



MINING SECTOR DIAGNOSTIC - KAZAKHSTAN

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REPORT



Acknowledgements and Validity

This report is the result of the Kazakhstan Mining Sector Diagnostic carried out from March 2022 to October 2022 by a technical team led by Javier Aguilar (Senior Mining Specialist) and comprised by the following members: Paulo de Sa (lead consultant), Timur Odilov, Tatyana Sedova and Helga Treichel. In the preparation of this report, the team interviewed a wide range of mining sector stakeholders for their points of view. The World Bank wishes to thank all the interviewees for their time and valuable contributions. This report is based on mining investment and governance data and indicators effective as of September 2022.

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Executive Summary

Kazakhstan is endowed with abundant mineral resources. The country is the world's largest uranium producer (33% of world output in 2021, USGS), and ranks third for titanium, seventh for zinc, eighth for lead, and eleventh for gold. Kazakhstan ranks second, globally, in manganese ore reserves (600 million tons) and has the world's eighth largest iron ore reserves (12.5 billion tons). It also hosts 30% of the world's chromite ore deposits, 95% of the chromium reserves and possesses extensive gold and copper reserves.

Mining is vital to Kazakhstan's economy. The mining industry's share in total GDP represented 17% and 16% of exports in 2021. More than 230 separate mining and metallurgical enterprises employ about 273,000 people. The Government aims to achieve economic diversification by enhancing the competitiveness of the mining sector, through the discovery of new mineral resources, the production of higher value added products, improved technology and greater environmental protection.

Kazakhstan's mining industry faces the double challenge of depleting minerals reserves and lack of exploration investments to replenish them. Kazakhstan is underexplored. Greenfield exploration has been almost non-existent for about 30 years, and the substantial geological data acquired prior to the Independence is incomplete or outdated. Lack of exploration investment has hampered sector growth, with few new mining projects having been developed over the last 30 years, except for open pit copper and gold. As a result, a large gap has emerged between the production of most minerals and the growth of their resource base.

Old technologies and poor management and environmental practices threaten the competitiveness of the industry. Kazakhstan's experienced a big surge in mining production during the Soviet period but the wave of privatizations after independence failed to reinvigorate the industry. Despite cheap power, low labor costs, and reasonably adequate infrastructure, the industry stagnated and lost competitiveness because of depletion of high-quality reserves, low operating efficiency, and limited adoption of modern technologies.

To address this double challenge, the Government tried to reform the sector and adopted a new mining code. The 2018 Code On "Subsoil and Subsoil Use" - separated the regulation of solid minerals from hydrocarbons and uranium mining and set out a much less burdensome procedural framework for operations, in line with international good practice. A major improvement was the introduction of the "first-come-first-served" principle for granting mining permits which follows Western Australia's legislation standards. More than 1,900 new licenses were granted since the approval of the new code with about 800 junior exploration companies currently active in Kazakhstan.

Despite early successes, not all goals of the reform have been achieved. While there are references to mining in various national development plans and strategies, the government is not clear about its objectives and strategies. Institutional weaknesses caused by frequent changes at the top of the Ministry of Industry and Infrastructure and Development (MIID), incoherence of related tax and economic policy with the resource challenges and specifics and competition over the sector authority between the MIID and Ministry of Ecology, Geology and Natural Resources (MGENR) during 2019-2022 have substantially delayed the full implementation of a new mining code and compromised the objectives of the reform. The lack of mining strategy combined with regulatory and institutional instability, deficient government information systems and lack of institutional coordination create uncertainty about the future of the sector.

A key deterrent is the Program for the Management of the State Subsoil Fund (PMSSF) which defines areas available for subsoil use operations. Only areas included in the PMSSF are available for licensing under the first-come-first-served principle but lack of transparency and a culture of secrecy regarding disclosure of information is hindering the extension of this rule to the entire country. Investors complain that the management of the PMSSF is not transparent, extremely cumbersome and is causing delays in the granting of new licenses and consider that no program for managing the state subsoil fund is needed at all.

Delays in the creation of an open, online digital cadaster is another major constraint. Effective license management requires an online digital cadaster ensuring an open and transparent access to information related to geology and subsoil use and building a more robust licensing institution, less focused on process and with increased responsiveness, transparency, and accountability.

Strong sector state ownership is impeding the dissemination of modern exploration techniques. In 2009, Tau-Ken Samruk National Mining Company was created to manage state-owned interests in mining companies and develop mining projects independently. In 2011, the National Geological Exploration Company JSC Kazgeology was founded to increase state sponsored geologic exploration. Both companies had been granted preferential treatment to obtain mineral contracts. Upon adoption of the SSU Code the same preference was granted to obtain licenses during two-year temporary period for blocks not included in the SSFMR Program and form joint ventures with foreign operators on free carry basis and work as contractors in competition with private providers of geological services. Their efforts failed to produce results in terms of significant investments or resource discoveries.

Lack of open access to existing geological data is an obstacle to privately financed exploration in the country. The National Mineral Resources Data Bank, a digital database providing open access to investors of all available primary and secondary geological information documents, was originally planned to be commissioned by July 2021 but faced a series of delays. Consequentially, the launch of National Mineral Resources Data Bank has been failed and currently new information platform minerals.gov.kz has been under development. As a result, investments in exploration by major and junior companies are still below what otherwise could be expected for a country with the mineral potential of Kazakhstan.

The new National Geological Service should provide basic geologic data, leaving exploration to private companies. The public provision of basic geoscientific information increases private mineral exploration activity by reducing both the costs and risks of private explorers in the selection of areas. The role of the new National Geological Service should be to develop databases of geological information (precompetitive geology) to de-risk investments, providing comprehensive scientific support to investors and open access to geological data, operation of the National Mineral Resources Data Bank, dissemination, systematization and analysis of geological information together with scientific geology institutions of Kazakhstan. The tasks that are inherent to the private sector – such as services for geological exploration, geophysics, work on specific private projects, etc. - should not be carried out by the state.

The adoption of the international reporting standards for the certification of mineral reserves should not be deferred. Reporting for the certification of nonfuel mineral reserves overseen by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) is based on international standards developed by Australia, Canada and Chile. The new SSU Code mandates all reporting according to CRIRSCO standards, but until January 2024 the reserve reports for new projects were given temporary period to be prepared under CRIRSCO standards or rules of State Commission for Reserves (GKZ standards) under Committee of Geology inherited from soviet times. Transition to an internationally recognized mineral reserves certification system of CRIRSCO was introduced to unify narratives of minerals resources by

private and public sectors. Committee of Geology and tax authorities are still discussing postponing this transition, which is against current good international practices and is delaying a much-needed update of the mining tax regime.

Without effective institutional reform, Kazakhstan won't be able to develop its geological potential.

Good international practice points to having geology, exploration, extraction and metallurgical responsibilities under the same authority, i.e. MIID, organized according to three principal services: National Geological Survey, Mineral Licensing Services and Regulation, and Mines Inspectorate and Compliance. Cross-cutting services should also be established, such as legal/regulatory functions, mineral economics and project evaluation, sector and market information, among others. The function of the Committee of Geology should be reorganized and superseded by role and mandate of the new National Geological Service in accordance with the objectives introduced in the SSU Code and the institutional model employed in countries such as Australia and Canada as well as phasing out of the PMSSF.

The reform of the mining tax regime with the introduction of royalties is urgently needed. Kazakhstan is an outlier as it applies a Mineral Extraction Tax (MET) based on the physical volume of recovered minerals, whilst taking account of potential losses during that recovery. Most countries apply a unit-based royalty on to value of minerals sold at the mine mouth, i.e., prior to processing, not to the reduction of reserves resulting from minerals production.

The mining tax regime changes too frequently and is subject to inconsistent application. Although many companies believe that the tax burden for mining in Kazakhstan is not excessive, they argue that frequent and rushing changes in the tax legislation and pressure from the authorities to increase revenues have led to investment deferrals. Given how often the tax regime has changed in the past, as seen by the recent increase of the Mineral Extraction Tax (MET) rates, following introduction of royalty-based tax framework the Government should consider reintroducing tax stabilization clauses for large investments covering some taxes (and not other legal provisions) for a limited period of time.

Mine closure and reclamation requirements must be aligned with international good practices. The SSU Code sets out clear requirements to mine closure and reclamation requiring subsoil users to prepare and submit mining reclamation plans and provide financial security for reclamation prior to the granting of an exploration license. However, mining companies complain about the amount of the financial surety for exploration licenses, and argue that the reclamation plan - which must be updated every 3 years - is essentially focused on the calculation of the financial surety. The environmental and industrial safety analysis of reclamation plans must be strengthened, and the soundness and adequacy of the final reclamation costs carefully assessed by relevant government authorities. The management of financial sureties and the use of funds for relevant reclamation work should also be regulated.

The introduction of a mining revenue sharing mechanism to the benefit of impacted communities would reduce social tension and promote local development. Although the SSU Code provides for the signing of agreements on social support for population when underground mining or exploration activities are carried out within the boundaries of settlements, there are no formal mechanisms to share the revenues of the mining sector with subnational authorities and communities. In practice, revenue sharing occurs through the obligation to finance the social development of the relevant region and its infrastructure, which is expressed as a percentage (generally, 1-2% of exploration/production costs or investments) and such amounts are sent to the budget of the local executive body (akimat) of the relevant region. The process is not transparent and is at the origin of complaints by both communities and civil society.

The legislation could further regulate the social obligations of mining companies. The law does not establish any rules or guidelines for the calculation of compensation and damages caused by mining projects and this can sometimes lead to unreasonable expectations and overestimation of their amounts. In addition, there are no clear guidelines to regulate resettlement in the mining sector. CSOs share a negative perception about the way mining companies have been conducting resettlement processes, believing that quite often their work does not meet the expectations of the affected communities.

The government has failed to develop a consistent approach for artisanal mining. The SSU Code contains certain aspects to facilitate artisanal and small-scale mining (ASM), such as simplified procedures for granting licenses and lighter requirements in terms of project documents and reclamation security, among others. However, the ASM remains largely unregulated, especially for gold. The State Revenue Committee has introduced simplified procedures for taxation, a mandatory tax identification number and a small single tax in an attempt to control the expansion of informal activities. Yet, formalization programs are needed to facilitate access to finance and markets, as well as opportunities to add value along the supply chain.

The purchase of local goods and services by mining companies is a key Government target. The requirements and liability for non-compliance under the legislation have become more stringent since 2010, when the notion of local content was introduced. However, the country's manufacturing base is still small and unsophisticated and there is no clear strategy to strengthen the capacity of local suppliers. The SSU Code requires mining companies to make allowances for training of Kazakhstan nationals, including their employees. Government should align more closely the resources towards R&D and training programs provided by mining companies with the requirements of the industry to the local content.

Additional investments are needed to prepare mining for the energy transition. Kazakhstan is adopting more strict measures to reduce the threshold of permitted emissions for 128 polluting companies in the power generation, oil & gas, mining and metals, chemicals, and construction sectors. However, under these criteria, many old industries would not be able to operate profitably due to cost increases, and their closing would generate significant social issues mainly due to possible unemployment in monotowns. Still, many companies are increasing the use of renewable energy in their operations, as part of the Government's carbon neutrality reform.

Transparency, inclusiveness and participation must be strengthened. Government needs to increase its efforts to reach out to all relevant constituencies and integrate their views in the policy formulation process. Several legal instruments regulate citizen engagement in mining, including the Environmental Code. While procedures for conducting public hearings led by local authorities are clear and well-regulated, local government agencies often do not have the ability to conduct them, delaying the approval process.

Greater clarity is needed on the interactions between the SSU Code, the 2021 Environmental Code and Land Code. Based on OECD practices, the new Environmental Code has imposed much stricter legal obligations and larger timeframes for environmental approvals of exploration and mining projects. Requirements have become more stringent, the cost of compliance has increased substantially, and procedures are more demanding, often extending the application period to 6 to 12 months. The environmental authority is still in the process of adjusting some regulations, including enforcement practices that may not be aligned with the SSU Code. Civil society organizations regret that EIAs are often not disclosed, are not published in full, or are very difficult to find, especially when the websites of government agencies are changed. Access to land surface regulated by the Land Code faces with difficulties related to ambiguity of compensation amounts payable to private landowners.

This report presents a summary of the Kazakhstan MSD key findings, providing an overview of the performance of the mining sector along the extractive industries value chain as well as with respect to the

sector management framework. The overview shows that of the 14 dimensions assessed (each of the cells in the dashboard), 7 obtained a very high or high score, while 4 obtained a low score, and 1 received a very low score. The dashboard shows the following:

- The management framework for Kazakhstan's mining sector receives an overall low score. Of the four aspects covered by the MSD, sector dialogue and the assignment of roles and responsibilities for the sector score highest, while the other two aspects receive scores that are below average.
- Regarding the first stage of the value chain, "Contracts, Licenses and Exploration", the "de jure" performance shows lower scores than the actual "de facto" performance, with only one "de jure" indicator receiving a very high score. Overall, the "de facto" performance receives a high score, with only "Collection and Maintenance of Geological Information" scoring lower.
- The "de jure" performance scored low for "Mining Operations", with the "de facto" performance faring somewhat higher. There is considerable variation in the underlying indicators, with scores ranging from very high and high (for "Mining Legislation and Processes" and "Occupational Health and Safety, "de jure" and also "de facto" for the later) to very low (for "Land, Compensation and Resettlement Rules").
- Performance of the third EI value chain component ("Taxation") scores very high with respect to "de jure" and high with respect to "de facto" performance.
- The scoring is very low in the "Revenue Distribution and Management" stage of the value chain, especially the "de jure" performance. Several items were rated very low in both dimensions. Only the performance with respect to resource revenue transparency is in the low range.
- The segment on mining "Local Impact" scores high on "de facto" dimensions and low on de jure considerations, with a very low score on "CSR and Social Issues", as a result of largely non-existing rules. "De facto" performance overall scores slightly higher, with strong performances is "Local Supplier Development" and "Employment".

I. Introduction

The Mining Sector Diagnostic (MSD) is a tool that the World Bank has developed, firstly to comprehensively assess a country's mining sector laws, rules and regulations, and secondly to identify the strengths and weaknesses of the institutions that implement those laws, rules and regulations and administer and oversee the sector¹. The MSD addresses the "rules" in place ("de jure" situation) as well as the extent to which these "rules" are implemented in practice ("de facto" performance).

The assessment is based on information compiled from legislation, interviews, secondary sources, and surveys, the results of which are assessed and summarized around the extractive industries (EI) value chain links and key issues for mining investment and governance.

The MSD considers the views of the three main stakeholder groups – government, mining companies and civil society - in a structured manner. It is a systematic and practical diagnostic tool that reports its main conclusions objectively. The results of an MSD can form the basis for a reform agenda that leads to a more dynamic mining sector, contributing not only to economic growth but also the wellbeing of the population, especially in mining regions.

The Kazakhstan MSD compiles and shares information on the mining sector management structure and governance at the central and regional government levels. It analyses the rules and policies that exist in the mining sector and the gap between these rules and their implementation in practice. It not only reviews sector performance from the perspective of the three main stakeholder groups, but also provides their priorities to improve mining sector performance.

The MSD was requested by the MIID- an initial discussion took place on 26/03/2021 with MIID's Vice minister (back then- bt) Mr. Baimishev, confirmed by the Minister (bt) Mr. Atankulov's letter (01-25/25546 dated 23/07/2021) and further discussed on the meeting with the Vice minister (bt) Mr. Karabayev on 22/09/2021, followed by series of technical meetings with the Ministry's subsoil use department.

Interviews of mining industry stakeholders included representatives of the government (the Ministry of Industry and Infrastructure Development , Ministry of Finance (State Revenue Committee), Ministry of Ecology, Geology and Mineral Resources (the Committee of environmental regulations and control, and the Committee of Geology, Kazgeoinform), the Ministry of Foreign Affairs), Majilis Parliament (the Committee on Economic Reform and Regional Development), representatives of state and private mining companies and industry associations (AGMP, Kazgeology, Kazzinc, Kazminerals, Bogatyr Komir, Aurora Minerals, Fortescue Kazakhstan, RCG- Resources Capital Group), experts from KAZRC PANEM and MIID Public Council, civil society organizations, including trade union and EITI activists (Trade Union Kazugleprof, Social Ecological Fund, Transparency International Kazakhstan, ECHO, Civic Initiative, Institute of Local Self-Governance.

This report summarizes the analysis and findings of the MSD and is organized as follows:

Section I contextualizes the diagnostic, describing the mining sector's management in Kazakhstan, its importance in the overall economy, the main institutional roles and responsibilities, and providing an overview of the legal and regulatory framework governing the sector.

¹ The MSD report does not provide an assessment of the individual mining investment projects, not an assessment of the mining ancillary infrastructure needed, nor an evaluation of the existing geological resources or reserves in the country.

