the same time, it should be noted that Ministry of Nature Protection of the Republic of Armenia has developed and put into circulation a Draft Law on Ecological Policy, which defines the concept of environmental monitoring. According to the draft, the government has to approve a joint annual for state monitoring and list of main monitoring indicators every year.

The draft proposes new approaches for environmental monitoring and defines the types of environmental monitoring. The draft also includes a separate chapter on environmental monitoring.

Chapter 8
ENVIRONMENTAL MONITORING
Article 41. Goal, principles and objectives of environmental monitoring

1. The purpose of environmental monitoring (hereinafter monitoring) is ensuring high level of conservation of the environment and natural resources, ecological security and sustainable use of natural resources through conducting observations of the environment and natural resources, creating, recording, analyzing, providing and storing sufficient data regarding the assessment of the situation.

2. Monitoring principles

1) *Conducting observations through the application of planned and internationally recognized main indicators.*

2) *Timely identification and forecast of changes to the state of the environment and natural resources due to natural and man-made influences.*
3) *Receiving and providing complete, reliable and measurable information on the state of the environment and natural resources.*

3. Monitoring objectives

1) *Ensuring the opportunity to carry out assessment of the state of the environment and natural resources utilizing the data acquired*
2) *Ensuring the establishment of grounds for the forecasts on potential changes to the state of the environment and natural resources*
3) *Providing political decision-makers with rationale on issues related to the conservation of the environment and natural resources.*
4) *Ensuring identification of situations warranting implementation of environmental measures.*

Article 42. Methods and subject of monitoring

1. Monitoring is conducted on the following components of the environment and natural resources for the purpose of assessing quantitative and qualitative features of the environment and natural resources and factors impacting them:

1) *Air pollution, physical influences on atmosphere, natural phenomena occurring in the atmosphere, as well as climate changes, substances contributing to the depletion of the ozone layer and other man-made impacts and phenomena*
2) *Surface and underground water resources, water ecosystems, use of water, its qualitative and quantitative features, composition, pollution with chemical and radioactive wastes, as well as other phenomena and influences degenerating the state of water resources*
3) *Other negative influences and phenomena contributing to the state of soil pollution, qualitative changes, and lands*
4) *Radioactive pollution in the territory of the country*
5) *Negative impacts of wastes and locations for their disposal*
6) *Flora and fauna facilities, including specially protected natural areas and forests, species and their populations, diversity, as well as their distribution, habitats and ecosystems playing unique roles for the survival of species*

2. Monitoring is done also in cases of such natural disasters or emergencies, which cause or may cause environmental pollution or degeneration of the state of natural resources (special monitoring).

3. Monitoring due to the stabilization of indicators characterizing potential changes in the environment and natural resources is carried out on a regular (continuous) basis or through periodic (partial) observations with the use of metering, on-site examinations and research, including scientific research, registration and inventory, analyses and examples, collection and accounting of derivatives stemming from available data and other methods.

4. Monitoring is implemented in line with the present law, requirements of other legal acts regulating the sector, list of main monitoring indicators approved by the Government of the Republic of Armenia, as well as in accordance with the list of unique indicators characteristic of the given area or community determined upon by the authorized body in the sector.

Article 43. Monitoring system

1. *The monitoring system includes the following:*
   1) *Joint state environmental monitoring*
   2) *Monitoring carried out by the initiative of legal and physical entities or non-governmental organizations, and monitoring conducted by local self-government bodies within the scope of their authorities*
   3) *Monitoring (self-control) implemented by organizations in an order defined by law.*

2. Monitoring foreseen by paragraph 1 of the present article is implemented based on scientific and professional best practices, recognized standards and methods, guided by the legislation of the Republic of Armenia, the present law, the Law on Local Self-Government and requirements set by other legal acts.

3. Monitoring is implemented through the use of state and community budgets, means of legal and physical entities, including NGO's and other means not prohibited by law.

Article 44. Joint state environmental monitoring

1. Joint state environmental monitoring is implemented by state authorities as a tool of ecological policy.

2. The system of joint state environmental monitoring includes:
   1) State monitoring carried out by national and regional authorities
   2) Monitoring carried out by local self-government bodies within the frameworks of their authorities delegated by the state
   3) Special monitoring implemented by relevant state authorized bodies, which is done when additional data is required with regard to the state of the environment and natural resources, including cases of natural disasters and emergencies that can cause excessive pollution or degradation of the environment
   4) Monitoring commissioned by the government and implemented by specialized organizations, scientific (academic) institutions

3. Public monitoring and monitoring implemented by organizations that carry out self-control in a manner defined by law contribute to the system of joint state environmental monitoring.

4. During the course of the monitoring activities, organizations carrying out joint state environmental monitoring are required to pass on obtained data over to the joint environmental depository.

5. Joint state environmental monitoring is implemented in accordance with the monitoring program approved by Government of the Republic of Armenia

Article 45. Public monitoring

1. Organizations may implement public monitoring if:
   1) They have relevant professional work experience for the implementation of monitoring on the given component of the environment or natural resources or are able to ensure the involvement of an entity with relevant professional work experience
   2) They have or are able to ensure the availability of accredited laboratories, calibrated devices and equipment or other means necessary for the implementation of monitoring
   3) They can ensure the acquisition of data on the state of the given component based on scientifically recognized and credible methods

2. The authorized body for public monitoring must inform of its intent to carry out monitoring beforehand. Monitoring shall be implemented using measurable methods.

3. The authorized body for public monitoring shall inform of the results of monitoring while substantiating the reliability of the data acquired, including the measurability (verifiable) of methods applied. The acquired data shall, in a defined manner, be uploaded onto the web site of the organization having implemented the monitoring.

4. Entities carrying out public monitoring are authorized to conduct assessment of the environment and natural resources based on the results of their monitoring as well as to participate in the preparation of national reports.

Article 46. Requirements for the monitoring program

1. The monitoring program shall include:
   1) The purpose of monitoring
   2) Name and location of monitoring site (geographical coordinates) according to the classification standards
   3) Subject of monitoring
   4) List of indicators subject to monitoring
   5) Type of observation (regular or periodic), period and frequency of observations (sampling hours and time between them), number of testing samples
   6) Methods and means of measurement

7) Information on the accreditation and certification of laboratories, types of measurement devices and equipment, their state, sensitivity of measurement methods and calibration in cases when monitoring is implemented through laboratories or only devices and equipment
8) Formats and timelines for the submission of data and reports received as a result of monitoring
9) Source and amount of financing for the implementation of the monitoring.

2. Entities that carry out self-control in a legally defined manner implement monitoring in accordance with the program of self-control.

Article47. Features of monitoring organization

1. Based on the data of joint state monitoring on the state of the components of the environment and natural resources and impacting factors, the authorized body may establish additional requirements for the implementation of monitoring by national and local self-government authorities, academic institutions or entities conducting public monitoring, which refer to the following:

1) *selection of monitoring sites for the measurement of pollution levels, minimum number of observation sites, application of equipment and measurement methods, frequency of sampling and measurements*
2) *modeling of pollution levels, including distribution of pollutants and registration of anticipated pollutants, calculation of leakages and maximum permissible quantities of emissions from stationary or mobile sources*
3) *acquisition of baseline data for the implementation of monitoring, as well as assessment of the situation based on the data received from monitoring and its submission to the authorized body*
4) *collection, recording, storage and provision of monitoring data*
5) *other requirements that will facilitate the acquisition of reliable information as a result of monitoring and accessibility of that information*

It is worth noting that the draft foresees regulations also for the further use of monitoring results. Article 23 of the draft stipulates that based on the monitoring results necessary measures /through the establishment of prohibitions, restrictions, requirements for issuing permits, as well as inspections, implementation of self-control and application of best available technologies that ensure saving of resources/ are undertaken for the complex protection of natural resources. According to the draft, sustainable use of natural resources will also be done based on the results of the monitoring data while taking into account climate and weather conditions as well as the area.

Health monitoring

Monitoring in the health sector is regulated by the RA Law on Ensuring Sanitary-Epidemiological Security of the Population, the Charter of the Ministry of Health and that of the National Center for Disease Control and Prevention SNCO of the Ministry of Health. The aforementioned law defines the legal, economic and structural basis for ensuring sanitary-epidemiological security of the Armenian population, as well as the guarantees foreseen by the state that exclude the impact of harmful and hazardous environmental factors on the human body and provide favorable conditions for the lives of future generation's sanitary-epidemiological security of the population is ensured through the promotion of public health, disease prevention and targeted implementation of national and regional programs of environmental rehabilitation. The targeted program for 2018 was approved by a protocol decision of the government on September 28, 2017. This decision states that with financing from the state budget, the ministry implements laboratory researches of environmental factors and provides relevant conclusions, carries out social and hygienic examinations of the impacts of environmental factors on public health (monitoring), as well as analysis and assessment of results.