Section II presents a comprehensive summary of the results, discussing the data as aggregated into the MSD dashboard and analyzing implementation gaps between de jure situation and de facto performance.

Section III analyzes the de jure situation and de facto performance of Kazakhstan’s mining sector management framework and identifies its weaknesses.

Section IV analyzes the de jure situation and de facto performance of the five stages of the EI value chain: (i) contracts, licenses and exploration; (ii) mining operations; (iii) taxation; (iv) revenue management and distribution; and (v) local impact. For each of these stages, the MSD evaluates the de jure situation (legislation, rules and regulations) and de facto performance (institutional capacity and effectiveness), describing the observed areas for improvement.

Section V analyzes the sectoral stakeholder priorities defined as the key priority areas identified by respondents - reforms that would have a significant impact on improving the mining sector’s contribution to sustainable economic development and wellbeing for the entire population.

Section VI concludes with a summary of sector strengths and challenges and presents an agenda of improvements.

This report has three annexes. Annex I contains a brief overview of the MSD methodology. Annex II contains the MSD questionnaire and the scores for all individual questions that form the basis for this report. Annex III shows that voting template that was used to elicit stakeholder preferences. This report and the underlying data will be made publicly available on the World Bank’s MSD website.

II. COUNTRY’S Mining Sector

II.1 Mining Sector Importance

Macroeconomic Performance

Contribution to the economy. Kazakhstan posted an annual average GDP growth rate of 5% from 2010-2019, with GDP in 2019 reaching US\$180.2 billion.² However, GDP contracted by 2.6% in 2020 before recovering in 2021 when GDP per capita reached US\$10,693.5, which means that Kazakhstan is an upper middle-income country. The mining industry’s share in total GDP represented 17% in 2021, and 16% of exports. Mining and metallurgical companies employ more than 273,000 people.³

The Government of Kazakhstan has defined the diversification of economic activity and the competitiveness of its mining industries as national priorities. Kazakhstan seeks to increase its share of higher-value added products, improve technology and environmental protection, and foster the discovery of new mineral resources.⁴ The predominance of the extractive sector in Kazakhstan’s economy has made the country vulnerable to commodity price fluctuations and other risks related to resource-dependency. As such, the economy remains squarely based on extractive industries with oil and gas and some mining as

² <https://www.trade.gov/country-commercial-guides/kazakhstan-mining-equipment-and-services#:~:text=The%20mining%20sector%20accounts%20for,the%20country's%20exports%20by%20value.>

³ [Invest In Kazakhstan - Industries.](#)

⁴ OECD (2018).

the main pillars. Despite a variety of announced policies aimed at promoting diversification, the results have been both slow and limited in the coming.

Mining Sector Performance

Kazakhstan is endowed with abundant mineral resources (see Figure 1). The country has about 8,000 different deposits of solid minerals and hydrocarbons on its national register of significant occurrences. In the last thirty years, more than 200 deposits of base, precious, and ferrous metals have been discovered, especially with regards to gold (e.g., Vasilkovskoye, Bakyrchik, Aksu, Bestobe, Akbakai, Zholymbet, Bozshakol, Pustynnoye, and others). Notwithstanding, minerals exploration in Kazakhstan during the past 30 years has been limited compared to the country’s potential.

Kazakhstan produces a diverse range of mineral commodities and is currently a leading global producer of uranium, chromite, coal, iron and steel, copper, and zinc (see Figure 2). The country is also a significant producer of barite, bauxite, cadmium, gold, lead, magnesium metal, manganese, and titanium sponge, among others. The industry has traditionally focused on exports to Russia, China, and the European Union (EU). The gold mining industry of Kazakhstan is mainly represented by small and medium-sized deposits by the standards of the industry.

Figure 1: Mineral Resources (as of end-2019)

Mineral Resource	Reserves (million tons)	Reserves, % of global total	World rank
Gold	0.349	2	15
Silver	0.195	5.7	2
Bauxite	160	0.5	n/a
Chrome ore	17	16.2	2
Coal	33.6	3.8	8
Copper	124	4.3	12
Iron ore	900	1.5	8
Lead	93	13.84	3
Molybdenum	51	9	4
Manganese	42	n/a	3
Uranium	56	12	2
Zinc	90	11	5

Sources: USGS (2021), EY (2021), Kazakh Invest

Figure 2: Mineral Production (2000)

Mineral	Volume (thousand tons)
Gold	63,000
Bauxite	5,000
Chromium ore	7,018

Coal	115,000
Copper ore	123,107
Iron ore	62,991
Lead in lead concentrate	30
Manganese ore	1,142
Uranium	22,808
Zinc in zinc concentrate	222

Sources: USGS (2021), EY (2021).

The mining sector in Kazakhstan is dominated by a few large players, with some of the most significant producers of non-fuel minerals being partly state-owned. The largest mining companies active in Kazakhstan include:⁵

- Eurasian Resources Group: one of the world's leading diversified mining and smelting groups with fully integrated mining, processing, energy production, logistical and marketing operations. Its key commodities include chromium, manganese, iron ore, bauxite and coal, representing almost one third of the mining and metals sector of Kazakhstan.
- Kazakhmys: a largest copper producer in Kazakhstan, with fully integrated operations from mining the production of finished copper cathode and rod. The company also produces large amounts of other metals as by-products, including zinc, silver and gold.
- Kaz Minerals: one of leading copper producers in Kazakhstan with five operating mines and four concentrators, and a high growth path focused on large scale, low cost, open pit mining in Kazakhstan. The Group was listed in London, Kazakhstan and Hong Kong and underwent delisting in 2021. Major growth projects include Bozshakol, Aktogay and Koksay.
- ArcelorMittal Temirtau: Part of the Arcelor Mittal global steel group, it is an integrated mining and metallurgical complex with its own coal, iron ore and energy base in Karaganda region.
- Kazzinc: a major fully integrated zinc producer with considerable copper, precious metals and lead assets founded in 1997, with a majority stake privatized to Swiss commodity trader Glencore.
- Tau-Ken Samruk: a national operator of state assets, Tau-Ken Samruk is a partner of Glencore and owns 29.8 per cent shares in the capital of Kazzinc. The company is actively seeking foreign investors to develop a variety of projects ranging from early-stage exploration to project development.
- Kazakhaltyn: one of the oldest gold producers in the country, from three operations (both open-pit and underground mines) located in the Akmola region.
- Central Asia Metals: London-based company owning 100 per cent of the Kounrad solvent extraction and electrowinning copper facility in Kazakhstan.

Most of the deposits currently mined were either already in operation during Soviet times or exploit deposits discovered during that period. Some of the operations still employ technology and management practices that date from those times. Lack of greenfield exploration and investment since independence in 1991 has hampered the development of the sector, with Kazakhstan not having been able to develop a significant pipeline of new projects.

After showing some interest in the early 2000s, large global mining companies have hesitated to invest and some, like BHP and Vale have left the country. The companies that have invested have mainly been junior companies interested in greenfield exploration. According to the Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan, the volume of investments in the mining sector in 2017

⁵ See <https://www.austrade.gov.au/australian/export/export-markets/countries/kazakhstan/industries>.

amounted to 1,260.1 billion Tenge (about US\$4 billion), including: 28.9 billion Tenge in geological exploration (2.3% of the total).⁶

At the end of 2019, the state-owned investment promotion agency Kazakh Invest listed 40 mining and metallurgical investment proposals with total estimated investment costs of US\$9.9 billion. However, with the notable exception of gold, most of the major mines currently under construction correspond to the last wave of large projects discovered before the independence. New projects in the pipeline include:

- The Shalkiya deposit (developed by state owned mining holding company Tau-Ken Samruk) of polymetallic ores (zinc, lead), discovered in 1963 and located in the south of the Republic of Kazakhstan. Total proven and probable reserves of zinc at were estimated by BrookHunt in November 2006 at 6.5 million tonnes (according to JORC classification). Mining operations started in November 2021, and construction of a processing plant and a tailings storage facility is planned to begin in 2022.
- The Alaigyr LLP was established in October 2011, to develop the polymetallic Alaigyr Deposit in Karaganda, producing 60,000 tonnes/year of lead concentrate. The mining and processing plant will reach its annual design capacity (900,000 tonnes of ore) by the end of 2022.
- The Aidarly mining and processing complex (developed by Kazakhmys Corporation LLC), located in the East Kazakhstan Region, will produce copper cathode and concentrate. Stage 1 will involve the construction of a heap leaching plant with annual processing capacity of 1.3 million tonnes of oxide ores for the production of cathode copper. Processing of sulfide ores will occur at a processing plant with an annual capacity of 20 million tonnes (stage 2), increasing to 50 million tonnes (stage 3) for the production of copper concentrate.

In addition, the Government wants to increase gold production to place Kazakhstan among the 10 largest gold-mining countries in the world. The longer-term objective is to achieve an annual production of 130 million tonnes around 2025–2030. Identified large gold deposits are scarce in Kazakhstan, and most of them are already being mined. In the medium term, most growth in the industry would come from the development of smaller deposits with lower capital costs and production capacity.

According to the Fraser Institute,⁷ Kazakhstan's overall Investment Attractiveness Index (IAI) in mining in 2021 was 65th out of 84 constituencies, ahead of Kyrgyzstan (74th) but behind Mongolia (63rd).⁸ The weak ranking was a combination of poor perception by investors regarding the policy environment (56th), and an underestimated geological potential (66th). Although being the highest ranked Asian jurisdiction in terms of mining policy, the country performed poorly in its legal system (77% of negative responses), its taxation regime, labor regulations, and geological database (all three with 67%).

II.2 Mining Sector Management

Key regulatory institutions

The **President** is the head of state, who annually addresses the people with a message on the state of the country and the main directions of the domestic and foreign policy of the Republic of Kazakhstan, including

⁶ EITI (2017).

⁷ The Fraser Institute constructs an overall Investment Attractiveness Index (IAI) by combining the Best Practices Mineral Potential index (BPMPPI), which rates countries based on their geologic attractiveness, and the Policy Perception Index (PPI).

⁸ <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2021.pdf>.

for the mining sector. The President has issued several Presidential Orders mandating reforms of the mining sector. **Parliament** is the highest representative body of the Republic performing legislative functions, while the Government adopts regulations and by-laws applicable to the mining sector.

In accordance with the Regulation on the **Ministry of Industry and Infrastructure and Development (MIID)** of the Republic of Kazakhstan, the MIID is responsible for the management of solid minerals. The MIID: (i) drafts regulations of subsoil use operations on exploration and production; (ii) grants and terminates licenses and contract for exploration and production of minerals; (iii) monitors subsoil use operations on exploration and production; (iv) controls compliance of the subsoil user with local content regulations regarding the procurement of goods, works and services. MIID's **Department of Subsoil Use** is in charge of managing the country's mining licensing system. Main entities under the Ministry regarding subsoil use include:

- The **Committee of Geology** performs regulatory, implementation and control functions in the areas of state geological studies, extension of mineral resources, and the rational and integrated use of subsoil. The Committee on Geology (i) grants subsoil use authorizations for geological studies and use of subsoil spaces; (ii) conducts state geological studies of the subsoil; (iii) controls geological studies and use of subsoil spaces; (iv) provides access to data on non-confidential and non-secret geological data; (v) maintains the unified register of the Program for the Management of State Subsoil Fund (PMSSF); (vi) drafts and approves regulations on geology and the geological study of the subsoil; (vii) keeps records on underground waters; and (viii) registers technogenic mineral formations.
- The **National Geological Survey JSC**, under the Committee of Geology, reorganized on 15 June 2022 – formerly the Republican Center for Geological Information Kazgeoinform Limited Liability Partnership (Kazgeoinform).⁹ Its main purpose is (i) developing scientific and geologic information for subsoil use by carrying out the collection and storage of the geological information owned and used by the state; (ii) collating and analyzing the data jointly with Kazakhstani scientific and educational geological institutions; and (iii) the delivery to investors an open access to geological information and maintenance of the National Mineral Resources Data Bank.
- **JSC Kazgeology National Geological Exploration Company JSC**, created in 2011, is the main agent for the expansion of the mineral resources base of Kazakhstan through increased state sponsored geologic exploration. In August 2019, the Ministry of Finance's State Property and Privatization Committee transferred its ownership to the Committee of Geology.

The **Ministry of Ecology and Natural Resources (MENR)** leads the formulation and implementation of state policy in the fields of environmental protection, development of the "green economy", waste management, protection, control and supervision of the rational use of natural resources, use and protection of water, sanitation, forestry, conservation, reproduction and use of the animal world and specially protected areas. From 2019 to 2022 inclusive, MENR was in charge of state geological studies and the expansion of the mineral resource base through administering Committee of Geology and its subsidiaries, National Geological Survey JSC and JSC Kazgeology National Geological Exploration Company

⁹ The creation of National Geological Survey JSC, based on the merger of Kazgeoinform with JSC Kazgeology National Geological Exploration Company JSC was announced on the President's message of September 1, 2021, and Government's resolution of December 30, 2021.

JSC. On 2 January 2023, these functions have been transferred back to the MIID, according to the President's resolution.

The **Ministry of Finance (MoF)** is responsible for the development and implementation of fiscal policy, including policies for managing the Sovereign Wealth Fund, which accumulates revenues from the oil and gas sector. The Ministry of Finance also oversees assets that the state considers strategic, including some of the largest mining companies operating in the country. For example, 40% of the Eurasian Resources Group shares are owned by the Ministry of Finance (ferroalloys, iron ore, aluminum, copper, cobalt, coal). The **State Revenue Committee (SRC)** is an implementing body under the Ministry of Finance, responsible for collecting taxes, including mining (subsoil use) taxes.

The Ministry of National Economy (MNE) is responsible for developing coherent macroeconomic policies through strategic and budget planning. The **Committee of Statistics** is an authorized body which develops and implements the state policy on statistics. It also develops and implements the statistics improvement programs in Kazakhstan. The Committee of Statistics is a part of the Ministry of National Economy of the Republic of Kazakhstan.

Local executive bodies (Akimats) are responsible for the management of common minerals (such as industrial minerals and construction materials)¹⁰ and underground waters. They (i) grant subsoil use right for common minerals and artisanal and small-scale mining; (ii) control compliance with artisanal and small-scale mining licenses; (iii) grant access to land as necessary for the subsoil use; (iv) regulate activities on territories and protects areas that have special environmental scientific, historical, cultural, and recreational value; (v) conduct geological research for underground waters for the supply of drinking water to the population, etc.; and (vi) provide access to information on licenses issued with regards to common minerals and artisanal and small-scale mining.

Institutional weaknesses caused by transfer of geology function to MENR in 2019 and frequent changes at the top of MIID, the lack of replacement of knowledgeable civil servants that retired, and the overall lack of opportunities created by budgetary restrictions and by the relative stagnation of the sector have delayed the implementation of the new SSU Code. One of the most important factors is the frequent turnover of the MIID management, especially the vice-minister in charge of the mining sector. Between 2014 and 2018, when the legal reform in the mining sector was underway, 2 ministers and 3 vice-ministers changed. In addition, there is a systematic trend of cut-offs at the MIID's Subsoil Use Department with 80% of staff turnover. An aggravating factor is that high-level civil servants with regulatory functions often hold influential positions on the boards of directors of companies with State participation which they are also charged with regulating.

Notwithstanding, Kazakhstan has good universities and - although many good geologists have left the country - a new generation of geologists formerly with the public administration – perhaps less experienced but surely more conversant with the modern technologies adopted by foreign mining companies – have created a flourishing entrepreneurial segment that is actively engaged in providing services to mining companies and promoting modern and efficient mineral exploration in Kazakhstan.

¹⁰ The new SSU Code differentiates between common minerals and solid minerals and, in some cases, contains references to specific minerals in each category. Exact lists of minerals and information on how they are defined, however, is not provided.

Suspicious of collusion between corrupt officials and the mining companies led a deterioration in the governance perception of the sector. Transparency International's Corruption Perception Index (CPI) 2021, ranked Kazakhstan 102nd out of 180 countries, with a score of 37 points out of 100.¹¹

II.3 Legal Framework

Kazakhstan has a civil law-based legal system. According to Article 6 of the Kazakhstan Constitution of 1995 with Amendments through 2017 and 2022,¹² the land and underground resources, waters, flora and fauna, and other natural resources are owned by the nation represented by the state. The land may also be privately owned on terms, conditions and within the limits established by legislation. Mineral resources extracted by subsoil users are their property.

There are no general restrictions for foreign investment in the exploration and mining sector related to solid minerals, except for uranium and artisanal and small-scale mining licenses which are issued to Kazakh citizens only. Under the current legislation, uranium contracts are granted only to the National Atomic Company Kazatomprom JSC and may be further transferred to an incorporated joint venture in which the national company controls directly or indirectly more than 50% of the shares.