According to said law, social and hygienic examinations of environmental factors on public health were to be organized by the State Hygienic and Anti-Epidemic Service. However, this service was reorganized in 2002 into the State Hygienic and Anti-Epidemic Inspectorate under the Ministry of Health /Resolution № 1316-N/, which was then dissolved on 27.04.207 /Resolution №444-N/ and the Health Inspection Authority was subsequently formed. It is worth noting that the RA Law on Ensuring the Sanitary-Epidemiological Security of the Population (hereinafter Law) has already undergone corresponding changes (on March 23, 2018) and the competencies of the authorized body in the area of ensuring sanitary-epidemiological security of the Armenian population and those of the Inspection Authority have been defined. These have included the implementation of social-hygienic observations and studies of environmental impacts on public health.

Link between environmental and health monitoring results and inspections in the sector

As the results of the system analysis of RA legislation on the environment and health care show, Armenian legislation defines specific regulations for the implementation of relevant monitoring. However, monitoring activities are not entirely regulated nor do they constitute a part of the overall chain of inspections.

As it was already mentioned, an RA Law on Ecological Policy and subsequent legal acts stemming from it would be an important step towards increasing the role of environmental monitoring. Unlike existing regulations in sectoral legislation, the Draft Law on Ecological Policy foresees the types of environmental monitoring, stipulates an obligation for the inclusion of monitoring results into environmental depositories, as well as establishes that monitoring results are to become the grounds for the implementation of complex environmental activities.

We believe the adoption of this law can essentially promote the role of environmental monitoring.

As for health monitoring, the picture here is a bit different. There are no distinctly defined types of monitoring, the links between future steps of utilizing the monitoring results are unclear, and the analysis of the legislation warrants the assumption that results of health monitoring are used by the Health Inspection Authority for the implementation of necessary supervision and inspections, identification of violations or assigning liability.

Recommendations on increasing the role of environmental and health monitoring

Environmental monitoring

The adoption of the Law on Ecological Policy and subsequent legal acts stemming from the law are very important.

We believe that this can become a vital step towards highlighting the significance of environmental monitoring and future steps may be conditioned upon the implementation of observations for a certain period.

If the Draft Law on Ecological Policy fails to be adopted, it is recommended to make amendments to the RA Law on Environmental Impact Assessment and Expertise adding provisions on monitoring while clearly establishing a link between monitoring and the implementation of complex environmental measures.

We believe that another very important step towards increasing the role of monitoring would be including a legal requirement on the development and approval of annual environmental monitoring plans and publishing monitoring results for the purpose of ensuring public oversight.

Health monitoring

Issues related to health monitoring are generally not regulated and coordinated. For increasing the role of this type of monitoring, it is recommended to make changes to the RA Law on Ensuring Sanitary-Epidemiological Security of the Population and establish the types of monitoring, areas for application of their results, as well as a requirement for the Health Inspection Authority to undertake relevant complex measures based on monitoring results.

As in the case of environmental monitoring, we believe that a major step towards increasing the role of monitoring would be setting a legal requirement for the development and approval of annual monitoring plans and publishing of monitoring results to ensure public oversight.

Inspections and enforcement of environmental, mining, occupational health and safety, public health laws

Reforms of inspection authorities commenced in Armenia in 2009 through the adoption of a concept paper on reforms of inspection authorities by the government /Resolution № 1135-N of 17.09.2009/. This resolution also approved the action plan for the reforms of inspection authorities and established a board for the coordination of reforms of inspection authorities. In the first phase of reforms, new procedures were developed and completed, a system of inspections based on risks was introduced and inspection sheets were put to use during inspections. Later, on September 25, 2014, Protocol № 40 approved the concept document for the

optimization of inspection authorities. The second phase of reforms was launched in 2015, during which an optimization of inspection authorities took place. The new Law on Inspection Authorities was adopted on December 17, 2014 and entered into force on January 9, 2015. Transitional provisions of said law established that all inspection authorities were to be formed within three years following the promulgation of the law (before January 9, 2018). Amendments were made to the law on 12.12.2017, according to which new inspection authorities could be formed prior to the next president assuming office. In order to ensure smooth implementation of reforms of inspection authorities, on 29.05.2009 the government adopted Resolution № 594-A on the Organization and Implementation of Inspections, which was followed by Resolution №839-A adopted on 30.07.2015. These resolutions banned the implementation of any inspections with the exception of inspections ordered by the RA Prime Minister and inspections conducted by newly-formed inspection authorities, which were planned to be carried out based on sectoral inspection sheets. Resolution № 839-A was subjected to regular changes that would constantly postpone the implementation of inspections. The last change to the resolution established 31.12.2017 as the date, until which the inspections were to be postponed. This date did not change later. Therefore, inspection authorities have failed for years to carry out inspections due to the noted restriction or did carry out inspections solely on specific orders from the RA Prime Minister.

Reforms of inspection authorities had foreseen 7 inspectorates instead of the previously existing 18, which would work with new approaches and formats.

Currently the overall situation of reforms of inspection authorities is as follows:

Health Inspection Authority – Founded by the RA Government on April 27, 2017 based on a government resolution (№ 444-N) on the dissolution of the previous inspectorate and establishment of a new inspection authority. The members of the Governing Board of the Health Inspection Authority were appointed by Resolution № 6114-A of the RA Prime Minister. Government Resolution № 718-N of July 23, 2017 approved the work plan of the Governing Board of the Health Inspection Authority. From July through October of 2017, the Governing Board of the Health Inspection Authority held 7 meetings. On August 8, 2017, the Prime Minister (Resolution № 885-A) appointed the head of the inspection authority. The Prime Minister also appointed three deputy heads of the inspection authority. The list of occupations, profiles of civil service positions and estimate of annual maintenance costs were approved by the Board of the inspection authority.

The package of draft laws ensuring the regular activities of the Health Inspection Authority was approved by the government and submitted to the National Assembly of the Republic of Armenia.

The RA Government has approved a resolution on making changes and amendments to 21 government resolutions that regulate issues related to the activities of the newly-formed inspection authority. This phase includes works aiming to address property issues, filling of vacancies for the inspection authority as well as development of a methodology for risk-based inspections.

Environmental and Mining Inspection Authority – Founded on April 27, 2017 in accordance with a government resolution (№ 445-N) on the dissolution of the state environmental inspectorate and the state mining inspectorate and establishment of a new inspection authority based on these previous agencies. The members of the Governing Board of the Environmental and Mining Inspection Authority were appointed by Resolution №613-A of the RA Prime Minister issued on June 21, 2017. The work plan of the Environmental and Mining Inspection Authority was approved by Government Resolution № 754-N on June 29, 2017. The first meeting of the Governing Board of the Environmental and Mining Inspection Authority was held on June 30, 2017, during which the issue of the candidacy of the head of the authority was discussed and submitted to the Prime Minister. On July 7, 2017, the Prime Minister appointed (Resolution № 700-A) the head of the inspection authority. From July through October of 2017, the Governing Board of the inspection authority held three meetings. The Prime Minister also appointed three deputy heads of the inspection authority. The list of occupations and profiles of positions have been approved. All of the positions at the inspection have been almost entirely filled.

The package of draft laws ensuring the regular activities of the inspection authority was approved by the government and submitted to the National Assembly of the Republic of Armenia.

The RA Government has approved a resolution on making changes and amendments to a number of resolutions that regulate issues related to the activities of the newly-formed inspection authority. The government has approved inspection sheets for risk-based inspections. The draft of the methodology for risk-

based inspections, which incorporates sections on best international practice and current challenges in the sector in Armenia, has been submitted to the RA Government.

Development of acts regulating internal procedures for the activities of the inspection authority is underway in the current phase. The list of issues subject to inspections (also referred to as inspection questionnaire) has been approved by the RA Government before the merging of the two previous inspectorates occurred. The new questionnaire is currently in the process of development and approval by the RA Government. The questionnaire is expected to include such issues:

- Declaration of extraction volumes,
- Compliance of the mine operation with the methods, timelines and extraction volumes defined in the mining project,
- Process of social and economic expenditures. Up until now inspection of social expenditures defined by the mining contract and during the geological exploration process have not been part of the competencies of the inspection authority.

Fire and Technical Security Inspection Authority – A government resolution has been drafted to foresee the dissolution of 4 inspectorates (Fire and Technical Security, Urban Development, Transportation, and Energy) and create one inspection authority. The draft has been put into circulation amongst stakeholder agencies and feedback is currently being outlined. By February of 2018, the draft was in the discussion phase. Certain issues related to the establishment of the inspection authority were also discussed in the 19th and 20thmeetings of the Inspection Reforms Coordination Board chaired by the RA Prime Minister.

Legal Oversight Inspection Authority– the Legal Oversight Inspection Authority was dissolved by Government Resolution № 1384-N adopted on December 22, 2016 and the Oversight Service of the RA Ministry of Justice was formed. The requirements defined by the noted resolution were implemented in 2017. Upon the dissolution of the Legal Oversight Inspection Authority the functions of the newly-formed service were clarified, which are primarily related to bodies under the ministry and do not affect businesses.

RA Ministry of Finance Inspection Authorities for Audit, Licensing Terms and Requirements Control – The Inspection Authority for Audit Control does not currently function. However, some of the functions of this agency are implemented by the Inspection Authority for Licensing Terms and Requirements. Oversight for audits is planned to occur through the Auditing Chamber, on which a draft law has been prepared. The Inspection Authority for Licensing Terms and Requirements Control will be dissolved in the time frames set by the RA Law on Inspection Authorities, with certain functions of this inspection authority passing over to other inspection authorities if so required.

State Service for Food Safety and Geodesy and Land Inspection Authority of the RA State Committee of Real Estate Cadastre – Measures are currently being taken to meet the requirements of the RA Law on Inspection Authorities.

The progress of reforms shows that the efficiency of newly-established inspection authorities highly depends on the level of their independence (independence from policymaking authorities). In order to ensure the implementation of this principle as well as the phased improvement of the recently-introduced system, a legislative package of changes and amendments to the RA Law on Inspection Authorities, RA Law on Civil Service, RA Law on Remuneration of Officials Occupying State Posts, RA Law on Public Service, and RA Law on State Administrative Institutions has been developed, which was also discussed with stakeholder agencies and approved by the Inspection Reforms Coordination Board adjacent to the RA Prime Minister. The main objective is to give the inspection authorities a different legal status, which stems from the peculiarities of the activities of inspection authorities.

It is worth noting that the RA Health Inspection Authority has been assigned the functions of implementing oversight over protection of health of employees and ensuring safety norms in cases and procedures defined by law, including:

a. Implementation of oversight of the mandatory requirements established by RA law on the protection of the employees' health and safety at the workplace, including availability, maintenance and operation of protective measures for collective and individual occupational safety,

b. Review and analysis of causes of accidents and professional illnesses at the workplace in cases and procedures defined by law,
c. Organization of methodological assistance to employers and trade unions in ensuring occupational safety through the provision of relevant information and counselling rendering the implementation of labor laws and other legal acts,
d. Identification of deadlines for the elimination of violations of the requirements of RA legislation endangering the lives or health of employees defined in the expert conclusion or the act on recorded shortcomings, temporary termination of the activities of the organization or those of its separate subdivision in a legally defined manner if those shortcomings are not eliminated within a defined period.

Considering the fact that reforms of inspection authorities are still in progress, for instance, the packages of legal drafts regulating the activities of the Health Inspection Authority as well as those of the Environmental and Mining Inspection Authority have only recently been submitted to the National Assembly and have not yet been adopted, and in addition to that, methodologies on risk-based inspections are still in the process of development and inspection authorities de facto do not yet function, we believe that at this stage it is not feasible to identify and assess issues hindering the activities of these inspection authorities.

At the same time, it is not possible to identify the shortcomings that affect regular activities of inspection authorities. Undoubtedly, there are many issues in the sector. However, we believe recommendations should be submitted on the solutions of these issues only after these inspection authorities start operating.

9.3. OTHER ISSUES PERTAINING TO RESPONSIBLE MINING EXCLUDED FROM THE PRESENT ANALYSIS

The three above-mentioned topics that were analyzed were submitted by EITI MSG members. There are a number of other areas that need improvement in order to make progress in the sector of responsible mining. A brief summary of those is presented below:

- Better tariffs and rates for causing damage to natural resources (for example, water) and the environment in order to promote efficient technologies and the utilization of ecologically less harmful practices and technologies. Incentives should be created for investing in “best available techniques” that are recommended by the EU Directive on Mining Waste.
- Improvement of the fiscal regime through the elimination of costly subsidies in the calculation of royalties.
- Improvement of pollution standards, particularly for soil, which, unlike water and air pollution, do not comply with global practices.
- Improve the definition of affected communities, to more adequate coverage of communities affected by mining activities.
- Improvement of inspections of mining activities and identification of violations of environmental and mining obligations.
- Improvement of technical safety of mining waste management centers.
- Better legislation and capacities to manage the inherited tailing dams and mines and related air pollution issues.
- Increasing the level of transparency of mining companies and engagement of communities, which will change the often-encountered culture of secrecy.
- Improvement of the implementation capacities of recently introduced projects for mining waste management and closure.

These additional topics can be discussed in future papers.

9.4. Preliminary Roadmap on Three Issues Related to Responsible Mining

1. Improvement of economic assessment instruments: inclusion of the cost-benefit analysis (CBA)

№	Activity	Responsible Authority	Timeline
1.1	Making amendments to article 4 of the RA Mining Code (hereinafter Code), which in addition to expert reviews on mining engineering, environmental impact and technical security as fundamental provisions regulating issues related to the use and conservation of minerals, will also establish the implementation of an economic assessment through the application of a CBA. For this purpose, it will be necessary to make changes to articles 7 and 15 of the Code reserving the government the right to approve the order on the implementation of the economic assessment.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Nature Protection RA Ministry of Economic Development and Investments	In a short period - from six months to 1 year and mid-term- 1 to 2 years. A long-term period would entail 2 to 5 years.
1.2	In article 3 of the Code "main concepts used in the Code" should also include a cost-benefit analysis in the context of metal mining.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Economic Development and Investments	Short-term
1.3	Adoption of a regulatory act, particularly a government resolution, which will define the order of economic assessment for investment programs in the sector of minerals use and conservation.	RA Ministry of Economic Development and Investments RA Minister of Energy Infrastructures and Natural Resources	Short-term
1.4	Changes to Article 50 of the Code that prohibit mining of minerals for a project lacking an economic assessment conducted in a defined order.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Nature Protection	Short-term
1.5	Adoption of a resolution/resolution by the RA Minister of Economic Development and Investments or a protocol decision by the RA Government on approving a methodological guideline for CBA	RA Ministry of Economic Development and Investments	Short-term
1.6	Depending on the choice for the final model of the organization of the cost-benefit analysis, the following will be required: - Making amendments to the relevant government resolution clarifying statutory objectives and functions of the RA Ministry of Economic Development and Investments if it is determined to reserve that function to the state governing authority. - Or development of regulatory acts in case of engagement of investment companies, defining the procedure for the selection of investment companies, remuneration, and the methodology. -	RA Ministry of Economic Development and Investments	Short-term/Mid-term

1.7	Dependent on the priorities of criminal policy, establishment of provisions in the RA Code on Administrative Infringements or the Criminal Code for mining activities conducted without proper economic assessment. Moreover, proportionate civil liability should also be foreseen for legal entities and/or their leaders or persons with the opportunity to influence their decision-making process.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Nature Protection	Short-term
1.8	Adoption of a guideline on environmental property damage assessment or another guiding mandatory act for the calculation of damage. In addition, such standards can be defined by the state governing authority and further developed by the judiciary in the frameworks of specific cases. Trainings should also be organized for judges on the assessment of environmental damages.	RA Government, RA Ministry of Nature Protection, judicial authorities	Mid-term
1.9	Establishment of sanctions in civil law in relation to certain environmental damages. Considering the fact that those sanctions might be viewed as punitive in nature (big penalties, revoking permits, privileges, etc.), it will be necessary to define a corresponding judicial procedure.		

2. Environmental impact assessment and expert review, including social assessment

№	Activity	Responsible Authority	Timeline
2.1	The RA Government should define an EIA methodology in a separate resolution.	RA Ministry of Nature Protection	Short-term
2.2	Clarification of requirements for feedback received from different ministries during the implementation of expert reviews in a procedure defined by the RA Law on Environmental Impact Assessment and Expertise in order to prevent the submission of ambiguous or contradictory feedback.	RA Ministry of Nature Protection RA Minister of Energy Infrastructures and Natural Resources	Short-term
2.3	Amendments to the RA Law on Environmental Impact Assessment and Expertise defining additional standards that identify what are the essential changes in documents serving as basis for the granting of the mining permit that warrant the implementation of an EIA.	RA Ministry of Nature Protection RA Minister of Energy Infrastructures and Natural Resources	Short-term/Mid-term
2.4	Adoption of an RA Government resolution on approving the methodology for the cumulative environmental impact assessment.	RA Ministry of Nature Protection RA Minister of Energy Infrastructures and Natural Resources	Mid-term
2.5	Changes to article 18 of the RA Law on Environmental Impact Assessment (*content of environmental and human health impact assessment reports*) clearly stipulating that the content of the report must address the analysis of health impact, the potential negative impact of the project on human health, as well as consider the damages, etc.	RA Ministry of Nature Protection RA Ministry of Health	Short-term
2.6	Changes to the concept document approved by RA	RA Ministry of Nature	Short-term