A new mining law - Code "On Subsoil and Subsoil Use", dated 27 December 2017 No.125-VI and effective from 29 June 2018 (SSU Code) - is the primary legislation for the management of the sector. The new law separated the specific regulation of solid minerals from the one applied to hydrocarbons and uranium mining, commonly regulating issues like minerals ownership, geological information, roles and responsibilities of various state and local authorities, as well as of subsoil users.

The SSU Code sets out the procedures for obtaining various types of subsoil use rights, grounds for temporary suspension of operations and annulment of licenses, transfer, pledge over the subsoil use licenses, general requirements applicable to artisanal and small-scale mining, as well as mine closure requirements. Subsoil use rights for solid minerals (as well as common minerals such as construction materials) can be obtained through the granting of a license or the acquisition of rights or an equity interest on existing subsoil users or controlling entities, while hydrocarbons and uranium continue to use a contractual framework.

A major innovation of the SSU Code is the introduction of the "first-come-first-served" principle, under which exploration licenses are awarded to the first qualified applicant. Still, the new law still devotes a lot of attention to the process of transferring to operating companies the right to exploit identified mineral deposits that were included in the *State Balance Sheet of Mineral Reserves* before the adoption of the SSU Code and for which the state holds the rights. The granting of these rights follows separate procedures, through competitive bidding.

A number of government decrees and MIID orders regulate the SSU Code with more detail. These include obligations such as: (i) Signature bonus upon the issuing of a license and payment for the use of land blocks; (ii) Annual minimum expenses for subsoil use operations; (iii) Share of local content in the procurement of goods, works and services; (iv) Minimum share of local employment; (v) Provision of training of Kazakhstani personnel and financing of research, scientific and technical and experimental design work (for each, the

¹¹ <https://www.transparency.org/en/cpi/2021>.

¹² The Constitutional amendment (enforced June 08, 2022), Article 1, cl.3 says: "3. The earth and its subsoil, waters, flora and fauna, and other natural resources belong to the people. On behalf of the people, the right of ownership is exercised by the state. Land may also be in private ownership on the grounds, conditions and within the limits established by law."

amount is equal to 1% of the mining expenses for the previous year and is paid starting from the second year of mining); and (vi) Financing the socio-economic development of the region and the development of its infrastructure under so-called old contracts for exploration and/mining minerals.

Certain issues related to precious metals are governed by the “Law on Precious Metals and Precious Stones” dated 14 January 2016. There are also other legislative acts regulating related issues, including:

- The Tax Code [Code No. 120-VI of the Republic of Kazakhstan on Taxes and other Obligatory Payments to the State Budget, dated 25 December 2017] which establishes the tax regime for all entities, including mining companies.
- The Environmental Code of the Republic of Kazakhstan, №400-VI, adopted in January 2021, which provides for economic regulation on environmental protection.
- The Land Code of the Republic of Kazakhstan dated June 20, 2003, № 442, which sets the grounds and conditions for access to state and private lands during exploration and granting land use rights to a land block for exploitation of identified mineral deposits.

In addition to national legal acts, Kazakhstan is a party to international treaties and international organizations and, as a member of the Eurasian Economic Union (EAEU), has entered into a number of treaties affecting the activities of the subsoil users (e.g. safety, employment, export and import of goods and services, licensing etc.). The EAEU guarantees the free movement of goods, services, capitals and labour, and the pursuit of coordinated, concerted and common policies in the economic sectors of the five member states: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, and the Russian Federation.

There is a dedicated official government-run online database of all legislative acts and by-laws - adilet.zan.kz. Separately, each ministry and other state bodies, including the MIID, run their own websites where the key legislative acts concerning the activity in a particular sector of economy are published. These may not always be full or up to date.

III. MSD Results Dashboard

This section presents a summary of the Kazakhstan MSD key findings. The results are aggregated into the dashboard (Figure 4), which presents an overview of the performance of the mining sector along the extractive industries value chain as well as with respect to the sector management framework, as defined earlier. Each cell in the dashboard consists of one or more indicators and each indicator is scored based on a set of questions included on the questionnaires.¹³ The details behind each indicator (i.e., the underlying questions and their scoring) can be found separately in Annexes I and II.

The overview shows that of the 14 dimensions assessed (each of the cells in the dashboard), 7 obtained a very high or high score, while 4 obtained a low score, and 1 received a very low score. The dashboard shows the following:

- Regarding the sector management framework, while the “Sector Dialogue” and institutional “Roles and Responsibilities” have high scores, there appear to be weaknesses in “Sector Policy”, and “Intra-Governmental Coordination”.

¹³ The scores for each element in the sector management framework derive from a set of relevant questions. Annex II provides a complete list of the underlying questions for each element, as well as the disaggregated scoring for each question.

- In terms of de jure performance, the “Tax Regime” has the strongest score, while the weakest link is “Revenue Management and Distribution” with very low de jure ratings.
- In terms of de facto performance, most links of the value chain perform well, with the exception of “Revenue Management and Distribution” which is assessed in the low range.

The following sections will take a detailed look at each dimension and present an updated analysis of the issues each dimension is facing, discussing the main reasons behind the results. The dashboard can be seen from two different perspectives: horizontally and vertically. From the vertical perspective the assessment has three thematic blocks:

1. Mining sector management framework, which evaluates sector policy, sector dialogue, roles and responsibilities, and intergovernmental coordination;
2. De jure performance, which includes legislation, rules and regulations along the five stages of the extractive industries value chain; and
3. De facto performance, which includes institutional capacity and effectiveness along the five stages of the extractive industries value chain.

Having assessed de jure and de facto performance separately, the MSD tool provides an estimate of the so-called implementation gap, e.g., the gap that exists between the legal and regulatory framework and its implementation in practice. For the Republic of Kazakhstan, the implementation gaps are relatively small for two stages of the EI value chain, “Mining Taxation” and “Local Impact”. For the other three stages of the EI value chain, actual (de facto) performance is rated significantly better than the underlying legal framework—suggesting a strong room for improvements in the latter.

Figure 3: MSD Dashboard Kazakhstan

Mining Sector Diagnostic					
Mining Sector Management					
Sector Policy		Sector Dialogue		Roles and Responsibilities	Intra-Governmental Coordination
II. Extractive Industries Value Chain					
	Contracts, Licenses and Exploration	Mining Operations	Mining Taxation	Revenue Management and Distribution	Local Impact
De Jure Performance	Rules for License Allocation, Oversight, and Transfer	Mining Legislation/Processes, Land/Compensation/Resettlement, Environmental and Social Impact Management, ASM, OHSA, Mine Closure--Rules	Tax Policy and Tax Administration Rules	Revenue Sharing and Fiscal Stabilization--Rules	Local Content, Employment, Community Engagement, CSR and Social Issues
De Facto Performance	Collection/Maintenance of Geological Information and Effective License Allocation and Management	Land/Compensation/Resettlement, Environmental and Social Impact, Support for ASM, OHSA, Mine Closure--Practice	Mining Tax Administration and Auditing	Revenue Sharing, Fiscal Stabilization and Resource Revenue Transparency--Practice	Local Supplier Development, Employment, Community Engagement, CSR and Social Issues--Practice

Figure 4: Implementation Gaps



IV. Assessment of the Sector Management Framework

The review of the dashboard and the gap analysis in the preceding section provide a birds-eye view of the sector’s de jure and de facto performance but does not give specific information on the strengths and weaknesses identified through the MSD. The current and the following sections provide a more detailed look at the sector management framework and performance along the EI value chain – including identifying potential areas for improvement, whether to policy and regulations or their implementation. The following discussion starts with the sector management framework (Figure 6).

Figure 5: Mining Sector Management

Mining Sector Management (2.61)			
Sector Policy (2.50)	Sector Dialogue (2.59)	Roles and Responsibilities (2.89)	Intra-Governmental Coordination (2.47)

The management framework for Kazakhstan’s mining sector receives an overall low score. Of the four aspects of the sector management framework that the MSD considers, the “Sector Dialogue” and the assignment of “Roles and Responsibilities” for the sector score highest, while the other two aspects receive scores that are below average. To achieve good mining management, government needs to enforce its legal, political, and administrative authority for formulating and implementing sector policies, in consultation with other stakeholders. In Kazakhstan, the core functions of geology, licensing and inspectorate are dispersed, requiring significant institutional reforms and capacity building.

Sector Policy (2.50)

Despite the successful legislative mining reform in 2017, Kazakhstan has been experiencing a lack of clarity about the government’s objectives and strategies for the development of the mining sector. There is no publicly available approved policy which sets out the vision, targets and goals for mining. While there are references to the mining sector in various national development plans and strategies, they are focused on the promotion of the minerals processing industry. The last formal sector strategy covered the period between 1994 and 2008. Notwithstanding, after 2012, when a plan for development of geological sector

until 2030 was approved, the main orientation for the development of the sector is based on the replenishment of the country's mineral resource reserves.

Kazakhstan's mining industry experienced a big surge in production during the Soviet period, closely associated to a downstream integration into metal processing. After independence, however, the sector went through a wave of privatizations that failed to reinvigorate the industry. Despite cheap power, low labor costs, and reasonably adequate infrastructure, the industry fell into a period of stagnation and experienced a relative loss of competitiveness caused by the depletion of high-quality reserves, low operating efficiency, and limited adoption of modern technologies. Few new major geological discoveries were made and pre-retirement and retirement age of most experienced mining and metallurgy specialists less to a shortage of qualified young personnel at various levels of scientific and technical specialization.

Therefore, Kazakhstan's mining sector was ill prepared to face the end of the commodities super cycle around 2014 and the challenges of decarbonization caused by the country's climate change commitments. As a result, Government engaged in the preparation of a new mining code seeking to align the country's mining legislation with competitive international models and create a more attractive environment for new exploration and extraction investments, including from foreign junior exploration companies.

The new Code introduced many improvements in the sector regulatory environment, perhaps the most important of which being the adoption of the "first-come-first-served" principle for awarding mineral rights, which follows Western Australia's legislation standards. The revived interest in the sector, seen by the more than 1,900 new licenses granted since the approval of the new code, resulted in new investments on exploration by license holders. The opening of the sector facilitated the entry of smaller companies focused on greenfield exploration. About 800 junior exploration companies are currently active in Kazakhstan and a few of them are about to go public in the Toronto Stock exchange in 2022. This created a new market for geologists trained in domestic universities and should lead to the discovery of new mineral deposits.

However, not all goals have been achieved. Efforts to strengthen the implementation of the new SSU Code have, so far, produced mixed results. The deadline of July 2022 set in a Presidential Order for the completion of several key sector reforms has not been observed, creating a sense of uncertainty regarding Government commitment to its successful implementation. Three essential measures are pending or still in early stages of implementation:

- Extending the first-come-first-served principle for issuing subsoil use licenses throughout the territory of Kazakhstan, while strengthening control over their granting through digitalization of procedures and the provision of open access to information on the applications process.
- Creation of the National Geological Survey to provide comprehensive scientific support to investors, open access to geological information and operation of the National Mineral Resources Data Bank, an open digital database of geological information.
- Completion of implementation of the international system of reporting standards on resources and reserves of solid minerals according to the Committee for Mineral Reserves International Reporting Standards (CRIRSCO).

The full realization of the new SSU Code's potential benefits is being hindered by the preservation of a culture of secrecy regarding sector information and an institutional framework poorly adapted to the enforcement of the new legislation. A key deterrent is the **Program for the Management of the State Subsoil Fund (PMSSF)**, enacted in Art. 69 of the new SSU Code, which is a key instrument to implement the state policy for the rational management of the country's National Mineral Wealth and the replenishment of Kazakhstan's mineral resource base. Its stated objectives are:

- (i) to improve the state system of planning and conducting geological exploration work;
- (ii) to finance the early and, accordingly, riskier regional and project-target stages of exploration of solid minerals;
- (iii) to improve the legal and regulatory framework to increase investment attractiveness for the deployment of innovative technologies for geological investigation and the expansion of the mineral resource base; and
- (iv) to develop public-private partnership mechanisms to attract the world's leading exploration and mining companies to participate in the implementation of projects based on the state geological study of the subsoil.

The PMSSF is managed by MIID and the Ministry of Energy (MoE), with information support from the Geology Committee being in 2019-2022 under the Ministry of Geology, Ecology and Natural Resource ("MGENR") and defines areas available for subsoil use operations in the PMSSF. The Program is regularly updated to include new areas for provision of subsoil use rights. Inclusion of new areas is not regulated and nontransparent.

However, lack of coordination and competition between the MIID and MGENR in 2019-2022 over the authority over the sector has resulted in the failure to open up the country's available territory for subsoil use. MIID insisted that, prior to making new areas available in the PMSSF under the first-come-first-served principle, it was necessary to identify the areas where mining is not allowed (urban areas, reserved areas for environmental reasons, etc.), and to clearly delineate the contours of the deposits discovered during the Soviet period for which geological work has already been done. Substantial additional work was needed to complete these tasks and this was substantially delaying the extension of the first-come-first-served principle to the full territory of Kazakhstan.¹⁴

Another priority is the launching of a **digital platform** providing open access to investors of geological information based on systematized electronic copies of all available primary and secondary documents. From a national repository of geological information on all mineral occurrences and deposits in Kazakhstan, the concept of the platform has evolved into an extremely ambitious program that aims to assemble 92 layers of information containing all other relevant information for the sector, such as protected areas, water resources, urban areas, etc.

The digital database named National Mineral Resources Data Bank, originally planned to be commissioned by July 2021, is facing a series of delays. This is not surprising given that no large mining country has managed to successfully establish such an ambitious undertaking. The design and implementation of the platform faced innumerable technical problems and the responsibility has been finally transferred to the Ministry of Digital Development to develop a new one. The MIID expects to launch operation of the new platform with limited tools and framework in May 2023.

The new **National Geological Service** - created on the basis of RCGI Kazgeoinform LLP currently reporting to the Committee of Geology - is tasked with providing comprehensive scientific support to investors and open access to geological information, operation of the National Mineral Resources Data Bank, dissemination, systematization and analysis of geological information together with scientific geology institutions of Kazakhstan.

¹⁴ Under the old mining code there was no need for systematic demarcation of the areas benefitting from proven reserves dating back from the Soviet times since the Committee of Geology was only required to do that after investors negotiated a contract for a requested area. Kazgeology received the funds to conduct the delimitation of about 1,000 deposits but the process has been delayed and reportedly continues to be done on a case-by-case basis.

The lack of a sector strategy combined with regulatory and institutional instability leaves no assurance to investors in terms of the future direction of the mining sector and its legal framework. Investors complain that the management of the PMSSF is not transparent, extremely cumbersome and is causing delays in the granting of new licenses. Some companies see the Committee of Geology as putting mineral reserves accounting at the center of its work and believe that it should stop acting as a police authority focused on subsoil use administrative procedures and devote more attention to the development and dissemination of Kazakhstan's geological data.

The Committee of Geology favors direct government investment mostly on brownfield exploration for the replenishment of reserves, led by state-owned Kazgeology and Tau-Ken Samruk. Having been granted preferential treatment before and under the SSU Code, these two companies were entitled until June 2020 to obtain mineral contracts and licenses for area on priority basis avoiding any competition. Although the transition period was meant to allow them to finish on-going projects, both companies redefined their strategies to promote joint ventures with new investors. Faced with difficult (and sometimes costly) access to geological data, licenses, and land, junior companies focusing on greenfield exploration were led to believe that they needed to partner with a state-owned company in order to be able to invest in Kazakhstan or, as a minimum, contract the services of specialized consultants that, quite often, were former civil servants.

The third priority is the adoption of the international system of reporting standards for the certification of nonfuel mineral reserves overseen by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO). The system is based on international reporting standards such as the JORC Code (Australia), the CIM Guidelines (Canada), and the Certification Code (Chile). The new SSU Code mandates all reporting according to CRIRSCO standards, but until January 2024 the reserves for new projects were given temporary period to be prepared under CRIRSCO standards or rules of State Commission for Reserves (GKZ standards) under Committee of Geology inherited from soviet times. The process is still at an early stage and requires time for its implementation. Mining companies are usually required to prepare reserve estimates according to an internationally recognized scheme, such as JORC, and making another set of estimates according to soviet-based official guidelines adds to their work without any clear benefit. However, the Committee of Geology claims that it cannot meet the 2024 deadline because Kazakhstan's tax authority raises the risk of decrease of the tax base for the calculation of the Minerals Extraction Tax. Both Committee of Geology and State Revenue Committee refuse moving from the mineral extraction tax (MET) tied to estimated mineral resource base to a unit-based royalty on the value of extracted minerals sold prior to processing.