	Government Resolution № 399-N of 09.04.2015 and to the order of implementation of an EIA and an expert review for activities foreseen by the noted resolution stipulating that if no relevant feedback is provided by the Ministry of Health within the given period, the EIA expert conclusion is rendered without addressing the health impacts or is not rendered at all.	Protection RA Ministry of Health	
2.7	Localization of the Good Practice Guidance on Health Impact Assessments developed by the International Council on Mining and Metals (ICMM) within the Armenian legislation recommending that the authorized body for Armenia's health sector be guided by said guideline when issuing conclusions or feedback.	RA Ministry of Health RA Ministry of Nature Protection	Short-term
2.9	Adoption of an RA Government resolution on the methodology for the assessment and compensation of damages to human health.	RA Ministry of Health	Mid-term
2.10	Establishment of legislative instruments that will exclude the negative common practice of incomplete disclosure of documents and withholding information during public discussions or inadequate addressing of issues raised during such discussions.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Nature Protection RA Ministry of Justice	Short-term

3. Monitoring of environmental, community and public health and occupational safety

№	Activity	Responsible Authority	Timeline
3.1	Amendments to the RA Law on Environmental Impact Assessment and Expertise that include provisions on environmental monitoring or adoption of the RA Law on Ecological Policy.	RA Minister of Energy Infrastructures and Natural Resources RA Ministry of Nature Protection	Short-term
3.2	Adoption of government resolutions on approving the annual program for joint state environmental monitoring and main monitoring indicators.	RA Ministry of Nature Protection	Short-term/Mid-term
3.3	Changes to the RA Law on Ensuring Sanitary-Epidemiological Security of the Population that define the types of health monitoring, areas of application of their results, as well as establishment of a requirement for the Health Inspection Authority to undertake necessary complex measures based on the results of the monitoring.	RA Ministry of Health	Short-term
3.4	Adoption of a resolution by the RA Prime Minister on the list of measures ensuring the enforcement of changes detailed in section 3.3.	RA Ministry of Health	Short-term/Mid-term
3.5	Inclusion of a requirement into the RA Law on Ensuring Sanitary-Epidemiological Security of the Population regarding the development and approval of annual monitoring programs as well as publication of monitoring	RA Ministry of Health	Short-term/Mid-term

	results to ensure public oversight.		
3.6	Adoption of an RA Government Resolution on Approving the Procedure for Human Health Impact Assessments. It is worth noting here that in their comments on the present research it was noted that the Ministry of Health was in the process of developing the draft RA Law on Health Care that would come to replace existing legislation in the sector. The new law aims to also regulate the relations within the public health sector, including the activities mentioned in section 3.4, 3.5 and 3.6.	RA Ministry of Health	Mid-term

4. The status of "civil society" in court as proper plaintiffs

№	Activity	Responsible Authority	Timeline
4.1	Make changes to chapter 26 of the RA Civil Procedure Code, which has already passed a first reading in the RA National Assembly, bringing down the requirement for 20 co-claimants and not reserving the right to represent collective claims in court exclusively to human rights NGO's.	RA Ministry of Justice	Short-term
4.2	To ensure the participation of civil society in the judicial process, it is also recommended to consider introducing regulations stipulated by German law into the Armenian legislation.	RA Ministry of Justice	Short-term
4.3	Amendments to the RA Law on Non-governmental Organizations removing the restriction for NGO's to represent the legal interests of only their beneficiaries in court.	RA Ministry of Justice	Short-term

ANNEXES

ANNEX 1. AUA CENTER FOR RESPONSIBILITY MINING COMMUNICATION WITH THE RA MINISTRY OF FINANCE AND THE RA MINISTRY OF ECONOMIC DEVELOPMENT AND INVESTMENTS REGARDING THE CALCULATION OF ROYALTIES

AMERICAN UNIVERSITY OF ARMENIA
Center *for*
Responsible Mining

10 February 2017

To Mr. Karen Karapetyan, the Prime Minister of the Republic of Armenia
cc: Mr. Vache Gabrielyan, Vice Prime Minister, Minister of International Economic Integration and Reforms
cc: Mr Vardan Aramyan, Minister of Finance

Dear Mr. Karapetyan,

Considering that the Government of the Republic of Armenia has approved the draft amendments to the RA Law on the Environmental and Natural Resource Use Fees and RA Tax Code on the 2nd of February, 2017 we provide the following observations, questions as well as the remarks on the possible impact of the proposed changes on Armenia's mining sector within the context of Armenia's mining fiscal regime, prepared by Mr. Matt Genacsi, an international expert on mineral taxation.

Please be informed that the Center for Responsible Mining of the American University of Armenia is implementing the Mining Legislation Reform Initiative, the aim of which is to support the improvement of the mining legislative and regulatory framework in Armenia. We are ready to support with technical expertise and researches on international best practices related to mining legislation.

For questions and clarifications please contact me, Alen Amirkhanyan, tel.: 077 21 50 39, e-mail: alen@aua.am:

We can organize a video call with the international expert if needed.

Alen Amirkhanyan,
Director of AUA Center for Responsible Mining

The revision to the rules regarding the calculation of the mineral royalty offers an opportunity for the Government to strengthen the international competitiveness of Armenia's mining sector while also (1) reducing the administrative burden on various Government agencies, (2) improving tax and royalty compliance, and (3) ensuring that Armenia earns a fair return on its valuable mineral assets for generations to come. We are encouraged by some of the decisions that the Government has made, including the apparent decision to maintain a variable component to the royalty, but at the same time we are concerned that some other proposed changes would benefit from explanation and perhaps some minor refinements.

In an effort to be as constructive as possible, and to make sure that we (and together with other stakeholders in Armenia's mineral sector) fully understand the proposed system, we have framed this short memorandum as a series of questions and a few suggestions for consideration.

The proposal increases the maximum deviation between the LME price and the sales value (for royalty purposes) from 90% to 80%. What is the impetus for this change?

Our understanding of the existing law is that the royalty on sales of concentrate is based on the sales value, but that this sales value may not be less than 90% of the LME value of contained metal. We believe that having such a floor, set at a fixed percentage of a transparent price that is not subject to manipulation, is a positive. A lower floor will maintain an index-linked limitation on the royalty basis calculation, which is positive, but it will also have the effect of significantly lowering the effective royalty rate likely to be paid by many companies.[42] Our question is whether this lowering of the floor is based on a desire to simply lower the effective royalty rate (e.g., because of a belief that the royalty burden is simply too high), or whether it is based on an argument that the 90% floor did not adequately account for the difference between realized sales values and the calculated LME price of metal contained in concentrate. If the 90% floor was determined to be inadequate, what evidence was presented to make this argument? Has it always been inadequate, or has there been some change in the fundamental economics of mines in Armenia that warranted such a change? We understand that previously, the floor was set at 70% of LME prices, before being raised to 90%. The repeated shift in this floor suggests that it may be viewed as a means of changing the royalty burden without changing the royalty rates. Is there any merit to this hypothesis? If so, we would argue that this is an inappropriate method of periodically adjusting the royalty and that it would be more transparent to clearly define the royalty base and, where necessary, to make any changes to the royalty rate instead of the base.

Has the Government considered simplifying the royalty base calculation and simply using LME prices (or even some percentage of LME prices) for the calculation of the royalty base?

While we expect that many producers will simply end up paying royalties based on the calculated 80% of LME prices, this is not in fact the royalty base. The royalty base for concentrate is sales value, suggesting that the government should be auditing sales values. We understand that the revisions anticipate that the Government will also release separate rules relating to maximum TC/RC charges based on international benchmark[43]s. The 80%

[42] We say "likely" because the basis for the royalty remains the sales value. Thus, where sales value deviates by less than 10% from the LME price, the change should have no effect on the effective royalty rate. However, based on our understanding of how royalties have been computed to date and of the incentives that the 90%/80% floor creates for both companies and government administrators, we expect it is likely that the 90%/80% floor will be close to a *de facto* royalty base.

[43] Selection of appropriate benchmarks would require some study, but there are several sources of information that may prove to be promising. For some minerals, treatment and refining benchmark charges have traditionally been agreed between miners and smelters on an annual basis and these benchmarks are published in various outlets. For instance, the International Zinc Association organizes an annual conference at which benchmark TC/RC prices are set. Similarly, copper TC/RC benchmarks are negotiated annually by major smelters in China and Japan. Where any such negotiated annual benchmark prices are available and widely used within the industry, they could serve as the basis for a stipulated allowable cost for royalty purposes. Major producers have in recent years been forcing a shift away from the use of annual benchmark pricing, which has spurred increased interest in the development of regularly published price indexes for treatment and refining costs: Metal Bulletin Copper Concentrates Index is a twice-monthly reference price for TC/RC in the Asia-Pacific market with prices for refining of minerals published as well; Commodities Research Unit publishes TC/RCs for copper, lead and zinc, among other data; the Baltic Exchange

price floor would only come into effect where reported sales values, less allowable TC/RC and other charges, are lower than the 80% of LME floor. Is our understanding of the interaction of the TC/RC and other deduction benchmarks and the 80% LME rule correct?

If so, is this multi-step process worth the added administrative complexity and administrative burden? Simply moving to LME prices (or a fixed percentage thereof) would simplify compliance and oversight. Language in the amendment package suggests that the Government is aware that using contract values as the royalty base may be practically challenging and that estimated values are likely to be used in practice. Why not eliminate this unnecessary complexity? A number of countries use published index prices (such as LME prices) for the royalty base calculation, and there are strong arguments for doing so.

Use of LME prices as the royalty base may face some opposition from industry, but we would argue that such an approach is not significantly different from the current system's reliance on an LME-based price floor, and has the added benefit of being simpler and more transparent than the current two-step system. If the Government accepts this logic, the next question would be whether to use the LME price of contained metal or (mimicking the current approach) some percentage of the LME price. Each approach is equally transparent and avoids problems related to the mispricing of related-party sales (transfer pricing) and other enforcement challenges, and they can be made to be equivalent through an adjustment to the royalty rate.

We recognize that LME prices and concentrate prices are not perfectly correlated, but believe that the risks this presents are more than offset by the simplicity and transparency of using an index price as the royalty base. If there is concern about this imperfect correlation between concentrate prices and metal prices, then the government could define the royalty base as the LME price less a defined TC/RC charge. There are available international indices for such charges. This would be more complex that use of just the LME price, and thus a second-best option, but it would be similarly transparent and insulated from manipulation when using an adequate TC/RC index.

In short, we do not think the Government benefits from maintenance of a two-stage calculation, where the royalty base is sales revenue subject to both an overall floor and a cap on specified deductions. Taking the sales revenue step out of the calculation altogether and relying simply on the index price that is currently used to set the floor (LME prices of some percentage thereof), or using the floor (100% of the LME price) less an index-based TC/RC deduction, would be much simpler and more transparent and not substantially different in economic effect.

Has the government considered revisions to the variable royalty mechanism?

We understand that the revised royalty system will maintain the variable component, calculated using a profit-based formula and applied against the royalty base (i.e., sales). Particularly in light of Armenia's relatively low tax rate, we believe it is important that the fiscal regime maintain some type of variable mechanism that increases during times of higher mineral rents and automatically decreases during periods of lower profits. However, our discussions with government and company officials suggest that Armenia's profit-based royalty rate mechanism may not be working as intended and is subject to significant administrative challenges. There are other approaches that could be considered. For instance, the variable royalty could be tied to changes in index prices for the underlying minerals. Such an approach is more common for petroleum fiscal regimes, but may be used for minerals with observable market prices as well. For instance, Queensland and Zambia apply a variable royalty rate on certain minerals that rises as prevailing market prices pass specified thresholds. Application of such an approach to poly-metallic mines may face added complexities, but we would suggest that these complications are likely to be less challenging that those of the current system, which relies on profit calculations that are subject to manipulation and require significant oversight.

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publishes shipping market information that may be adaptable (Guinea's mining law, for instance, makes specific reference to the "Baltic Exchange Capesize Index Route C3- Tubarao/Qingdao" in its definition of the base for the Iron Ore royalty; Platt's offers pricing reports on dry freight shipping as well as TC/RCs for some minerals; WoodMac's metals concentrate service offers TC/RC prices and forecasts; the Shanghai Metals Market also publishes TC/RCs for some minerals; the Mining Cost Service may provide indexes for various refining, treatment and transport charges, though these are focused on the US. and Canadian markets.

What is the purpose of the retroactive royalty relief?

We understand that the draft would allow companies subject to disputes and penalties regarding past royalties will be allowed to apply the new 80% rule. In general, we find it troubling that companies will be allowed retroactive royalty relief. What is the purpose of this relief? What is the anticipated revenue effect? How many companies does this retroactive royalty relief apply to? Only companies that were subject to fines and penalties for underpayment, or will companies not subject to fines and penalties previously be allowed to revise past royalty calculations? The proposal refers to installment plans. Will installment plans include provision for a payment of interest on overdue amounts?

REPUBLIC OF ARMENIA

MINISTRY OF FINANCE

DEPUTY MINISTER

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02/2-4/7192-17 2017-04-26
To MR. ALEN AMIRKHANIAN, DIRECTOR,
AUA CENTER FOR RESPONSIBLE MINING
(Address: Marshal Baghramyan 40, Yerevan)

Dear Mr. Amirkhanian,

In execution of the RA Prime Minister's Instruction No 01/05.1/992-17, dated as of March 29, 2017, the RA Ministry of Finance, has discussed with line ministries the Letter you have submitted, relative whereto we would like to convey following:

In general, the Government of the Republic of Armenia highly appreciates the standpoints of Mr. Matthew Genasci in relation to the taxation of the mining sector in the Republic of Armenia. Review of the Letter shared reveals that two groups of comments are proposed by the American University of Armenia. The first group includes per se questions relative to justifications on the RA Laws on "Making amendments to the Republic of Armenia Tax Code" and "On making amendment and supplement to the RA Law on Nature Protection and Nature Utilization Payments", while the second group includes recommendations on improving the mechanism of applying environmental tax to metal minerals.

In relation to justifications on the RA Laws "On making amendments to the Republic of Armenia Tax Code" and "On making amendment and supplement to the Republic of Armenia Law on Nature Protection and Nature Utilization Payments", we hereby convey following:

Replacing the 90 percent threshold set forth by the RA Tax Code with 80 percent did not aim at reducing the actual royalty base, which is explained as follows:

As righteously noted in the Letter, the first method of determining the royalty application base in the Republic of Armenia is the contract value of sale of metal concentrate. As you may know, this contract value depends on the international prices of metals contained in the concentrate, the quantities of metals contained in the concentrate and paid for (qualitative indicator of the concentrate), the level of processing and refinement, the transportation costs and other internationally applicable deductions (the quantity not paid for or deducted, transportation franchise, etc.). Accordingly, the actual values of the listed variables persisting on the market of concentrate at a specific time point shall determine to what extent the minimum threshold of the royalty base (earlier defined as 90 percent of the cost of metals contained) is commensurate to the concentrate sale contract price being determined under specific market conditions. Studies conducted by the Government of Armenia show that in case of copper concentrate which has the biggest share among the types of concentrates being produced in Armenia under current market conditions[1], 90 percent is not a

[1] The price of one ton of copper - 5800 USD, average content in the concentrate - 25%, TC for one ton - 90 USD, RC for one pound - 0,09 USD, non-payable part - 1 unit, costs associated with transportation - around 60 USD, based on key assumptions.

commensurate value for determination of the lowest threshold. Moreover, it is unfair when the price for copper per 1 ton is in the range of 4500-4800 USD. Henceforth, we have calculated the equivalent interchangeable threshold in existing conditions, and it is in the bounds of 80 percent of the cost of metals contained in the copper concentrate.

To illustrate more on this, following examples can be considered (the numbers are conditional; however, they are quite close to the reality):

		90%	80%
1	Copper price (USD)	4500	4500
2	Copper content	28%	28%
3	Penalty deduction	1%	1%
4	TC - processing cost USD/ton (including transportation cost)	160.4	160.4
5	RC - refinement cost (for 1 pound)	0.1	0.1
6	Concentrate price (including the above deductions) for 1 ton	997	997
7	Concentrate price per Law (USD) - (28%)* International price *90% (80%)	1,134	1,008
8	Price gap - (9/8)*100	13.8%	1.1%
9	Fixed part of the royalty	4.0%	4.0%
10	Calculated royalty - exclusive of the profitability component (9+9*8)	4.6%	4.0%
11	Earnings from sale of concentrate (USD) (6)	997	997
12	Expenditures per 1 ton (USD)	850	850
13	Profit (USD) (11-12)	147	147
14	Profitability (13/11*100)	14.7%	14.7%
15	Adjusted earnings from sale (USD)	1,134	1,008
16	Adjusted profitability (15-12)/15*100	25.0%	15.7%
17	Royalty (inclusive of profitability) (9+14*12.5%)	5.8%	5.8%
18	Royalty calculated (inclusive of profitability) (10+16*12.5%)	7.7%	6.0%
19	Royalty gap (19/18*100-100)	31.5%	2.8%

As one can draw from the information presented in the above example, the aim of the mentioned legal initiatives is to establish a fair tax burden in a situation of drop of the international prices for concentrate, which should also contribute to further growth of the sector, since the calculations made reveal that the methodology of royalty calculation defined in the frame of existing legal regulations also creates serious risks in terms of continuing one's economic operations in the sector.

As regards the justifications to give a retroactive effect to the above laws, we would like to underline that the application of recommended 80 percent shall not have a retroactive effect. The drafts give retroactive effect only to the provision on exemption from fines and penalties calculated in case of recalculations applied by the tax authorities before 2016 inclusive. This is explained by the fact that the relevant provision of the Republic of Armenia Law on Nature Protection and Nature Utilization Payments sets that the recalculation is the function of the tax authority. Hence, the tax payer in any case, even when the actual contracting value is lower than the 90 percent of the international price, shall have no obligation to make a recalculation.