A major part of the country will only become accessible for exploration after the completion of these three tasks. The frequent delays in the transition towards full implementation of the new SSU Code appear to be a clear example of mission creep at the level of the Committee of Geology which, by controlling the provision of the subsoil blocks provided for exploration and production, engaged in several unnecessary tasks that risk prolonging the adoption of the new SSU Code indefinitely. In the meantime, valuable geological information that could be put to use to stimulate investments in exploration is kept under a veil of secrecy and prospective areas are excluded from much needed investments in exploration.

Sector Dialogue (2.59)

The Association of Mining and Metallurgical Enterprises (AGMP) is Kazakhstan's Chamber of Mines counting more than 100 members, including about 50 subsoil users. It predominantly represents the interests of large incumbent national mining companies (private and state-owned). Although large foreign

mining companies are also represented, they are favoring the establishment of new platform to facilitate dialogue with junior companies.

Junior exploration companies believe Kazakhstan needs competent sectoral associations that know the problems of the industry from the inside, raise critical problem issues with the sector ministries and try to solve them at different levels. However, they feel that AGMP and, more broadly, the National Chamber of Entrepreneurs "Atameken"¹⁵ isn't performing this role effectively, partially because the government often pays little attention to the opinion of the industry. They believe that it would be possible to significantly increase the efficiency of their activities through the participation of a larger number of representatives of not only large but also small companies in their working groups. Some companies are of the opinion that AGMP represents the interests of large companies only, to the detriment of small companies. In addition, they think Kazakhstan entities should cooperate with international associations in the development of the industry. Many industry representatives regret that the MIID is not open for dialogue, especially for small companies.

There are no strong Civil Society Organizations involved in the mining sector. Civil society is mainly involved at the stage of public hearings under EIA. However, the institutional network of independent non-governmental organizations (NGOs) in the field of mining and environment is rather weak, with most of the governance NGOs, essentially regrouped under EITI.

CSOs believe that the mining sector suffers from an overall lack of transparency and that civil society is poorly informed about the state of affairs in the mining industry in the country. They claim that government did not engage NGOs in the preparation of the SSU Code nor on the disclosure of sector information as prescribed in the legislation. For instance, the MIID still does not disclose and ensure public access to all subsoil use contracts and licenses, information on performance of the licenses and beneficial ownership over earlier awarded contracts.

However, CSOs recognize that many CSOs do not have sufficient competence to present their views and that, at the same time, there are not enough effective instruments to provide views. In their view, the mining code suffered from a lack of broad multi-stakeholder approach, leaving only room for the competent authority in decision making and enforcement of the legislation.

Dialogue with industry is seen by many CSOs extremely limited. However, CSOs recognize that work on improving the quality of the dialogue is ongoing, with the involvement of the EITI National Stakeholder Council. Issues arising in the course of interaction between local governments, mining companies and civil society are resolved on a routine basis at meetings of working groups under the Government and through the EITI Stakeholder Council. However, CSOs noted that these meetings are becoming extremely rare, and the scope of discussions progressively reduced to the EITI report. This could potentially trigger Kazakhstan's suspension from EITI during the next Validation.

Moreover, the involvement of civil society is very weak, even on areas that could directly affect the population. For example, mining companies are required to prepare and update an Emergency Preparedness and Response Plan (EPRP), within the framework of expert reviews of projects by emergency authorities, but without community participation. Some civil society representatives believe that it would be essential to increase the interaction between government agencies, civil society and the population in

¹⁵ The Chamber of International Commerce of Kazakhstan was reorganized on July 29, 2014, to perform functions of the National Chamber of Entrepreneurs of Kazakhstan "Atameken" in the sphere of foreign economic activity of businesses and attracting foreign investments.

emergency situations, since the vast majority of the population does not have clear guidance on how to act in case of emergency.

Roles and Responsibilities (2.89)

Kazakhstan's mining legal framework has become more flexible and stable, as well as less subject to discretion and uncertainty on the part of the regulator. However, the legislation is still in flux. The roles and responsibilities of the different public entities involved in mining have shifted over time. For example, over the last few years mining was under the mandate of the MoE, the MIID and the MEGNR. In practice, there are areas where there is a deficiency of clarity about the roles of the institutions, where resources and capacities are lacking, where there are problems of delimitation of powers and coordination between the national government and regional authorities (common minerals and artisanal and small-scale mining), and between sectoral and environmental authorities.

The main factor of instability is the institutional fragmentation between the geological authorities and the MIID, both units having different visions for the policy and reform of subsoil use, as well as instability in the leadership of the MIID. A clear example that disturbs the effective implementation of the SSU Code is the setup of an effective monitoring and enforcement institutional framework. The inspection of subsoil use in Kazakhstan is extremely segmented with few coordination among oversight entities: MIID (solid minerals), Committee of Environmental Regulation and Control of the MENR (environmental management), Committee of Geology (geologic studies), Ministry of Labor (health and safety), Ministry of Emergency Situations (natural accidents, tailings dam security, emergency plans), etc. Lack of collaboration among these entities has generated greater complications for companies.

Regarding solid minerals, at the exploration phase, the counterpart of open access to mineral reserves is the strict compliance with the obligations prescribed in the SSU Code, to prevent speculation and the freezing of areas that are not worked. Yet, annual exploration activity reports are currently submitted on paper format to the regional offices of the Committee of Geology, with copy to MIID. The authorities issue reception and approval notes but usually do not analyze the quality of the reported data and do not use them to improve the quality of regional geodata. The Committee of Geology conducts annual reviews (without field inspection) with regards to geological studies; storage, accuracy, and registration of geological data; and subsoil users' reports on geology, minerals extracted, and planned losses on the use of subsoil. Should a breach be found, the Committee sends notification within 10 business days since the infringement is identified. The subsoil user has 5 business days to disagree or 10 business days to provide a corrective plan indicating specific deadlines for eliminating breaches. Failure to eliminate breaches will result in an audit with on-site visit.

At the extraction phase, a problem with the earlier concluded contracts, is a scope of control that restricts any changes to the mining plan without explicit approval from the MIID, including extraction methods as well as technologies used by operators. This may restrict the ability of operators to respond to changing market conditions. In most countries, changes to mining plans must be approved by relevant authorities only when a modification of the plan uncovers new environmental or safety risks.

A strong mining inspectorate is needed to receive, collate and analyze the reports of exploration and mining companies, check compliance against regulatory obligations, prepare statistics, conduct or contract physical audits and support the tax authority in the application of the fiscal regime. In practice, however, MIID does not have enough staff on its inspectorate unit for an effective enforcement of the SSU Code. This situation is aggravated by the permanent rotation of government officials that limit their understanding of the roles and responsibilities of the institutions they lead. Companies regret that there are fewer and fewer professional personnel in MIID and the Committee of Geology who have experience in the industry.

Both industry and CSOs claim that Kazakhstan is not a country of institutions but a country of personalities that shape government entities at their will during their short tenure terms. They regret that there is no alignment with sector goals between departments and committees in the sectoral ministries and that sometimes there is hidden competition and struggle between ministries and departments for allocating and approving resource rights. One of the constant complains regarded the dispersal of issues of geology and subsoil use in three Ministries (MIID, Ministry of Energy, MGENR), which affected the lack of uniform approaches in the implementation of geological studies, as well as issues of subsoil use.

Good governance of the mining sector requires that the decision-making system be multisectoral from a horizontal point of view (with more than one ministry in charge of creating checks and balances), multilevel from a vertical point of view (with participation and management of regional governments) and multi-stakeholder (with the participation of civil society, mining companies, and local populations), supported by interoperable and integrated information systems, and with the resources and capacities and institutional resources suitable for effective operation.

There was a conflict of interest in having the Ministry of Environment as the main promoter of mining sector development. There was also some overlapping in relation to the replenishment of the mineral resource base, which is tasked for both the MIID, in term of granting exploration licenses, and the Committee of Geology, in terms of conducting prospecting and exploration using state budget funds. This institutional arrangement was quite unique and only seen in countries where the mining sector is not developed. It resulted on several conflicting positions between MIID and the MEGNR, a lack of clarity regarding government's role in the sector and an overall blockage of mining sector development. For example, in an attempt to take over the functions on inspecting exploration and mining operations, the MEGNR promoted a draft law supporting the Concept of Development of the Geological Industry of Kazakhstan for 2021 – 2025 which, among other things, implied the extension of the priority right of Kazgeology and Tau-Ken Samruk to obtain licenses for reserved areas. This draft law was blocked by the President's Administration but the role of the three geological entities (Committee of Geology, Kazgeology and Kazgeoinform) under MEGNR was not clearly defined and delayed the setup of brand new National Geological Survey.

Yet, the institutional framework is young and, therefore, perfectible. The process had several setbacks, including changes in environmental regulations that reassigned powers to the responsible agencies, and had to overcome various obstacles, including financing, which delayed the institutional strengthening of the entities.

Role of state-owned enterprises (SOEs) in the mining sector of Kazakhstan

Kazakhstan's mining sector is still under a strong influence of state ownership. State participation in the extractive industries is also carried out through Samruk-Kazyna National Welfare Fund JSC (NWF), which dominates the sector through its control of Kazatomprom and Tau-Ken Samruk, some of the country's largest state-owned operators. In January 2009, the Government created Tau-Ken Samruk National Mining Company to independently develop some mining projects and manage state-owned stakes in mining companies. Tau-Ken Samruk's business model consists in identifying or purchasing projects, developing studies for their development and construction, negotiating partnerships and joint ventures or divesting share and mineral assets for further reinvestment in the development of new projects.

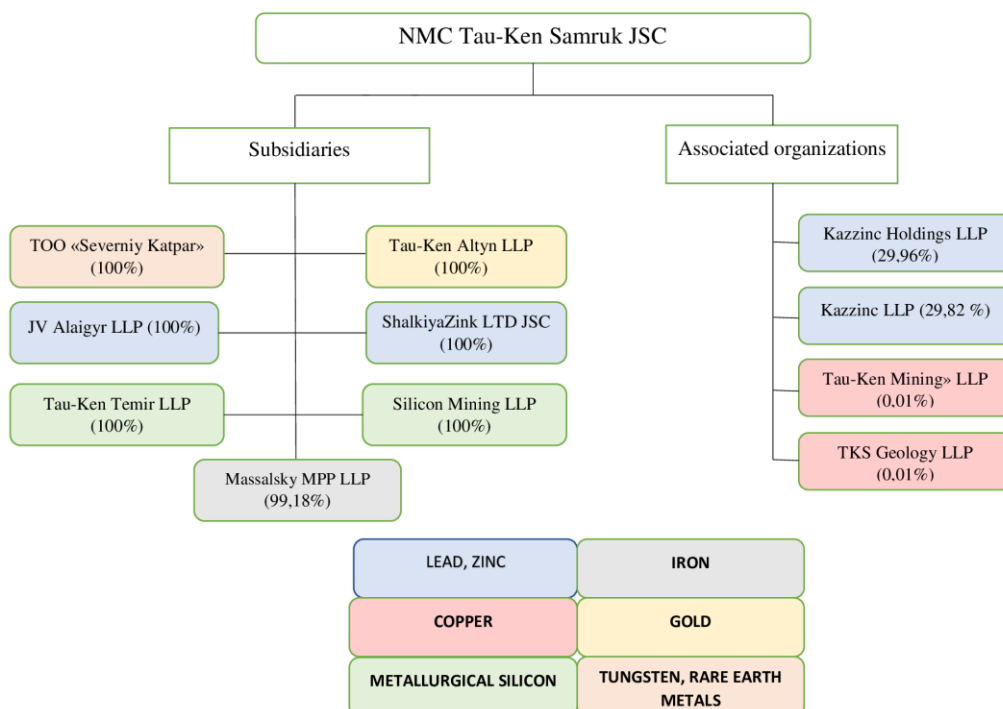
Currently, both Tau-Ken Samruk and Kazgeology have the right to obtain subsoil use rights and act as service providers to mining companies. Before July 2020, when the two-year transitional period of new mining code – the Subsoil Use Code (SSU) Code – expired, the business model of both companies mainly focused on obtaining subsoil use rights of prospective resources on priority basis compared to other private

companies and entering into joint ventures for their potential development with private investors, either national or foreign, against free-carried equity of about 20-25%.

The business model combining strong state control with an apparent openness to investment and trade favors companies that have been created as partnerships between government and influential domestic economic groups, such as Kazzinc and Eurasian Resource Group, an integrated mining and metals business, 30% and 40% of which are owned by the government through Tau-Ken Samruk and Ministry of Finance respectively. The knitting together of regulators, SOEs and influential domestic business groups, implemented through the privatization process, is a cornerstone of the mining sector.

For that reason, governance of SOEs is of paramount importance, especially with regards to protecting Managing Boards from political interference. Moreover, the use of these holding companies allows SOEs to operate outside of the budget process and the scrutiny of the Parliament. In addition, ministries with ownership functions are also regulators of their respective sectors. This means that ministers hold influential positions on the boards of directors of the holding companies which they are also charged with regulating, generating direct conflicts of interest. The result is an overall regulatory context that creates significant barriers to competition when compared to most resource-rich countries, meaning that incumbents and state-owned companies tend to have advantages over newcomers and junior exploration companies.

Figure 6: Tau-Ken Samruk JSC group of companies



Kazakhstan has stated the aim to decrease the SOE share in the economy to 15% by 2020, in line with OECD averages. The goal has not yet been reached, but in 2020, the government enacted a new comprehensive

privatization program for 2021-2025. Tau-Ken Samruk is included in the list of companies that could potentially go through an initial public offering (IPO) or be sold to strategic investors. However, after internal review, Tau-Ken Samruk's Board advised against the privatization. While many reforms to improve the reporting activities of state-owned enterprises (SOEs) have already been introduced, further efforts to ensure competitive neutrality between private companies and SOEs, broader improvements of the local SOE governance framework, and sufficient regulatory transparency are needed.

Intergovernmental Coordination (2.47)

There are complications in coordination, collaboration and information sharing between government entities at the national level and between the various levels of regional and local government. As there is no explicit state policy for mining, each sector has its regulatory space and, in practice, there is still a lack of a common mandate between the various development policies, plans and strategies. Further streamlining of procedures as well as close co-ordination with environmental, economic policy and tax authorities would definitely improve the mining sector's overall performance.¹⁶

Working groups are regularly created to address specific issues, but as a rule they do not take into account the opinion of the industry. There are also mechanisms for information exchange and discussion in the form of forums and exhibitions, such as MINEX, KAZENERGY Forum, etc. However, participation in the forums is paid, civil society does not usually attend. On the other hand, the MFA assumed an important role in promoting mining investments.

The weakness of management and information systems also contributes to the problems of lack of effectiveness in sectoral management and institutional coordination. One of the sector's publicly available sources of information is the EITI database, but it is not integrated with the Ministry of Finance's database, and so the data is not entered automatically, and there is also a lack of sufficient supervision over the submission of reports by subsoil users to these bases. Overall, CSOs believe that Ministries do not inform the public about the existence of databases, and some data is published on government's websites in unpredictable places, so it is very difficult to find.

Room for Improvement in “Mining Sector Management Framework”

This assessment of the mining sector management framework has helped identify room for critical improvement in both the rules and their implementation.

- ◇ Key reforms introduced through the SSU Code have faced resistance from some government institutions to their full implementation. The Government could revive reforms by issuing a clear sector policy statement (mining sector policy or strategy) elaborated and disseminated through a process that includes broad and meaningful engagement with industry and civil society. This policy instrument would guide the required institutional adjustments, providing clear direction for inter-ministerial policy and operational alignment.
- ◇ The legal framework for the sector requires the harmonization of different pieces of legislation, such as the mining, land, environment, water, and tax laws, among others to avoid fragmentation.
- ◇ An effort should be made to remove remaining gaps between certain provisions in Kazakhstan's mining sector legal framework and good international practices (such as terms of ownership,

¹⁶ OECD (2018).

document registration, access to geological information, mineral reserves certification system, procedure for granting rights to subsoil resource management, etc.).

- ◇ MIID should be empowered to strictly enforce first-come-first-served as the key principle for granting mineral rights, without exceptions or preferential treatment to specific entities. The Committee of Geology seems to continue to privilege the interests of a relatively small group of incumbent companies and has hindered the transition towards a more open, competitive sector.
- ◇ It appears to be more reasonable to have geology, exploration, extraction and metallurgical responsibilities together, under the same competent mining sector authority. Considering the current government's institutional framework, it should be hosted under MIID. The entity's function should be organized according to three principal services - National Geological Survey, Mineral Licensing Services and Regulation, and Mines Inspectorate and Compliance - and establish cross-cutting services such as legal/regulatory functions, mineral economics and project evaluation, sector and market information, among others.
- ◇ The role of the new National Geological Survey should be to develop databases of geological and scientific information (precompetitive geology) to de-risk investments. The tasks that are inherent to the private sector – such as services for geological exploration, geophysics, work on specific private projects, etc. - should not be carried out by the state.
- ◇ It is necessary to build capacity among government officials on modern exploration and mining techniques and business models, provide training to improve the accuracy and the quality of geological data and strengthen in-country capacity to implement international standards for the certification of mineral reserves.
- ◇ Government should strengthen the operational coordination and information integration among different ministries and their inspectorate entities to reinforce the goal of mining reform and the direct enforcement of the legislation applicable to the mining sector.
- ◇ It is also important to strengthen formal mechanisms and platforms for constructive stakeholder engagement in the forms of dialogue and collaboration, with a clear legal status that gives effect to their decisions.