We deem it worth to underline that the approaches proposed in the drafts have been thoroughly discussed by the business operators of the sector, and the option proposed by the drafts was considered acceptable. Therefore, it is unlikely that it would be problematic for the businesses operating in the sector.

Regarding the recommendations for improving the mechanism of environmental taxation of the metal ore

In relation to the recommendation to calculate the royalty only on the basis of the LME, we deem it worth noting that in Armenia the royalty is paid not only for high profitability generated from the sale of mineral ore and the products from processing thereof, but it aims also to compensate the use of metal ore (meaning that it has a character peculiar to the environmental fee). In this regard, the recommendation to calculate the royalty on the basis of international prices only will come into conflict with the general objectives of the royalty.

We should also note that the existing two-tier system of royalty calculation aims at exclusion of potential cases of transfer pricing. In this regard, despite the fact that according to the submitted Letter, the possibilities of transfer pricing shall be limited in case of application of the calculation of royalty on the basis of LME, however, one should acknowledge that application of the LME prices may create certain risks for managing whereof certain mechanisms are presented (to apply a certain percentage of the LME or a difference between the LME and the established margin of processing).

Henceforth, we believe, that the approach to calculate the royalty only on the basis of LME prices needs further discussion, given also that the recommendation on alternative approach to apply a certain percent of the LME price or the approach to eliminate the margin of processing from the value determined by the LME price, in fact, underlies the calculation methodology defined in the existing law.

As to the recommendation to introduce a variable component in the royalty calculation mechanism, given the fact that the objective of the proposed recommendation is to calculate the royalty at a higher rate in a situation of high profitability, we believe, that the proposed recommendation can be discussed, since the application of the proposed model may allow supporting the businesses operating in the sector at the expense of additionally collected royalties in a situation of drop of market prices in the future.

Summing up, I would like to extend by gratitude to you and the Center you lead, for sharing with us your viewpoints and positions to the benefit of the Republic of Armenia and for showing a constructive practice of discussing. We are always ready to ensure our participation in technical discussions on any issue relative to the sector.

Sincerely,
Davit Ananyan

THE RA DEPUTY MINISTER OF ECONOMIC DEVELOPMENT AND INVESTMENTS

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No. 05/11.2/2827-17

23.03.2017

Your No.

TO: ALEN AMIRKHANYAN

DIRECTOR OF

THE CENTER FOR RESPONSIBLE MINING

AMERICAN UNIVERSITY OF ARMENIA

Dear Mr. Amirkhanyan,

The RA Ministry of Economic Development and Investments highly appreciates Mr. Matt Genasci's standpoints in relation to taxation problems of the mining sector in the Republic of Armenia, as well as his valuable consultancy recently provided on a number of important issues that are available in the sector.

See below the clarifications and justifications underpinning the recent legislative regulations for royalty application, being initiated by the Government of the Republic of Armenia:

1. Regarding justifications for defining the royalty computation base as 80% of the cost of metals contained in concentrates:
   Replacing 90% threshold, as prescribed under the Law, by 80% has no purpose to reduce the actual royalty base. As truly mentioned in the letter, the first method of determining the base for royalty application in the Republic of Armenia is the contractual value of sales of metal concentrates. As you know, the aforementioned contractual value is contingent on the international price for metals contained in concentrate, the quantity of paid metals contained in concentrate, the level of treatment and refining costs, transportation costs and other reductions applicable in the international practice (non-paid or reduced quantity, transportation franchise, etc.). Accordingly, in the markets of sales of concentrates at the specific time, the actual values of stated variables determine to what extent the minimum threshold of the royalty base (in the past being set at 90% of the cost of contained metals) is equivalent to the contractual value of sales of the concentrate, asset under specific market conditions. Our analysis suggests that for the copper concentrate having the maximum weight as compared to the concentrates produced in Armenia,

90% for determining the minimum threshold under the current market conditions[1] is a non-equivalent value. It is even more unfair, when the prices for copper are in the range of 4,500-4800 USD. Accordingly, we have calculated the replaced threshold under the current conditions, and it is in the range of 80% of the value of metal contained in the copper concentrate. The change made has no purpose to reduce the burden of royalty, but rather to restore justice that has been violated over the recent years because of the low level of copper price. We hope that there will not be any need to further reduce the new thresholdbeing set; however, we can easily calculate that, if the price for copper is 4,000 USD, the equivalent and fair threshold should be 75%,under otherwise equal conditions

2. We assert Mr. Genasci's perception, as per which the minimum threshold of 80% being set for the value ofmetals contained in the concentrate (as calculated by LMI prices) is applicable only in case when the sales value, as defined under the contract,will be below the stated one. In case it is higher, the royalty base will be the actual value receivedfor sales of the concentrateaccording to the contract.
Hereby, we would like to clarify that this is not a new approach, and that it has been defined also under the effective Tax Code. Mr. Genasci's comment, according to which the advisability of completely giving up on "the contractual sales value as a royaltybase" approach might have been discussed to maintain the simplicity of tax administration, is subject to consideration.Sofar, the statement of question has not been discussed from this perspective. Understandable is also the recommendation made by Mr. Genasci on an alternative approach of applying a certain percentage of LMI price, which does not significantly differ from application of the currently defined approach with regard to the minimum threshold.

3. The approach of subtracting the processing margin from the value, beingset by the LMI price, as stated by Mr. Genasci, is, in fact, on the basis of the main method currentlydefined under the Law. Perhaps, it would be possible to make some further clarification by means of publishing one aggregate value of"processing margin"; however the approach defined under the amendment to the current Law is also realizable. The number of enterprises producing metal concentrate in the Republic of Armenia is not more than ten, and, in course of several discussions with finance officers of such organizations, the approaches required by the current legislative amendments have been discussed in details. We think that it is not problematic. In the meantime, once again we would like to confirm that we understand the advantage

[1] In view of the main presumptions that the price per ton of copper is 5,800 USD, average grade in concentrate – 25%, TC per ton – about 90 USD, RCper pound – 0.09 USD, the non-paid share – 1 unit, costs connected with transportation – about 60 USD.

4. The second component of royalty, beingset on a revenue basis, is still in effect. It has not been changed. We do not think that the current administration makes the use of the second revenue-based royalty component impossible. Perhaps, Mr. Genasci's concern regarding the riskiness of application of the revenue component has a ground in terms that the difficulties in defining the profit may be a subject of dispute between economic entities and tax bodies. However, one should bear in mind that enterprises in the mining sector also pay profit tax, and only because of it, both they and the tax bodies have to calculate the amount of taxable profit. From this perspective, one can substantiate that there are no justifications for modifying the second component. Tax bodies must strengthen their capacities tocontrol, and enterprises – their skillsof tax registration.

5. No reverse power has been given to the rule of applying 80%. It has been applied since 2007 (for the first time this rule will be applied in April, 2018, to compute the royalty for 2017). The justifications for applying it for 2017 are presented above, and, therefore, those will not be repeated here. Reverse power has beengiven only for fines and penalties calculated in case of recalculations applied by tax bodiesuntil 2016, inclusively. The latter's justification is as follows: as per an appropriate provision ofthe Republic of Armenia Law "On Nature Protection and Nature Utilization Payments", recalculationis defined as thetax body'sfunction. This means that taxpayer is not obliged to recalculate even if the actual contractual value is below 90% of the international price for concentrate. The Republic of Armenia Law "On Taxes" defines that penalties shall be imposed in the event, when, in view of theobligation of"self-declaration", taxpayer has failed to fulfill own obligation and has under-declared the taxes. It is noticeable that, in this specific case it is not apparent that the penalties should be imposed. As prescribed under the Republic of Armenia Law "On Taxes", in case there are ambiguities, they shall be applied in favor of taxpayer. This rule also requires that no penalty should be imposed in such situation. However, in some cases, given theconsiderationsregarding"caution", tax bodies have calculated also penalties and, consequently, transferred the dispute to judicial bodies. Hence, that provision incorporated in the Law hasnotso much a meaning and implication of forgiving, but ratherclarification. Thus, judicial bodies will be also free from the burden of considering such cases.

We hope that the stated clarifications have addressed all the questions broached by Mr. Genasci and clarified the arguments underpinning the RA Government decrees. In the meantime, we express willingness to submit more clarifications, should they are deemed necessary.

Once again, we would like to assert that the statements of questions pointed out by Mr. Genasci will be taken into account in further phases of royalty policy development and will contribute to having more effective decisions.

Regards,

Tigran Khachatryan

Executed by Samvel Paranyan, Department of Industry Development

ANNEX 2. DRAFT LAWS OF THE REPUBLIC OF ARMENIA ON MAKING SUPPLEMENT TO THE RA MINING AND TAX CODES AND THE RA LAW ON THE PROTECTION OF ECONOMIC COMPETITION AND LOCAL SELF-GOVERNMENT

Only Armenian version is available.

ANNEX 3. JUSTIFICATION FOR THE NECESSITY TO ADOPT DRAFT LAWS ON MAKING SUPPLEMENT TO THE MINING AND TAX CODES AND THE LAW ON THE PROTECTION OF ECONOMIC COMPETITION AND LOCAL SELF-GOVERNMENT

Only Armenian version is available.

ANNEX 4. EITI LEGAL AND INSTITUTIONAL STUDY FRAMEWORK

Overview

The scope and content of the EITI Legislative and Institutional Framework Review is based on the EITI standard, which requires disclosure of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the state in managing the sector. The EITI requirements related to a transparent legal framework and award of extractive industry rights include:

- Legal framework and fiscal regime,
- License allocations,
- Register of licenses,
- Contracts, and
- Beneficial ownership (in cooperation and coordination with an expert provided by the EBRD who will lead beneficial ownership legislative and institutional analysis from global best practice perspectives and preparation of the beneficial ownership roadmap).

Armenian regulatory and institutional framework with respect to all of the areas listed above will be reviewed to identify existing gaps and loopholes that could create obstacles in effective enforcement of the EITI requirements.

The scope of this review will also cover a broader analysis and assessment of mining legislative and institutional framework from **responsible mining** perspectives in line with the EITI requirements and key priorities outlined in the **MSG Work Plan 2017-18** for Armenia.

Deliverables

- Draft Legislative and Institutional Review and Action Plan, to be prepared by 13th October 2017, which will include both analysis and reform action plan on legislative and institutional framework.
- Final Legislative and Institutional Review and Action Plan, to be prepared by November 3, 2017, which will incorporate MSG and Secretariat feedback.

Methodology

The methodology to be employed in preparation of the EITI Legislative and Institutional Framework Review and Action Plan includes:

- Review all relevant aspects of the Armenian legislative and institutional framework in relation to the EITI requirements, identifying gaps, weaknesses, contradictions, etc.;
- Comparison between Armenian legislation and international best or effective practice that would benchmark recommendations;
- Consultative input from MSG members and other stakeholders.

The analysis will be comprised of six major directions expounded below and the Action Plan.

I. Legal Framework and Fiscal Regime

EITI implementing countries are required to provide a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies. With this regard, the legislative and institutional review will look into domestic framework to identify whether the requirement can be enforced or whether changes need to be done to ensure the enforcement of this requirement. Considering the fact that data disclosure

for Armenia covers the fiscal year (FY) 2016 and possibly FY 2017[44] the analysis will specifically look into any legal barriers to enable the data disclosure retroactively. Institutional framework and existing capacities will be mapped and assessed to make sure the expected changes are feasible to be enforced in the domestic context.

Domestic legal and institutional mechanisms of **revenue collection** will be reviewed to identify and assess potential obstacles to accessibility of tax/revenue data, including confidentiality and time limits will be the primary focus of the analysis. The data will include the following:

- Royalties
- Income tax
- Profit tax
- extra-budgetary funds/revenues
- local government revenues (sub-national payments)
- In-kind revenues
- Infrastructure provisions and barter arrangements
- Transportation revenues
- Level of disaggregation of revenue data (by marz, by company)
- Data sources for government revenues and company payments.

The following aspects with respect to data disclosure will be reviewed and assessed:

- Data timeliness, quality and assurance,
- Method of reporting(collecting) government and company data (feasibility of online, electronic reporting with adequate security provisions),
- Methodology on reconciling government and company data, and
- Availability of data in open data format (xls or csv) and publicize its availability (req. 7.1c; to also be addressed in Communications Strategy)

The legal review will examine the possibility of including 2017 data in the 2018 EITI report, taking into account the time limits governing the availability of annual information and the need for legal acts, as well as restrictions on imposing retroactive effect.

With respect to data disclosure on **revenue allocation**, the following aspects of the legal and institutional framework will be reviewed and analyzed:

- Distribution of mining sector revenues (cash or in-kind); if not reflected in national budget allocation must be explained citing relevant financial reports;
- Subnational transfers (source of funds, quantity, and process); specifically review law(s) requiring compensation of impacted communities; assess legally specified list of impacted communities with alternative methods of identifying impacted communities (e.g., distance from mining operation, etc.);
- Allocation of locally generated revenues from the mining sector (esp. land and property taxes);
- Discussion of revenue management from the mining sector focused on transparency, accountability, sustainability, and resource dependence.

Legislation to be reviewed includes but is not limited to the following:

- RA Constitution
- RA Law on Securities Market
- RA Law on Banking Secret
- RA Law on Banks and Banking Operations
- RA Mining Code
- RA Law on Wastes
- RA Law on Tariffs for Compensation of Environmental Damage Caused to Flora and Fauna
- RA Law on Environmental and Natural Resource Use Fees
- RA Law on Inspections
- RA Law on Administrative Procedures
- RA Law on Local Self Government Bodies

[44] Note that the Scoping Study will make recommendations on whether MSG should include both or only one of these years depending on the quality of data available when the Independent Administrator will be preparing the 2018 report, which is expected to be in the first half of 2018.

- RA Law on Preventing Money Laundering and Financing of Terrorism
- RA Law on Registering Legal Entities and State Accounting of Legal Entities' Separated Divisions, Institutions and Entrepreneurs
- RA Tax Code
- RA Law on Freedom of Information

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities),
- RA Ministry of Nature Protection,
- RA Ministry of Energy Infrastructure and Natural Resources,
- RA Ministry of Finance (State Revenue Committee),
- RA Ethics Commission for High-ranking Officials,
- RA Central Bank
- RA State Cadastre Office
- RA State Revenues Committee
- NGOs engaged in legislative issues and the private sector.

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

International conventions and global initiatives to be reviewed include:

- OECD global forum on tax transparency will be considered throughout the analysis
- OECD Multinational Convention on Base Erosion and Profit Shifting,
- International Accounting Standard (IAS) 24 on Related Parties Disclosure
- Convention on Mutual Administrative Assistance in Tax Matters
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Base Erosion and Profit Shifting)
- Bilateral treaties on double taxation signed by Armenia

II. Allocation of Mineral Rights (Licenses)

Implementing countries are required to disclose the following information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report:

- Description of the process for transferring or awarding the license;
- Technical and financial criteria used;
- Information about the recipients of the license that has been transferred or awarded, including consortium members where applicable; and
- Any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards.

The analysis will review domestic legal framework to identify whether current legal tools allow that the information set out above is disclosed for all license awards and transfers taking place during the fiscal years 2016 and 2017 that will be covered by the EITI Report. The analysis will identify any significant legal or practical barriers, including institutional capacity gaps preventing such comprehensive disclosure to be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

The MSG can include additional information on the allocation of licenses in the EITI Report, including commentary on the efficiency and effectiveness of licensing procedures, which will be taken into consideration during this analysis.

Legislation to be reviewed includes but is not limited to:

- RA Constitution
- RA Mining Code
- RA Law on Environmental Impact Assessment and Expertise
- RA Law on Wastes
- RA Law on Environmental Monitoring
- RA Law on Special Protected Areas of Nature

- RA Law on State Regulation of Technical Safety
- RA Law on Environmental and Natural Resource Use Fees
- RA Land Code
- RA Law on Freedom of Information

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities),
- RA Ministry of Nature Protection,
- RA Ministry of Energy Infrastructure and Natural Resources,
- RA Ministry of Finance (State Revenue Committee),
- RA Central Bank (State Depositary)
- RA State Cadastre Office
- NGOs engaged in legislative issues and the private sector.

International conventions and global initiatives to be reviewed include:

- OECD global forum on tax transparency will be considered throughout the analysis
- OECD Multinational Convention on Base Erosion and Profit Shifting,
- International Accounting Standard (IAS) 24 on Related Parties Disclosure
- Convention on Mutual Administrative Assistance in Tax Matters
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Base Erosion and Profit Shifting)
- Bilateral treaties on double taxation signed by Armenia

III. Register of Licenses

The term license, in the EITI context, refers to any license, lease, title, permit, contract or concession by which the government confers on a company or individual rights to explore or exploit mineral resources. The analysis will look into the relevant domestic laws and regulations to identify any obstacles that prevent the country to maintain a publicly available register or cadaster system with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report:

- License holder
- Where collated, coordinates of the license area. Where coordinates are not collated, the government is required to ensure that the size and location of the license area are disclosed in the license register and that the coordinates are publicly available from the relevant government agency without unreasonable fees and restrictions. It should be noted that EITI Report should include guidance on how to access the coordinates and the cost, if any, of accessing the data. The EITI Report should also document plans and timelines for making this information freely and electronically available through the license register
- Date of application, date of award and duration of the license
- In the case of production licenses, the commodity being produced.