V. Performance along the Extractive Industries Value Chain

This chapter takes a more detailed look at the performance of the mining sector at each stage of the value chain and lists potential areas where there is room for improvement.

V.1 Contracts, Licenses and Exploration

Regarding the first stage of the value chain, “Contracts, Licenses and Exploration”, the de jure performance shows lower scores than the actual de facto performance, with only one de jure indicator receiving a very high score. Overall, the de facto performance receives high scores, with only “Collection and Maintenance of Geological Information” scoring lower.

Figure 7: Value Chain Stage 2—Contracts, Licenses and Exploration

	Indicators
De Jure Performance (2.15)	License Allocation Rules (1.58)
	License Management and Transfer Rules (2.71)
De Facto Performance (2.97)	Collection and Maintenance of Geological Information (2.46)
	Effective License Allocation (3.12)
	Effective License Management (3.32)

Collection and Maintenance of Geological Information (2.46)

Storage and access to data on subsoil and subsoil use is done through the National Geological Service (former Kazgeoinform LLP) under the Committee of Geology . Although there were no new major discoveries of mineral deposits in the 30 years that followed independence, Kazakhstan benefits from a substantial amount of paper-based and records in outdated format of geological data produced during the Soviet period.

Ownership of geological data is defined according to the following principles:

- Geological data that was transferred at independence to the ownership of the state remains property of the State.
- Geological data received on the account or at the expense of the subsoil user is its private property. Data contained in geological reports received by the state authority from the subsoil user shall remain a commercial secret of the subsoil user and the state must take measures to protect such confidentiality for 5 years.
- The subsoil user is responsible for the record-keeping and accuracy of geological data that was produced during its subsoil use operations, including keeping cores and samples.

Another tool of information on subsoil use is Integrated Cadaster of National Subsoil Fund that is originally conceived to keeps records of:

- (i) all mineral occurrences and deposits in Kazakhstan.
- (ii) data on areas granted for geological studies, exploration and production of hydrocarbons, solid minerals, common minerals, use of subsoil spaces and artisanal mining.
- (iii) data on closed exploitation sites of hydrocarbon, solid minerals, common minerals production, artisanal mining, storages of hazardous toxic waste and wasted water.
- (iv) record keeping of existing technogenic mineral formations.

A reference book with key results of geological information generated prior to the independence was published in 1996, containing detailed information on quaternary deposits. The data, including geological maps that provide an almost complete coverage of the country at the 1:200,000 scale, is generally available against a fee. Although generally recognized as useful, the data is mostly in paper format, with several companies reporting that digital maps are basically scanned copies of paper maps. In addition, the

information is not always georeferenced, and some layers of data and other pieces of information are missing, having been lost over time.

Because exploration techniques have evolved significantly since the Soviet times, the Committee of Geology is working on the preparation of an updated reference book (Geological Atlas). A KZT1 trillion (US\$ 2.3 billion) national program for geological information aimed at defining additional resources to supplement current reserves and develop public infrastructure for geodata has been approved for the period 2021-2025, according to a decree of the MGENR. The program is targeting increases in resources of 700 million tonnes of hydrocarbons, 200 tonnes of gold, 5 million tonnes of copper, 5 million tonnes of base metals, and 50,000 million tonnes of uranium. The target is to allocate around 70-80 billion Tenge per year to the mining sector, in the following types of activities: scientific and applied research in support of geological exploration of mineral resources; automation and digitalization; development of infrastructure; and staffing.

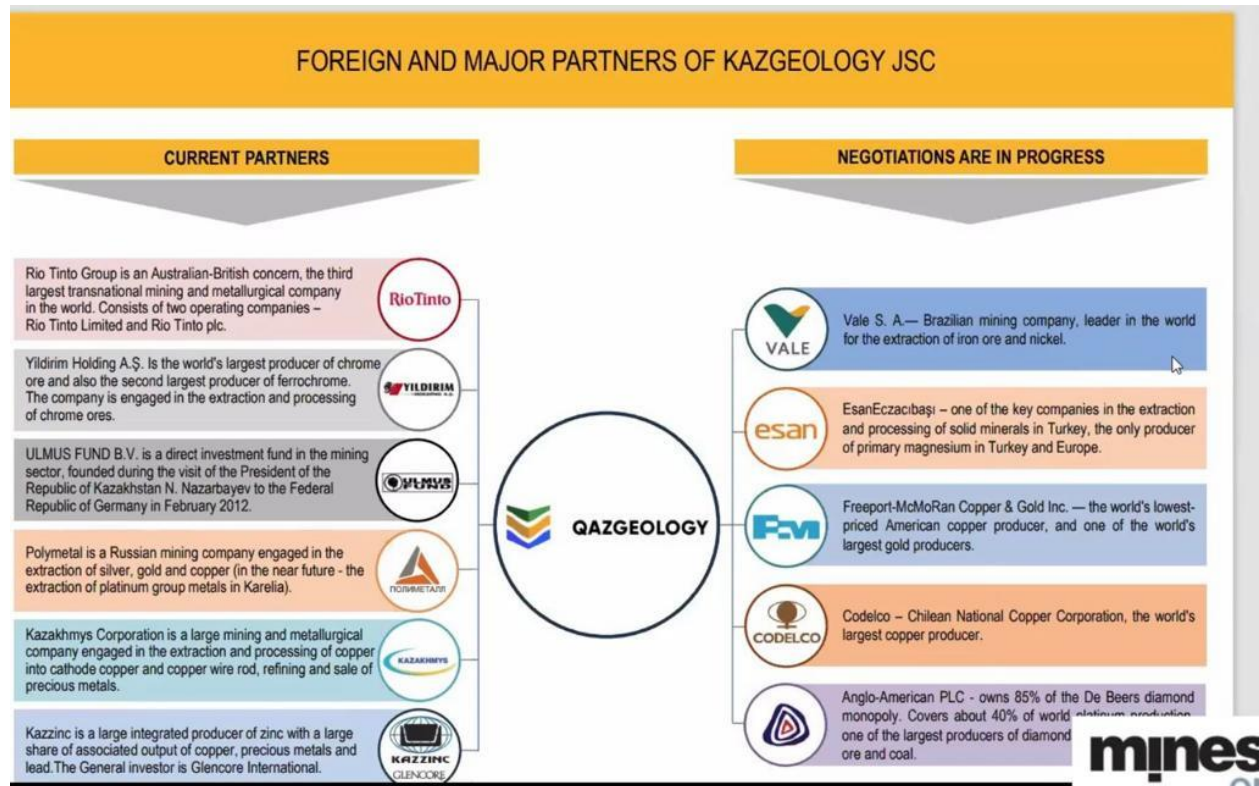
Efforts to digitalize the geodata have been going on for several years, reportedly without a strict methodology and mostly focused on scanning the paper documents. The Committee of Geology wants to move to a detailed 1:50,000 mapping scale but only small portions of the country have the required metallogenic maps, seismic, sedimentary, mineralogy or geophysics coverage. The priority is to replenish the minerals reserve base of mining and metallurgical dependent mono-towns. The ultimate goal is to create a digital database providing open access to investors of all geological information in possession of the state.

Responsibility for the setup and management of the database lies with National Geological Service, under the Committee of Geology. National Geological Service created in 2022 on the basis of Kazgeoinform LLP is aimed to maintain informative and scientific basis for subsoil use by providing comprehensive geoscience support to investors, open access to geological information, the operation of the digital mineral resource platform and the dissemination, systematization and analysis of geological information together with other geoscience institutions in Kazakhstan. The original deadline for the creation of the geologic survey was December 2021. A legal diploma for that purpose is under preparation.

A major roadblock to the development of modern geological information is Kazgeology's business model that privileges the expansion of work in joint venture with foreign operators or as a contractor in competition with private providers of geological services. Over the last ten years, Kazgeology emerged as an important provider of geological services to mining companies, providing a full range of services for investors, starting with the process of site selection, geological exploration and obtaining subsoil use rights, and competing in several tenders with private national providers.

Kazgeology's rationale is based on the principle that no foreign investor will come to Kazakhstan without an important investment by the government in de-risking private geological exploration expenditures, arguably the riskiest segment of the minerals investment cycle. Kazgeology believes that the government should improve the country's exploration attractiveness by undertaking the first phases of exploration until the identification of mineral deposits, therefore bearing the major risks of the activity.

Figure 8: Foreign and major partners of Kazgeology JSC



The SSU Code clearly establishes that Kazgeology should not compete with private service providers but, notwithstanding, the company kept requesting waivers for the completion of existing and additional work programs. The Company's vision for 2025 is to become a world-class state-owned exploration company that possesses key competencies and advanced technologies in the geological study of subsoil and carries out high quality geological exploration and scientific research in the interest of Kazakhstan. According to its Annual Report, geological exploration in the country is carried out in the framework of 19 investment projects implemented in cooperation with foreign investors. To date, more than US\$ 35 million of investments have been attracted under these projects. The Company plans to increase the amount of foreign investment attracted to exploration up to US\$ 100 million by 2025. Kazgeology is currently being audited by Kazakhstan's Supreme Audit Institution.

Similar models adopted by several European geological surveys after the steep rise in commodity prices in the 1970s proved to be ruinous to these institutions. They consisted in conducting geological work leading to the discovery of mineral deposits and preparing feasibility studies that would be offered for joint ventures with private investors. As it turned out, few private investors were interested in these discoveries and when they were, found it extremely difficult to agree with the proposed conditions of the joint venture or the operating procedures that had to be followed by these state-owned entities (public procurement, lengthy decision periods, political pressure, etc.). In addition, more often than not, mining companies had their own geological and financial models and were reluctant to adopt those proposed by the national geological survey. The failure of these models led to an almost universal consensus of having geological

surveys focus on country and regional-scale pre-competitive geological information to guide mining investors in the selection of targets, letting them invest on the riskier phases of geological exploration.¹⁷

Another important step for the full implementation of the SSU Code is the adoption of the international system of reporting standards for the certification of nonfuel mineral reserves overseen by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO). The system is based on international reporting standards such as the JORC Code (Australia), the CIM Guidelines (Canada), and the Certification Code (Chile) and is supposed to replace the classification developed by the State Commission on Mineral Reserves (SCR) which founded in 1927 to create a unified system for the objective assessment of mineral reserves at the country level. The SCR classification has been improved many times, but currently still relies on Russian-based GKZ standards, which are not accepted internationally by stock markets and create a barrier to attracting foreign investment.

In 2014, Kazakhstan began the process of developing national reserves standards based on the CRIRSCO template. A new code of reporting standards for geologic exploration, mineral resources, and mineral reserves (the KAZRC code) has been developed under the guidance of an independent KAZRC Association that had been founded by Kazakhstan's Professional Association of Independent Experts in Subsoil Use (PONEN), which consists of independent experts and qualified specialists in geological prospecting organizations and mining entities, the Association of Mining and Metallurgical Enterprises, and Kazgeology.

The SSU Code mandates all reporting to be done according to CRIRSCO standards, but until January 2024 the new reserves and reports were given a temporary period to be prepared under CRIRSCO standards or rules of State Commission for Reserves (GKZ standards) under Committee of Geology inherited from soviet times. According to PONEN, on April 2022 about 50 reports had been reviewed by the Executive Committee, converted into the KAZRC classification, and submitted to the Committee of Geology for approval. If the conversion does not result in a downgrade of more than 25% of the volume of reserves it will be approved. Otherwise, the Committee reserves the right to appoint an independent auditor to review the calculation.

The quality of data reporting has increased substantially as a result of this program. In addition to the laboratory partially owned by Kazgeology, which is still expecting international certification, many private companies have invested in their own laboratorial capacity to improve the quality of their geological data. However, the Committee of Geology claims that it cannot meet the 2024 deadline for the full transition to CRIRSCO because Kazakhstan's tax authority refuses to accept it for the definition of the tax base for the calculation of the Minerals Extraction Tax (see Section V.3).

¹⁷ See for example the Geological Survey of Western Australia's role: "As a trusted, world-leading geological survey, the Geological Survey of Western Australia (GSWA) provides objective and authoritative geoscientific data, information and knowledge to support the responsible use of the State's natural resources. The GSWA produces state-of-the-art databases, books and maps for prospectors, explorers, miners, investors_and the general public. This information provides the building blocks that enable the resources industry to design exploration programs that optimise discovery. It also provides the general public and interest groups with the geological knowledge to make informed opinions around mining and resources, and through effective geoheritage and geotourism strategies, informs our stakeholders about the history and importance of our continent. Current and evidence-based information is also critical to government for developing policies and making decisions, particularly in relation to economic and land-use issues. GSWA provides geoscientific advice to regulators, and manages the collection, storage and release of statutory information supplied by the resources sector." GSWA Geological Survey website.

License Allocation Rules (1.58)

While before 29 June 2018, subsoil use rights were awarded through contracts, under the new SSU code they are granted under licenses. A subsoil user may be granted an unlimited number of licenses, except in those cases established by the Code. Currently, the Kazakhstani legislation identifies six types of licenses:

- an unexclusive license for geological studies (prospection) of mineral resources issued for a period of up to 3 years. There are no area limits for these studies but drilling is not allowed.
- an exclusive license for the exploration of solid minerals (exploration license) issued for 6 consecutive years, with the possibility of an extension for 5 more years.
- an exclusive license for the production of solid minerals (mining license) issued for a maximum of 25 consecutive years, with the possibility of an unlimited number of renewals for a period not exceeding the initial term of the license.
- an exclusive license for production of common minerals issued for a maximum of 10 consecutive years.
- an exclusive subsoil space use license issued for a maximum of 25 consecutive years, with the possibility of an unlimited number of extensions for a period not exceeding the initial license period.
- an exclusive artisanal mining license (also referred to as “prospection license”) issued for three years and that can be extended once for three years at the request of the license holder. Kazakhstan nationals have the exclusive right to produce precious metals and stones manually or using low-power machinery. Subsoil use rights under an artisanal mining license may not be transferred and/or encumbered.

Mining licenses are awarded by different governmental authorities depending on the type. Exploration and mining licenses for solid minerals are currently awarded by the MIID which is authorized to grant and terminate subsoil use rights for solid minerals (except for uranium) and carries out control over compliance with the legal obligations. The competent authority for uranium is the Ministry of Energy. Licenses for geological survey and for subsoil space use are awarded by the MGENR through the Committee for Geology, whereas mining license for commonly occurring minerals and license for artisanal mining are granted by a relevant local executive body (akimats) in different regions of the country. The risk of this institutional fragmentation is the potential overlap of licenses, especially if there is no integrated and online system that updates on a continued basis the status of the areas available to be licensed.

Exploration licenses grant exclusive exploration rights in respect to any solid minerals (including common) for the purposes of prospecting and assessment of resources and reserves with a possibility to conduct test mining up to 1000 m³ without additional MIID approval. The territory of an exploration license may not exceed 200 blocks (one side of each block is equal to one minute in a geographic coordinate system, each having an area of approximately 2.2 km²). If a deposit is discovered, the subsoil user has an exclusive right to obtain a mining license, if the discovery is confirmed by a report on estimation of resources and reserves of solid minerals. No assignment of such exclusive right is permitted.

Mining licenses grant exclusive mining rights in respect of any solid minerals (including common), as well as the right to conduct in-site (brownfield) exploration, use the space for the purpose of carrying out mining operations, placement of mining and/or processing facilities, and store technogenic mineral formations. An applicant shall submit a package of documents to the MIID for approval, including a draft mining plan and a draft mine closure plan. After their approval, a mining license is issued.

The terms, conditions, rights and obligations of exploration or mining licenses are not subject to negotiation of any kind. In certain cases (e.g., force majeure, rehabilitation procedure, temporary non-profitability of mining) mining license holders may apply for a retention status for up to five years, with a potential extension for five more years, exempting them from the obligation to comply with minimum annual mandatory expenditures for mining works.

All types of licenses are granted in respect of the specified areas delineated by the MIID on the basis of information provided by Committee of Geology in the Program for the Management of State Subsoil Fund (PMSSF) which is the main instrument of the mining policy. The PMSSF contains geographical coordinates of areas:

- (i) within which it is planned to conduct a state geological study of the subsoil;
- (ii) for exploration or extraction of solid minerals which have been the object of geological campaigns in the past and, disposing of detailed geodata, must be reserved for auctioning;
- (iii) for exploration or extraction of solid minerals which have no available geological information and can be opened for licensing through the first-come-first-served process;
- (iv) where mining is banned (specially protected natural territories, recreational and historical and cultural sites, urban centers, etc.); and
- (v) for the needs of defense and state security, areas of settlements, areas of lands of the water fund.

The PMSSF specifies which territories are generally available for subsoil use and for which type of operations, is developed subject to the information from a unified register of the subsoil resource base, state monitoring of subsoil use; and collection, storing, systematization and analysis of geological data. It is periodically updated and sent to MIID for approval, based on the energy and raw materials security needs of the country. Unfortunately, all this extremely valuable and sensitive information is not public nor transparent, as it is the case for attractive mining jurisdictions such as Australia, Canada or Chile.

Exploration and mining licenses (both for solid and common minerals) are generally evaluated and awarded on a first-come-first-served basis. Under the previous Law on Subsoil Use the government granted rights to subsoil use through competitive bidding (auction), except in certain exceptional cases in which the rights were negotiated. Areas with proven reserves determined before the independence were included in the national accounts - the *State Balance Sheet of Mineral Reserves*, based on the assessed reserves using historical estimates, adjusted if clearly out of date, and drawn down as mineral exploitation proceeds.

Competitive bidding takes place in several instances, where a license is granted in respect of the following territories:

- with reserves of commercial categories (A, B and C1 as per SCR) and included in the state balance of minerals prior to the date of entry into force of the SSU Code (temporary provision expired on 1 January 2023);
- which are within 30 kilometers from the outer perimeter of the boundaries of an existing contract area of a legal entity which is classified as a city-forming. This applies to companies like Kazzinc, Kazakhmys and ERG, which are usually the only large enterprise in an area they operate in (temporary provision expired on 1 January 2023);
- in respect of which a subsoil user contract entered into before the enactment of the SSU Code was early terminated.

In case of competitive bidding procedures, the applicants are required to submit a standard form application for participation in the bidding and provide supporting documents which are practically analogous to those required from the first come, first served scheme applicants. Supporting documents

are not standardized, but they are unambiguously specified in the legislation. In addition, lodging surety instruments (securing the payment of signature bonus) in standard form is required for participation in the bidding.

MIID has developed but could not adopt a draft amendment to the SSU Code extending the validity of the Auction Regulations from until January 1, 2023, until January 1, 2025, and including amendments to create a legal mechanism that excludes abuse and manipulation in connection with ongoing auctions for blocks included for the first time in the PMSSF, among other things.

Effective License Allocation (3.12)

The SSU Code provides that only subsoil blocks included in the PMSSF are available for licensing under the first-come-first-served principle. Although applicants may also request the authority to include a relevant prospective territory in the PMSSF, a major part of the country will only become accessible for exploration after the completion of state geological work. This work has faced delays and is scheduled to be completed by the end of 2022.¹⁸ As of the date of this report the work has not been completed.

Many companies are not satisfied with the overly cumbersome process of obtaining subsoil plots through the PMSSF and consider that no program for managing the state subsoil fund is needed at all. Lack of transparency is seen as a major problem and, overall, junior exploration companies complain that legal norms should be understandable and transparent for business, not discretionary, and applied systematically to all.

The culture of secrecy and delays in the creation of an online digital cadaster ensuring an open and transparent access to information are extremely favorable to the incumbent companies that can ask to have areas directly or indirectly under the area of influence of their operations included in the Program. Two ways of granting licenses out of general rules that came from the previously legislation have, in practice, allowed certain companies to obtain a license avoiding competition with other applicants through the first-come-first-served regime or competitive bidding procedures. For example, for the first 2 years following the SSU Code enactment (i. e. until June 2020), exploration and production licenses could also be issued directly to national companies such as Tau-Ken Samruk and Kazgeology, in respect of the areas not included in the PMSSF. On the other hand, until 29 June 2023 an exploration/production license can be issued to a company implementing an industrial and innovative project which is related to subsoil use. This path came from the previously effective legislation and in practice is deemed as a loophole to obtain a license avoiding competition with others under general first-come-first-served regime or competitive bidding procedures. Some companies have highlighted cases when subsoil use rights were granted based on industrial and innovative projects that involved only common beneficiation plants, as well as with respect to areas without any significant mineral resources.

While new applicants may also request the authorities to include additional prospective areas in the PMSSF, some fear that an expression of interest on their part might lead to favoritism and the opaque granting of areas to insiders. Although the PMSSF has been recently extended to include additional areas for exploration granted through the first-come-first-served principle, the fact that it opens territories for granting licenses gradually has led to a two-step license granting procedure, since an area needs to be included in the Program before the first-come-first-served process can begin. In practice, this means that

¹⁸ According to MIID's Department of Subsoil Use, as of mid-May 2022 about 259,000 km² remained to be opened to licensing through the first-come-first-served principle.

instead of the 15 working days for issuing a license (second step), the process can take a year or more from the moment a company expresses an interest in an area (first step).

Despite the simplicity of procedures and a small list of required documents, many companies complain they cannot obtain a license the first time, with roughly half of the first applications being rejected because of minor formal details. The main reason is the formal approach to the consideration of applications and the overregulation of the procedure for the application forms. Reportedly, some companies have received licenses without having qualified experience or the appropriate equipment to ensure environmental and health and safety compliance with the legislation. Companies have also noted that lack of staff affects the processing time of applications and urged MIID to accelerate the process to introduce the mining cadaster management system for issuance of licenses.

Regarding competitive bidding, in December 2015, MIID held the first auction of mineral resources. The use of auctions was included in the Kazakhstan's mining legislation at the end of 2014, and the list of resources to be auctioned in December 2015 was confirmed by the Ministry in June 2015. The auctioning process was subsequently discontinued. Some prices offered during the bids were unrealistically high and the bidder subsequently upon the grant of subsoil use right defaulted after the offer. As a result, the areas were frozen for periods of up to 2 years causing additional delays in the development of the resources.

These types of shortcomings are supposed to be addressed by the amendment to the SSU Code contemplated by the MIID that will try to toughen the pre-qualification criteria for applicants and increase the financial security for bidders. Auctions are expected to resume once the work of area delimitation is complete. Nonetheless, industry reports cases where areas benefitting from extensive geological information were mistakenly licensed through first-come-first-served procedures, when they should have been auctioned.

License Management and Transfer Rules (2.71)

Reporting obligations. The subsoil user is required to submit periodic reports to the competent authority, for example on the fulfillment of license obligations, on purchased goods, work and services, on controlling bodies, geological reports and other matters. Information about geological data obtained by the subsoil license owner through exploration is submitted electronically to the competent state authority in compliance with the new Code (Committee of Geology) and will remain confidential for five years or three months after expiration of the license. The state authority concerned is responsible for maintaining confidentiality. Reporting on exploration and mining expenditures is subject to third-party auditing. At the extraction phase, these can be further subject to government-sponsored audits on resource depletion that are very difficult to implement.

Monitoring compliance with license and contract obligations as well as compliance with the requirements for exploration and mining operations is conducted by the monitoring division of the Subsoil Use Department of the MIID on yearly basis. Compliance with the obligations under subsoil use contracts is monitored against the obligations set out in the contracts themselves, as well as in attached work programs which set out all the financial and production obligations of a particular subsoil user. Failure to fulfill any obligation under the contract may become ground for termination.¹⁹ While the regulations make it possible to terminate a contract based even on a small breach, in practice there is always room for negotiations due to the contractual nature of relationship.

¹⁹ When discovering a breach, the competent authority notifies a subsoil user and provide a period for remediation. If the subsoil user fails to rectify the breaches and there more than 2 of such breaches, the ministry is entitled to terminate the contract.

With respect to exploration licenses granted under the SSU Code, if a subsoil user is in default on its obligations (which consist of annual minimum expenditures, payment of the signature bonus and land use fees), the MIID notifies it of the breach, and the licensee must rectify the breach within 4 months and provide proof of rectification to the MIID. Should the licensee fail to rectify the breach, the license is subject to revocation upon a written notification to the licensee and expires in 3 months of the date of notification. The revocation of the license may be challenged in court within 15 business days of receipt of the notice.

Compliance of mining licenses granted under the SSU Code is monitored in the same way as for explorations licenses. However, there are additional liabilities for breach of the obligations on local content in works and services (30% of the cost of the unfulfilled obligation), financing of R&D and training of Kazakhstan nationals (both in the amount of unfulfilled obligation). Payment of the penalty terminates the obligation for the respective year.

Transfer of licenses. Pursuant to Article 40 of the SSU Code, any exploration and mining licenses are transferrable to third parties upon consent of the MIID, if applicable. At the same time, exploration licenses during their first year of operations may not be transferred. Artisanal mining licenses are non-transferrable.

Strategic minerals. First introduced in 2004, the notion of a state pre-emptive right to purchase the subsoil use right or share in a company holding such right or even a share in its parent companies, remains a challenging aspect of the new SSU Code. The introduction of a consent for the transference of a subsoil use right and the “objects associated with subsoil use right” (i.e. shares/interest in a subsoil user and its direct and indirect parent companies) implies that whenever there is a transfer of mining rights or shares in an entity holding such right (directly or indirectly), such deal shall be sanctioned by the competent authority (with certain exceptions). The consent regime applied and still applies to regular merger & acquisition transactions, as well as Initial and Secondary Public Offerings, irrespective of the number of shares to sold/issued (except for certain transactions with under 1% of shares), including when there is no actual change of control. While the SSU Code provides for a wider list of exception from the consent regime, most of the private transactions still require the consent.

The purpose of the consent is to verify the identity of the transferee not only from the technical and financial standpoint (to avoid having a subsoil user which cannot fulfill its obligations) but, most importantly, from the national security point of view. Currently, only a limited number of transfers would require the national security check, namely those related to large deposits of solid minerals (the criteria is established in the SSU Code and includes minerals such as lead, gold, and copper, in addition to uranium), strategic hydrocarbons and uranium subsoil plots, or if the proposed transfer somehow affects the interests of national security.

The consent is granted (or refused) on the basis of a decision of an expert commission under the MIID and by the National Security Committee. As there is no legal definition of what may or may not be considered as a threat to the national security, there is always room for discretion of the involved state authorities. The subsoil user has one year to remediate breaches caused by failure to obtain consent for the transfer of direct or indirect control of a license. No reference to compensation is provided in Kazakhstan’s SSU Code. Dispute resolution mechanisms are established for mining operators through a Kazakhstan-based court.

Effective License Management (3.32)

Delays in the creation of an online digital cadaster ensuring an open and transparent access to information and the opening of non-reserved land on the full territory to the first-come-first-served principle are seen as the main constraints to effective license management in Kazakhstan. Potential applicants may see territories available for subsoil use operations on an e-map hosted by MIID. Yet, mining companies report that sometimes it is difficult to get precision on the status of license conditions. It is not always clear if a given license is active, with a pending application, in breach of obligations, or recently vacated. Certain areas sometimes appear to have been carved out of the licenses, for example for artisanal and small-scale mining activities.

A criticism to the first-come-first-served system is that the easier access to licenses allows speculators to hold subsoil use rights while not doing enough exploration work on these areas to meet their investment expenditures commitments. One way of demonstrating that the new code works is to perform inspections for checking on compliance by the license holders and identify possible violations that may lead to termination of some licenses. But, in practice, the monitoring of licenses and contracts, which total up to 2000, is carried out at the central level by only four people at the monitoring division of the Subsoil Use Department. Staffing of regional inspection units is also inadequate. This prevents them to conduct field inspections and makes the control of compliance with the requirements for exploration and production operations almost impossible.

An audit of all mineral deposits resulting in the termination of 118 licenses, 57 contracts, and 73 notifications to eliminate violations sent to subsoil users was recently carried out. The SSU Code establishes that these terminated licenses/areas for mining should be auctioned openly. However, there is no clear mechanism to make the terminated areas available for exploration in a transparent and competitive way. The same issue arises in respect of contracts not extended by the MIID. It remains to be seen whether both termination and re-issuing of these licenses will follow the provisions of the code and result in transparent decisions, facilitating the turnover of territories in favor of real investors.

Whereas earlier exploration contracts were granted on average within 1.5 years from the date of winning a tender, under the new SSU Code exploration licenses are meant to be issued within ten business days. Despite overall lack of transparency and bureaucratic cadaster procedures, companies report a clear improvement in the access to licenses. They state that when well prepared, an application for an area included in the Program can take as little as 14 working days to be approved. New exploration licenses began to be issued under the new SSU Code beginning end of 2018 for 6 years, so there is no information yet on compliance with the renewal procedures. However, some industry representatives have noted that the process of obtaining consent for the transfer of shares in mining companies takes a long time, up to several months, which greatly hinders the attraction of equity financing through an IPO or private placement.

Room for Improvement in “Contracts, Licenses and Exploration”

- ◇ Consistent with the SSU Code’s policy orientation, Kazakhstan should adopt a private sector-led exploration approach, where the role for the government is to provide support for precompetitive geology through open access to geodata and geoscience activity, leaving capital-risk exploration to junior and mining companies. The public provision of basic geoscientific information increases private mineral exploration activity by reducing both the costs and risks of private explorers in the selection of areas for more detailed exploration.
- ◇ The Government-sponsored program for the collection and interpretation of geological data should be reassessed and expanded to include modern technologies and approaches currently

- used in countries like Australia and Canada. The Government should reorient funding for geological work exclusively towards precompetitive geology (scientific and analytical functions) and provide existing and new subsoil users with open, transparent access to geological data and reports.
- ◇ The role and mandate of the Committee of Geology should be reassessed, modified in accordance with the principles introduced in the SSU Code and superseded by the National Geological Service. Public geoscience as a public good is the most effective measure that governments use to promote mineral exploration and development. International experience suggest that geological mapping projects have immediate impact in terms of claim staking or new exploration activity. As a rule of thumb, \$1 in government spending results in \$5 in private sector exploration over the medium term.
 - ◇ The creation of the National Geological Service, on the basis of Kazgeoinform and certain assets of Kazgeology, should be prioritized and accelerated providing clarifications to the role of the state in compiling and providing access to geological data. The new entity should be framed on the basis of the institutional model employed in countries such as Australia and Canada where geological departments do not grant subsoil use rights and are not directly involved in attracting investments. It should take over the management of the National Mineral Resources Data Bank or other information platform in subsoil use. Priority should be given to the development and launch of this databases to simplify investors' access to geological information and other information related to granted subsoil use rights under Art. 77 of the SSU Code.
 - ◇ Consideration should be given to the elimination of the Program for the Management of the State Subsoil Fund. The application of the first-come-first-served licensing principle to all the territory of Kazakhstan should be enforced no later than end 2022 (except in protected areas and zones where mining is banned), coupled with competitive bidding for well-known deposits in exceptional cases. All loopholes, exceptions and advantages, as well as the current two-stage licensing process should be abolished.
 - ◇ MIID should expedite the streamlining of the licensing procedures and the creation of an online digital cadaster ensuring an open and transparent access to subsoil use information and the full digitalization of the procedure for granting rights to subsoil use, including an online license application platform.
 - ◇ MIID should consider the introduction of a progressive and indexed annual surface rental fee for the use of the subsoil based on the surface of the licenses that, in the case of the exploration phase, increase with time to reduce speculation.
 - ◇ Government should provide capacity building and training for the strict adoption of the CRIRSCO standards for the certification of reserves by 2024.
 - ◇ Government should consider combining the procedures for the transfer of "objects" (shares and other equity interests) associated with the subsoil use rights with the ones for the notification of the change in control. This will avoid confusion and provide flexibility in raising funds from investors who do not have effective control.
 - ◇ Government could also consider creating a special procedure for private placements and increase the number of personnel analyzing transfers to comply with legislative deadlines.

V.2 Mining Operations

For the purpose of this report, the “Mining Operations” component of the extractive industries value chain includes a look at such aspects as the processes for obtaining mining operation, environmental and sectoral permits; the effectiveness of social impact regulations; resettlement; artisanal and small-scale mining; mining product transport; health and safety; and mine closure.

The de jure performance scored low, with the de facto performance scoring somewhat higher. There is considerable variation in the scoring of the underlying indicators—with scores ranging from “very high” and “high” (“Mining Legislation and Processes” and “Occupational Health and Safety, de jure and also de facto for the later) to “very low” (“Land, Compensation and Resettlement Rules”).