It is expected that the license register or cadaster includes information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold (for more details see Chapter V on Beneficial Ownership). The analyses will look into any significant legal or practical barriers in the domestic framework preventing that such comprehensive disclosure is documented, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.

In cases if such registers or cadasters do not exist or are incomplete, the analysis will identify and disclose any gaps in the publicly available information and document efforts to strengthen these systems.

Legislation to be reviewed includes but is not limited to:

- RA Constitution
- RA Mining Code
- RA Law on Environmental Impact Assessment and Expertise

- RA Law on Wastes
- RA Law on Environmental Monitoring
- RA Law on Special Protected Areas of Nature
- RA Law on State Regulation of Technical Safety
- RA Law on Environmental and Natural Resource Use Fees
- RA Land Code
- RA Law on Freedome of Information

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities)
- RA Ministry of Nature Protection
- RA Ministry of Energy Infrastructure and Natural Resources
- RA Ministry of Finance (State Revenue Committee)
- RA Central Bank (State Depositary)
- RA State Cadastre Office
- NGOs engaged in legislative issues and the private sector

International conventions and global initiatives to be reviewed include:

- OECD global forum on tax transparency will be considered throughout the analysis
- OECD Multinational Convention on Base Erosion and Profit Shifting,
- International Accounting Standard (IAS) 24 on Related Parties Disclosure
- Convention on Mutual Administrative Assistance in Tax Matters
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Base Erosion and Profit Shifting)
- Bilateral treaties on double taxation signed by Armenia

IV. Contracts

According to EITI requirements implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of minerals.
The analysis will review relevant domestic laws and regulations to identify whether there are provisions related to disclosure of contracts and licenses that govern both the exploration and exploitation of minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway.

The term “contract” in EITI context means full text of any:

1. Contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of mineral resources;
2. Addendum or rider which establishes details relevant to the exploitation; and
3. Alteration or amendment to the documents described in Points 1 and 2.

The term “license” in the EITI context means full text of any:

1. License, lease, title or permit by which a government confers on a company or individual rights to exploit mineral resources;
2. Annex, addendum or rider that establishes details relevant to the exploitation rights or the execution thereof; and
3. Alteration or amendment to the documents described Points 1 and 2.

Legislation to be reviewed includes but is not limited to:

- RA Constitution
- RA Mining Code
- RA Civil Code
- RA Law on Administrative Procedures
- RA Law on Freedom of Information

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities)
- RA Ministry of Nature Protection
- RA Ministry of Energy Infrastructure and Natural Resources
- NGOs engaged in legislative issues and the private sector

International conventions and global initiatives to be reviewed include:

- OECD global forum on tax transparency will be considered throughout the analysis
- OECD Multinational Convention on Base Erosion and Profit Shifting,
- International Accounting Standard (IAS) 24 on Related Parties Disclosure
- Convention on Mutual Administrative Assistance in Tax Matters
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Base Erosion and Profit Shifting)
- Bilateral treaties on double taxation signed by Armenia

V. Beneficial ownership

According to EITI, the term "beneficial owner" means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity. An appropriate definition of the term, however, needs to be suggested in the local context in line with the EITI reference and in consideration of international norms and relevant domestic laws, as well as considering domestic legal and institutional capacities which will further enable the disclosure of the beneficial owner. The threshold of the ownership should also be decided locally and fixed in the relevant legal provisions. For both of these issues the project local and international experts will analyze existing domestic legislative and institutional framework, international conventions and agreements signed by Armenia, as well as ongoing initiatives related to beneficial ownership and disclosure of related data to identify gaps and obstacles for meeting EITI Standard on BO.

EITI recommends that implementing countries maintain a publicly available register of the beneficial owners of the corporate entities that bid for, operate or invest in extractive assets, including the identities of their beneficial owners, the level of ownership and details about how ownership or control is exerted. This relates to legal entities which conduct or have applied to access rights for both mineral exploration and extraction. The analysis will look into existing domestic legal and regulatory framework to identify whether the beneficial ownership information is incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. The institutions to be reviewed shall include the State Registry and Depository.

The project experts' team will coordinate the domestic legislative and institutional framework review with the work of an international expert recruited by the European Bank for Reconstruction and Development (EBRD) who will evaluate Armenia's BO legislation and institutional capacity from international best practice perspective and develop a roadmap for ensuring compliance with EITI Standard 2016.

Legislation to be reviewed includes but is not limited to this:

- RA Cnstitution
- RA Law on Securities Market
- RA Law on Banking Secret
- RA Law on Banks and Banking Operations
- RA Mining Code
- RA Law on Wastes
- RA Law on Tariffs for Compensation of Environmental Damage Caused to Flora and Fauna
- RA Law on Environmental and Natural Resource Use Fees
- RA Law on Inspections
- RA Law on Administrative Procedures
- RA Law on Local Self Government Bodies
- RA Law on Preventing Money Laundering and Financing of Terrorism
- RA Law on Registering Legal Entities and State Accounting of Legal Entities' Separated Divisions, Institutions and Entrepreneurs

- RA Tax Code
- RA Law on Freedom of Information

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities)
- RA Ministry of Nature Protection
- RA Ministry of Energy Infrastructure and Natural Resources
- RA Ministry of Finance (State Revenue Committee)
- RA Ethics Commission for High-ranking Officials
- RA Central Bank
- RA State Cadastre Office
- RA State Revenues Committee
- NGOs engaged in legislative issues and the private sector

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

International conventions and global initiatives to be reviewed include:

- OECD global forum on tax transparency will be considered throughout the analysis
- OECD Multinational Convention on Base Erosion and Profit Shifting,
- International Accounting Standard (IAS) 24 on Related Parties Disclosure
- Convention on Mutual Administrative Assistance in Tax Matters
- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (Base Erosion and Profit Shifting)
- Bilateral treaties on double taxation signed by Armenia

VI. Social Expenditures

The MSG members together with the Project's local and international experts will also look into the available data and on social spending and expenditures, as well as legal and institutional framework related to it, particularly:

- Inventory of social expenditure by mining companies (including contributions for charitable purposes)
- If possible disaggregate what is required by law, what by contract, what stemming from charity, etc.
- Suggest path for developing standardized approach and reporting on companies' social spending; this includes disclosure of the recipients of the mining sector's charitable contributions.

VII. Promoting the Culture of Responsible Mining

In the scope of Legislative and Institutional Analysis and Action Plan the project local and international experts in consultation with the MSG working groups, will develop a Responsible Mining Preliminary Roadmap which will be submitted for MSG approval. The project experts, in consultation and, to the extent possible, in consideration of the comments from MSG members, working groups and other stakeholders will review and analyze the mining legislative and institutional framework with the following objectives:

- Examine the issue of the sector's contribution to sustainable development and the extent to which there exists data to assess this;
- Analyse the following areas to identify major gaps:
  a) cost-benefit valuation of mining projects;
  b) ESIA process in the country (both quality of report preparation as well as quality of their reviews); and
  c) environmental, community health, and occupational safety monitoring/reporting.

The Responsible Mining Preliminary Roadmap will specify those areas of mining legislative and institutional framework, as well as specific legal and regulatory acts (highlighting gaps and necessary changes) which should be

further analyzed more in detail. This will become the basis to implement further reforms in the specified areas, develop draft legal acts or changes to them, as well as analyze institutional framework and provide recommendations for reforms.

Legislation to be reviewed includes but is not limited to:

- RA Constitution
- RA Mining Code
- RA Land Code
- RA Water Code
- RA Labor Code
- RA Law on Flora
- RA Law on Fauna
- RA Forest Code
- RA Law on Environmental Impact Assessment and Expertise
- RA Law on Wastes
- RA Law on Inspection Bodies
- RA Law on Environmental Monitoring
- RA Law on Tariffs for Compensation of Environmental Damage Caused to Flora and Fauna
- RA Law on Specially Protected Areas
- RA Law on State Regulation of Technical Safety
- RA Law on Environmental and Natural Resource Use Fees
- RA Law on Administrative Procedures
- RA Law on Local Self Government
- RA Tax Code
- RA Law on Freedom of Information

All relevant sub-legislative acts deriving from the legislation above as well as from those that could be recommended during consultative meetings will also be reviewed in the scope of the analysis.

Stakeholders include but are not limited to the following:

- RA Ministry of Justice (the state registry agency for legal entities)
- RA Ministry of Nature Protection
- RA Ministry of Energy Infrastructure and Natural Resources
- RA Ministry of Finance (State Revenue Committee)
- RA Ministry of Territorial Administration and Development
- RA Ministry of Emergency Situations
- RA Ministry of Economic Development and Investments
- RA Ministry of Health
- NGOs engaged in legislative issues and the private sector

ANNEX 5: OPINIONS AND OBSERVATIONS ON THE EITI AND MINING INDUSTRY PRESENTED BY THE REPRESENTATIVES OF LOCAL SELF-GOVERNMENT BODIES.

Only Armenian version is available.