Figure 9: Value Chain Stage 2--Indicators

	Indicators
De Jure Performance (2.48)	Mining Legislation and Processes (3.10)
	Land, Compensation and Resettlement Rules (1.25)
	Environmental and Social Impact Management (2.41)
	Artisanal and Small-Scale Mining (2.30)
	Occupational Health and Safety (3.75)
	Mine Closure and Financial Sureties for Decommissioning (2.08)
De Facto Performance (2.99)	Land, Compensation and Resettlement--Practice (3.67)
	Environmental Impact (2.67)
	Social Impact (2.71)
	Support for Artisanal and Small-Scale Mining (2.24)
	Occupational Health and Safety (3.69)
	Mine Closure and Financial Sureties for Decommissioning (3.00)

Mining Legislation and Processes – De Jure (3.10)

The Subsoil Use Code set out the legal framework for exploration and mining of solid minerals, including applying and granting of licenses, requirements for project documents, reclamation, license obligations and liability. There are also a number of by-laws specifying in detail various procedures under the Subsoil Use Code, e.g. applying for a license, submission of reports, holding auctions, provision of reclamation bond etc.

Compared to the previous 2010 Law, the new SSU Code sets out a much less burdensome procedural framework for both exploration and mining operations. The new code changed the legal framework dramatically by abolishing approval of the project documents by various governmental instances, commissions and bodies, leaving only the minimum necessary review, such as environmental and industrial safety. Under the old legislation, the procedures for approval of project documents and obtaining various permits could take 1-2 years. In many cases the inability to get approvals swiftly resulted in the deterioration of information or major changes in the economics of the project, which required updating the plans and project documents immediately after the previous ones had been approved.

In addition, the Code abolished (except for the earlier signed contracts) the notion of work program, a document which contained all financial obligations of a subsoil user, as well as the permitted volumes of mining extraction. Instead, the subsoil user is now required to spend a minimum amount on

exploration/mining related works during a given year. Yet, in practice, the amount effectively invested in exploration is very difficult to monitor.

However, as the mining legislation became much more user-friendly, the new Environmental Code which came to effect on July 1, 2021, has become much stricter in terms of environmental approvals and their timeframes. Based on OECD practices, it implies more sophisticated and usually longer procedures and requirements. Given it has only been in effect for less than a year, the enforcement practice is yet unstable and subject to change, and some processes under the SSU Code and the Environmental Code may not always be aligned.

Currently, exploration plans and mining plans are not required to be approved by the mining authority. Exploration plans are developed and shall be approved by subsoil users only upon environmental review. An environmental impact assessment shall only be required in respect of exploration plans under certain circumstances, i.e. when exploration implies extraction of rock mass and the removal of soil for the purpose of resources appraisal.

Mining plans require an industrial safety review by MIID and if operations are planned in the proximity of water sources – approval of the regional water resources departments. Mining operations are subject to mandatory environmental review and environmental permits which is the most time-consuming procedure, given that it requires undergoing prior Environmental Impact Assessment (EIA).

Land, Compensation and Resettlement Rules (1.25)

The Land Code of the Republic of Kazakhstan dated June 20, 2003, № 442 sets out the rules and conditions for granting land use rights to a land block according to the types of operations for subsoil use (paragraph 4 of article 32). Under the Land Code, local executive authorities reserve certain lands for different purposes, including for subsoil use operations. The right to use the land is granted after obtaining the appropriate permit, license for subsoil use or signing a contract for subsoil use. Leasing rights can be granted for the purposes of exploitation activities for the entire duration of the license (clause 5 of article 37). The Land Code is supplemented by specific regulations of the use of land for mineral exploration and prospecting.

The holder of an exploration license or contract generally is entitled to be provided with a land parcel which is in the state ownership on the basis of a public servitude, without ownership of such land. However, if the land is private or a public land is occupied by or adjacent to an existing landowner/land user, then a license/contract holder has to reach an agreement with the private landowner or occupier. For example, a holder of an exploration license has an access right to surface land, but no activity on the surface is allowed until an easement is established by decision of a local authority and an agreement is reached with the landowner on compensation of losses. Obligations for land reclamation and other conditions are determined by the agreement on the establishment of the easement, and in the absence of such agreement, by a court decision.

Pursuant to the Land Code, compensation shall be provided to landowners and land users in case of provision of private easement if such easement causes damages. If a public easement is established for the purposes of subsoil use, land users and landowners are entitled to compensation which is made by the subsoil user. If the establishment of an easement leads to impossibility to continue the use of the land, then the landowner is entitled to claim buyout of the land plot by the public authority which established the easement or ask for the provision of an equivalent or different land plot.

The law does not establish any rules or requirement on the calculation of compensation and damages and often subsoil users cannot agree with the landowners on the amount of compensation. When a deposit is found on a private land plot, the law mandates the landowner to return the land plot to the state, and only then it can be further passed over to the subsoil user, thus not permitting the subsoil user to deal with the landowner directly, which causes delays. Another issue concerns the change of the land category especially when a deposit is found on agricultural land. In this case the land plot must be transferred from agricultural purpose lands to industrial purposes lands.

No regulatory framework is in place to regulate resettlement of populations in the mining sector. The SSU Code only marginally touches the resettlement issue when it talks about the so-called Community Development Agreements which must be concluded between subsoil users and local executive and representative bodies in case an exploration or mining area is in the proximity of 1000 meters to any populated settlement. These agreements shall establish the measures of social and economic nature to support the affected population, including in terms of resettlement. However, there are no clear guidelines or requirements on this matter.

Land, Compensation and Resettlement Practice (3.67)

Conducting exploration or other mineral activities on private land requires reaching an agreement with the owner of the soil and the establishment of an easement approved by local authorities. However, the SSU Code prescribes no rules or guidelines to facilitate an agreement on the modalities and amounts of compensation for the damage caused. Mining companies argue that, in the absence of such guidelines or regulations, private landowners can ask very high prices to grant access to the subsoil under their properties. They also complain that there are regulations in the Land Code for reserving land for subsoil use, but there is no procedure in the land legislation to implement them. In their view, absence in the law of rules or requirements on the calculation of compensation and damages caused by exploration activity can sometimes lead to unreasonable expectations and overestimation of their amounts. This hinders exploration on private lands.

Cases of resettlement triggered by mining operations are rare in Kazakhstan, but CSOs share a negative perception about the way large industrial companies have been conducting resettlement processes. They believe that quite often their work does not meet the expectations of the affected communities. Notwithstanding, several CSOs stated in their responses to the MSD questionnaire that, in practice, payments of compensation are common when exploration and/or mining activities interfere with land ownership or land use. This explains the high *de facto* score for this topic. On the other hand, sales of land to foreign investors are controversial and have caused troubles in the past.

Environmental and Social Impact Management - De Jure (2.41)

In January 2021, a new Environmental Code of the Republic of Kazakhstan, №400-VI was adopted, setting out the environmental requirements for subsoil use activities to comply with modern international practice. In addition, other specific obligations are laid out in the SSU Code and the Water Code of the Republic of Kazakhstan of July 9, 2003, № 481, among others.

The new Environmental Code toughens the legal obligations for large industrial facilities that have the most significant environmental impact through a classification used to impose more or less strict requirements, subject to screening the environmental impact of the planned activity. The new code provides for different types of obligatory documents for each category, with Annex 2 providing the criteria for classifying the facilities as of category I, II or III. Facilities that do not meet those criteria are referred to IV category. Other

significant changes regard environmental impact assessment, environmental permits, application of best available techniques and waste management systems, as well as mandatory public hearings.

The SSU Code and the Environmental Code stipulate that any exploration or mining operations may only be commenced upon conducting an Environmental Impact Assessment (EIA), obtaining of the relevant environmental permit and/or positive opinion of environmental state expert review, depending on the planned type of activity. As a result, the requirements related to exploration and mining have become more stringent and procedures are now more demanding, often extending the application period to 6 to 12 months.

Before the commencement of exploration or mining operations, all subsoil users have to prepare specific project documents, which are subject to either a state ecological expertise (with screening procedures based on EU practices) or approval of the competent authorities. The new code provides for different types of obligatory documents for each category of facilities:

- Category I Facilities (with gross emissions of 1,000 tons and more) shall be subject to a comprehensive environmental permit that includes specific technological standards for emissions, discharges, water, electrical and/or thermal energy consumption, among other things.
- Category II Activities (which may have significant impact on the environment depending on specific circumstances) will require an environmental impact permit. They shall be subject to screening of the planned activity, considering its location, duration, facility characteristics, etc.
- Category III Activities shall be subject to an environmental impact declaration by the operator, a novelty for Kazakhstan's environmental legislation. Declarations will be submitted in writing or as an e-document to the relevant local executive authority indicating, among other things the declared amount of emissions, and the amount and types of waste. If the actual volumes of emissions, discharges, accumulation or disposal of waste exceed the declared ones, the operator may incur a fine for providing inaccurate information, with the ultimate suspension of the operation.
- Category IV applies to activities that generate a minimal environmental impact and do not require any permit or declaration.

Environmental permits are granted for mining companies' operations, setting annual limits for emissions, water use and water discharge. If levels exceed these limits, charges are applied in proportion to the amount of emissions or usage in excess of the limits (Article 127). Payments for the negative impact on the environment are established by the tax legislation.

Water. Kazakhstan's SSU Code contains references to the country's separate water legislation but does not provide further information on the exact requirements for subsoil users. The Code requires exploration license holders to carry out ground water sampling and disclose results to relevant authorities, whereas operators carrying out extraction activities which require water resources must submit water usage plans to the authorities overseeing water resources. Moreover, mining is banned near drinking water sources.²⁰

Mine tailings management. The MENR regulates mine tailings through the regulation of limits on solid waste disposal. Regulations for the mining sector are still being adjusted but the idea is to impose a hierarchy principle giving priority to the commercial recovery of minerals in tailings, their internal or external recycling and disposal only as a last resort. Security of dams is under the responsibility of the Ministry of Emergency Situations.

²⁰ OECD (2018).

Protected Areas. According to the Law on “On Specially Protected Natural Territories” № 175 dated July 7, 2006, geological survey and exploration activities are permitted in protected areas upon consent of the environmental authorities, while extraction of minerals can exceptionally be authorized upon resolution of the government. These operations shall comply with stricter ecological requirements set out by the Environmental Code. In addition, the SSU Code provides for a clear distinction of the territories where subsoil use operations are prohibited or limited, e. g. natural parks, reservation territories, underground water basins, populated areas, burial grounds etc. These areas are included in the Program for the Management of the State Subsoil Fund as “no-go zones”.

Best Available Techniques (BAT). The development of reference books on BAT for different economic sectors in Kazakhstan is being carried out by the "International Center for Green Technologies and Investment Projects" (ICGTIP), which performs the functions of the BAT Bureau. The BAT principles should be gradually introduced in 10 years. By 2025, the top 50 polluting enterprises from the oil & gas, mining and metals, chemical and electric power industries, accounting for 80% of the country’s total pollution, will have to prepare a 10-year program for the adoption of BAT in their sectors. If they do not implement the approved plan, the payment rates for emissions will grow 2 times from 2025, 4 times from 2028, and 8 times from 2031.²¹

Climate Change. Kazakhstan has adopted and implemented an emissions trading scheme (ETS) in January 2013, covering 55% of Kazakhstan’s total CO₂ emissions, in the energy, mining and chemical sectors. The average price of allowances was KZT 406 (US\$2).²² The mining sector achieved the highest level of compliance, with none of the 9 participating companies and their 24 installations exceeding their emissions quotas.²³ The country committed under the Paris Climate Agreement to reduce GHG emissions by 15% by 2030, from the level of base of 1990. In November 2020, the government adopted a National Plan for Allocation of Quotas for Greenhouse Gas (GHG) Emissions for 2021. The emissions cap (the total number of emissions allowed) is set for 159.9 million metric tons (mmt). The power sector received 91.4 mmt for 90 power plants and the oil and gas sector 22.2 mmt for 61 installations, while 24 mining installations got 7.3 mmt allowances, and 21 metallurgical facilities 29.6 mmt.²⁴

Kazakhstan is adopting more strict measures to constrain the amount of carbon dioxide emitted into the atmosphere by industrial enterprises. One measure envisioned by the government is to reduce the threshold of permitted emissions for affected companies from the current level of 169 million tons of CO₂ equivalent (tCO₂e), to 125 million tCO₂e. The threshold of permitted CO₂ emissions will decline annually by 5.4% through 2025 and this is expected to raise the costs for 128 polluting companies working in power generation, the oil & gas, mining and metals, chemicals, and construction sectors from around US\$2 million to US\$44 million, according to MEGRN’s plan for 2022-2025. The issue here is that, under these criteria, many old industries would not be able to operate profitably due to the costs burden, and their closing would generate significant social issues mainly due to possible unemployment in monotowns.

Environmental Impact Management - De Facto (2.67)

The environmental regulatory entity, the Committee of Environmental Regulation and Control carries out inspectorate functions financed by government budget. It implements a risk-based management system with at least one annual site inspection. More frequent site inspections can take place in response to

²¹ IEA (2022).

²² Nugumanova (2016).

²³ The sector generated 21.3 mmt CO₂ in 2018-20, nearly 10 mmt below its allotment of 30.6 MMt CO₂. This suggests that the initial quotas were exceedingly generous and should be reviewed in the future. (Kazenergy 2021)

²⁴ GRATA International (2021).

complaints (e.g. extraordinary discharges). The Committee has local departments in 17 oblasts, each of them with its own laboratory and specialized staff reporting to headquarters. Environmental reporting is done quarterly by means of digitalized reports and data provided by companies is reconciled with field observations. Starting in 2023, a digitalized monitoring system funded by the companies will be implemented for real time remote control of operations.

In practice, however, the environmental authority is still in the process of adjusting to the new regulations which have only been in place for a little more than one year, and some enforcement practices are still inconsistent. For example, even though the SSU Code clearly outlines the areas where subsoil use is limited or completely prohibited, the MIID and the environmental authorities do not monitor compliance with these restrictions, largely because they have no unified cadaster of protected areas, i. e. they are not aware of where these areas are located. In addition, the state did not provide subsoil users with accessible information about the boundaries of these territories, which entails additional environmental risks.

Greater clarity would be helpful to understand the interactions between the SSU Code and the new Environmental Code, as many mining companies feel challenged by the level of uncertainty brought by the environmental authority after adoption of the new legislation. While they recognize that the EIA process is broadly aligned with the international practices of the OECD, they feel that, in practice, the environmental authority enforces the new Environmental Code in a very stringent way. For example, although the final outcome of the environmental screening depends on the individual assessment of a civil servant, most exploration activities are subject to environmental expertise and, after many procedures and revisions, usually fall under Category II, where an EIA is required to conduct drilling activities. Some companies reported that even minor exploration work or minor changes in exploration and production entail a screening procedure to assess the significance of effects on the environment and then, most frequently, an EIA procedure. This makes it very difficult to timely commence and complete exploration works in order to comply with license conditions on annual minimum expenditures and, overall, is considered a deterrent for the discovery of new mineral deposits.

Companies also argue that the cost of environmental compliance has increased substantially with the new Environmental Code. For example, they argue that the limits on waste discharges and emissions are very strict but, notwithstanding, the MGENR has recently reduced the emission limits and increased the value of the fines. Some companies say they are currently paying billions of Tenge in fines and allege that the environmental reform was driven by the need to increase revenues. On the other hand, many companies are increasing the use of renewable energy in their operations, believing that this will become mandatory in the near future, as part of the Government's carbon neutrality reform.

Companies state that besides reporting regularly on soil, air and water quality, according to the legislation, they are also now requested to report on waste discharges, emissions and energy consumption. Although reporting will be made easier when it moves to electronic format, the quality of existing environmental baseline data is considered weak and monitoring compliance by government authorities on the field is seen as irregular.

On the other hand, the changes brought by the new the Environmental Code are well received by civil society organizations, which believe that there is still a lot of work to be done to implement them. They regret that EIAs are often not published, or are not published in full, and that it is very difficult to find them, especially when the websites of government agencies are changed.

Social Impact Management - De Facto (2.71)

No substantive comments were received on this item. Although the SSU Code provides for the signing of agreements on social support for population, when underground mining or exploration activities are carried out within the boundaries of settlements, the procedure is not adequately regulated. Social obligations related to the development of subsoil use activities are most of the resort of the companies' Corporate Social Responsibility (see section V.5).

Artisanal and Small-Scale Mining (ASM) - De Jure (2.30)

Informal artisanal and small-scale mining has been ongoing in Kazakhstan for many decades. A significant number of people in rural areas make their living by extracting minerals from the near-by pits and shafts.

The SSU Code was the first attempt to regulate artisanal mining which previously was not legally recognized or permitted. The code has established the procedure for granting artisanal mining licenses and sets requirements to the activity, including in terms of project documents, grounds for licenses revocation, and reclamation security, among others. Artisanal mining licenses can be issued in occupied lands with prior consent of a landowner/occupier or a subsoil use license or contract holder. Artisanal licenses can only be issued to Kazakhstan citizens and are non-transferrable. Provision of consent is at full discretion of an exploration and mining license or contract holder and is not an obligation.

There are no specific requirements for artisanal miners to protect waters and forests. However, the Environmental Code sets out general environmental protection requirements during subsoil use operations, such as the obligation of subsoil users to ensure isolation of absorbing and freshwater horizons to exclude their pollution and prevention of depletion and pollution of groundwater. Artisanal miners must also provide a financial assurance for rehabilitation of consequences of artisanal mining. The Subsoil Use Code requires that artisanal mining is carried out without the use of chemical reagents and poisonous substances. Artisanal miners shall submit annual reports on the mined precious metals and gemstones to the local state authority.

The SSU Code contains certain aspects to facilitate artisanal and small-scale mining, such as the possibility of having citizens pay a token fee to obtain a license to prospect, allowing them to engage in exploration and development wherever gold is found—not including the property of registered gold mining companies. A troubling aspect of this initiative is that it could legalize free mining in immediate proximity to the borders of permitted mines, in areas that may likely be connected to a developed deposit. Because of that risk, gold mining companies vigorously oppose this concept, as it could seriously degrade any long-term strategy for expanded development.

In order to control the expansion of informal artisanal and small-scale mining, the State Revenue Committee (SRC) has introduced simplified procedures for taxation and small single tax for the activity. It is now mandatory to have a tax identification number and custom controls require the presentation of a “passport” with identification of location of extraction. According to the SRC, awareness campaigns by joint task groups with regional authorities are starting to produce some results.

Support for Artisanal and Small-Scale Mining (ASM) - De Facto (2.24)

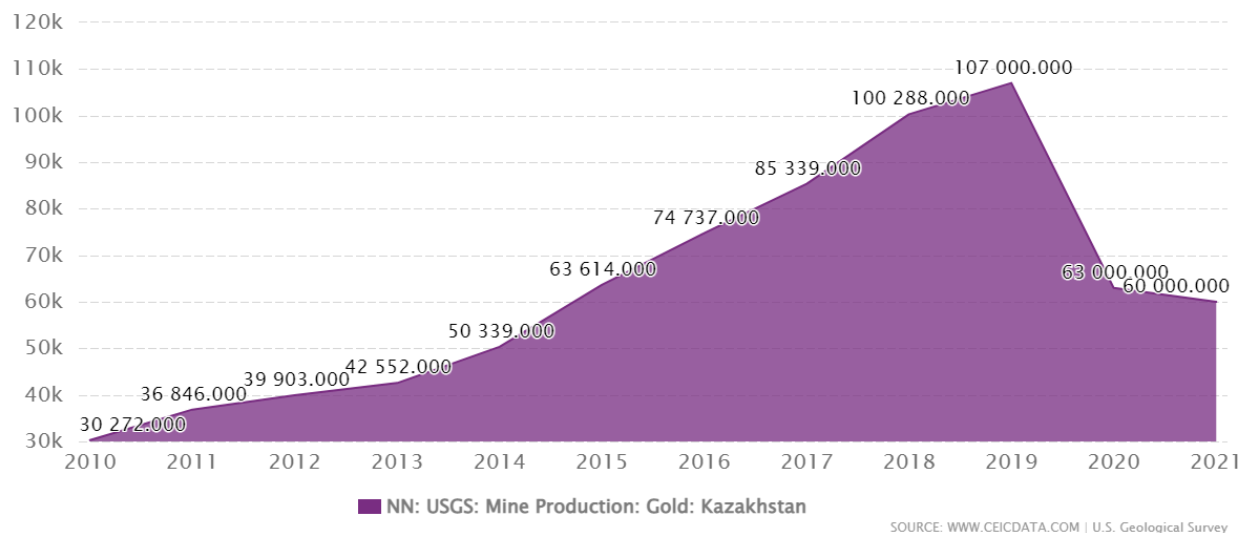
Kazakhstan holds great potential for gold mining for both small-scale artisanal miners and large mining companies as well. Gold production reached an all-time high of 107 tonnes in 2019 but has been declining ever since, to 60 tonnes in 2021 (Figure 6).

The government has failed to develop a consistent approach to deal with thousands of artisanal miners who are extracting gold from dozens of deposits across the country illegally, or quasi-legally, at known and

undeveloped, or even publicly unknown gold deposits. Each year, the Ministry of Internal Affairs apprehends as many as 4,000 illegal miners, although their actual number is likely several times higher. The situation has deteriorated in recent years, as many of the country’s young men are unemployed and gold mining often offers the only means to support their families.

Most artisanal miners work in extremely hard conditions and do not follow common safety measures, in particular when it comes to blasting with methods prone to produce rockfalls. They dig tunnels to get into mines and, in some instances, have taken over mines by assault after overcoming and beating security guards.²⁵ This can disrupt operations, because management cannot allow its employees to work underground in areas occupied by artisanal miners.

Figure 10: Gold production, 2010-2021



The current legislation prescribes a 30 kilometers buffer zone around industrial operations where large companies have priority to acquire mining licenses. However, gold extracted illegally is not considered a commercial product and therefore artisanal activities cannot be categorized as theft. The actual turnover of illegal gold mining industry in the country could be more than US\$100 million. Black market gold sales are controlled by local criminal organizations that resell illegally mined gold in nearby countries, primarily China. The same level of informality and unsafe work conditions can also be observed in the extraction of colored stones.

Occupational Health and Safety - De Jure (3.75)

Occupational, health and safety (OHS) requirements in Kazakhstan are regulated by industrial safety legislation. They are established by the Labor Code, the Code on Population Health and Healthcare System. Specific occupational safety obligations and technical requirements are additionally established by the Law on Civil Protection.

The labor legislation requires employers to take all measures to guarantee safety of life and health of employees while performing their duties. Such measures include legal, social and economic measures, organizational and technical, sanitary and hygiene, medical, preventive, rehabilitation and other measures. Employers must provide to employees’ safe workplace and protective gear, as well as obtain mandatory

²⁵ The situation was spotlighted in mid-2015 when several miners died from an incident at JSC Kazakhaltyn’s Bestobe gold operation. After a short investigation, it was revealed that the miners were not Kazakhaltyn employees—and that there were at least a thousand illegal miners working there underground.

insurance coverage. In addition, the Labor Code requires employers to ensure training, instruction, and knowledge-testing of personnel on OHS matters and to provide them with documentation required for safe conduct of production process, and failure to do so may result in an administrative penalty and, in case of repeated violation, a fine up to US\$480.

There is a general grievance mechanism specified in the Labor Code in relation to all labor-related matters, including OHS, which is available to employees and employers. This implies appealing to a state labor inspector which must consider all appeals in a timely manner and is entitled to issue mandatory prescriptions, instructions, protocols and impose administrative fines for violation of legal requirements in the OHS sphere.

The SSU Code requires compliance with industrial safety legislation during the exploration and extraction stages and obliges subsoil operators to report on planned measures to manage safety risks during mine closure, which also need to be approved by competent authorities.

Occupational Health and Safety - De Facto (3.69)

The number of occupational accidents has reportedly decreased during the past few years, due to the adoption of new technology and equipment by a number of mining companies.²⁶ However, some representatives from unions argue that companies are holding back on disclosing statistics on the real number of safety accidents and that enforcement of safety regulations in the mining sector is done by the regional authorities which are ill prepared to implement the task and rarely conduct field visits.

Another prevalent problem is the access to public health information providing an accurate picture of the real situation in mining and metallurgical sites where pollution from smelters is often compounded by emissions from coal-fired power plants. The lack of good statistics sometimes prevents the miners to get health and safety premiums because the damage cannot be proven.

Mine Closure and Financial Sureties for Decommissioning - De Jure (2.08)

According to World Bank and OECD recommendations, the SSU Code sets out clear requirements to the mine closure and reclamation requiring subsoil users to prepare and submit reclamation plans prior to the granting of a mining license and to provide financial security for reclamation (both for exploration and mining licenses) before commencing any operations which may negatively affect the environment. There are explicit rules related to reclamation and rehabilitation of mined lands, including in case of advanced exploration activities where massive soil movement is involved, which were drafted taking into account the international guidelines. The activities performed as part of mine closure and reclamation are governed by the Land and Environmental Codes.

In order to start operations, a mining company needs first to complete an EIA process (approved by the MENR) and then prepare and submit for approval a mine plan to the environment authority, subject to an industrial safety expertise. It is implied that simultaneously an associated reclamation plan must be also prepared by registered professionals and approved by a state environment and industrial safety expert review. According to the SSU Code, the preparation, approval and expert review of a reclamation plan is required prior to the grant of a mining license and the beginning of advanced exploration activities with massive soil movement. The reclamation plans shall be reviewed and amended every 3 years from the date of the latest assessment of the mentioned expert review. In case a mining plan is amended, such amended plan is subject to the mentioned state reviews. Based on the latest updated reclamation plan, a subsoil user is required to develop a detailed reclamation project design two years before the mine closure. The

²⁶ OECD (2018).

plan must be discussed with the public and approved to implement established remediation goals, tasks and options.

The SSU Code provides that a subsoil user may choose to conduct progressive rehabilitation, while the Instruction on Development of Reclamation Plans states that the progressive rehabilitation is an essential part of a reclamation plan. Progressive rehabilitation is not required by state environmental expert review.

Drafted in its entirety on the basis of the Canada guideline, the Instruction on Development of Reclamation Plans sets out detailed guidance as to what a reclamation plan shall contain, including in terms of environment protection (which is a separate section of the reclamation plan), land rehabilitation and ensuring the safety of the environment, life and public health. The plan shall also contain a description of the most likely post-liquidation risks for people and their mitigation to ensure people safety. However, the requirements do not specifically focus on other social impacts such as job loss, resettlement, etc.

The Instruction on Development of a Remediation Plan implies that the concerned public shall be consulted during the preparation of a reclamation plan, and their opinion shall be considered in the framing of the remediation goal, tasks and options. The interaction with community is held through public hearing and the procedure for holding them is established by the environmental by-law - The Rules for Conducting Public Hearing. Pursuant to the mentioned rules, all documents related to the subject matter of the hearing are provided by the entity initiating the public hearing in an electronic form through a special environmental entity - the local state authorities - which are in turn required to publish them on their websites. The initiator is obliged to ensure dissemination of the announcement on conducting the public hearing to the concerned public through mass media (including TV channels, newspapers) as well as those places accessible to the affected population.

The SSU Code sets out the common requirements to the financial assurance provided to secure the fulfillment of subsoil user's obligation to perform the reclamation, which are further detailed in the specific articles with respect to exploration and mining operations. The financial assurance can be provided in three forms: (i) pledge of a dedicated bank deposit for the benefit of the state; (ii) insurance bond; and a bank (local or foreign) or a corporate guarantee to be provided by a publicly traded company. Foreign banks and public companies must have a minimum credit rating. The code requires subsoil users to secure the funding of rehabilitation and closure-related expenses in form of guarantees or unconditional performance bonds to cover the estimated liquidation costs during the first third of the production cycle by at least 40%, 60% during the second and 100% thereafter.²⁷

All instruments are provided to the MIID and are held by it until the discharge of the obligation by the subsoil user. There are statutory approved templates of all financial assurance instruments, each of which provide that the termination or amendment of the instruments may only be performed upon the permission of the state body which hold the assurance, which ensures the intended use of funds.

Mine Closure and Financial Sureties for Decommissioning - De Facto (3.00)

Mining companies believe that the procedure for obtaining a financial surety is complicated and have serious complaints about their amount, especially for exploration licenses. Many companies consider that the consigned deposit in a dedicated bank account is too expensive and try to avoid it. On the other hand, guarantees from domestic banks are very difficult to obtain and guarantees from foreign banks to confirm financial capacity are not recognized in Kazakhstan, if these banks are not publicly listed and comply with acceptable credit rating. Therefore, insurance bonds, covering 5-7% of planned expenditures, are the most common instrument, although the industry complains that the fees have increased exponentially in recent years after the introduction of statutory templates for insurance bond. Companies also argue that the

²⁷ OECD 2018.

reclamation plan is a document mostly prepared for financial purposes, focused on the calculation of the financial surety which must be updated every 3 years. Some companies claim that a “real” mine closure plan is only needed two years before the planned decommissioning of the operation. This goes against international standards, which indicate that mine closure plans are needed before the mine starts construction.

Moreover, companies point to the fact that there is no reference in the law to a verification mechanism under state expert review which could ensure that estimated liquidation costs correspond to the actual costs and that bonds or collateral fully cover specific liquidation costs. Instead, in the case of exploration activities, a flat fee is applied based on the acreage of the license, which can be quite costly for large areas.²⁸ The MIID has been promising to amend the methodology for calculation of the amounts of assurance for 2 years now with no result. In addition, they have to pay upfront an insurance bond covering 8 years of planned activities, although the exploration license is issued for only 6 years. This approach causes difficulties mostly for the companies that like to apply for huge tracks of land and conduct a quick assessment of their prospectivity, relinquishing the less promising areas after 1 or 2 years of work. The requirement to provide insurance and pay insurance premium 8 years in advance forces the companies to be more selective and to reduce the scope of their work even the cost is reimbursed by the insurer when the company decides to relinquish some areas before the expiration of the license.

This financial surety policy for exploration licenses came into force in March 2021. According to the MIID, it was caused by dismissive compliance with the original policy introduced on the 2018 SSU Code, whereby companies were required to provide financial sureties after receiving exploration licenses and before commencement of work. Eventually it led to the practice that only 10% of the issued licenses were covered by financial sureties, mostly in the form of one year insurance bonds with different coverage. For the extraction phase, the financial surety is paid in stages beginning with the approval of the EIA (before obtaining a mining license) and is revised and updated regularly.

Some companies have also noted that, in practice, control over the implementation of mine closure and reclamation plans by government agencies is not carried out. Even though the entire framework for mine closure is lined up in the legislation, its enforcement has not yet been established completely. The environmental authority does not pay sufficient attention to closure plans, and there is no examination of the validity and sufficiency of the cost of liquidation by government entities. This could lead to a situation where the amounts of guarantees for rehabilitation and placement of tailings may be underestimated, exposing the budget to future risks. In addition, there is no system for administering the management of sureties and the use of funds for reclamation activities by government authorities.

Kazakhstan faces a challenge of legacy mines managed under Soviet-era environmental standards, which have led to pervasive pollution and hazardous waste deposits. However, some progress has been achieved in the retreatment of tailings. For example, a new facility is about to be commissioned in Karaganda for the production of 5,000 tonnes of copper from the retreatment of tailings. The industry also claims that poor enforcement of the financial surety leads to situations when sometimes gold is extracted in areas only covered by an exploration license, to avoid rehabilitation costs.

Room for Improvement in “Mining Operations”

◇ MIID should consider increasing the staff and strengthening a risk-based system and procedures of its inspectorate unit, in order to enforce the SSU Code and increase the turnover of territories aimed at

²⁸ As of May 2022, the fee was of 2,205,360 Tenge per block.

attracting new investments in exploration. Also, clear and predictable criteria and procedures should be laid out for the termination of non-compliant licenses.

◇ MIID and the environmental authority should consider adopting a risk-based approach to changes in mining plans so as to allow additional flexibility for operators to effectively respond to changing market conditions.

◇ MIID needs to strengthen the capacity of its subsoil use staff, with special emphasis on the mining inspectorate and compliance's enforcement function, while coordinating policy and monitoring efforts with other ministries.

◇ There is a need for the harmonization of environmental laws with objectives of the SSU Code related to exploration. Detailed regulations prescribing clear rules are needed to streamline environmental licensing for subsoil use activities, preferably by the approval of joint MIID/MENR regulations. This might require an amendment of Appendix 2 of the new Environmental Code to take into account the proportional impacts of the different stages of the mining lifecycle.

◇ MENR and MIID should consider adopting a more flexible and consistent approach to the screening of exploration projects and reassess the amount and the modalities of payment of the financial assurance for the rehabilitation of exploration land.

◇ MENR should consider the introduction of Social Impact Assessment as part of the EIA, having an ESIA as the certification instrument.

◇ MENR should adopt stricter guidelines for environmental baseline assessments and invest in the acquisition of more environmental baseline data.

◇ Government should urgently assess the opportunities and risks in relation to the decarbonization and establish a baseline for the possible adoption of a program for the decarbonization of the mining sector.

◇ Government should consider preparing regulations for social-support mechanisms and the resettlement of populations affected by the mining sector, as well as guidelines for the calculation of compensation and damages caused by exploration activities on private lands.

◇ Government should consider providing a framework and guidelines for direct land transactions, negotiations and acquisition from private landowners or occupiers at mining stage.

◇ Licensing procedures for artisanal and small-scale mining could be simplified. Formalization programs should be prepared and implemented facilitating access to finance and markets, as well as opportunities to integrate supply chains.

◇ The legislation on mine closure and the financing of such work needs to be brought in line with international standards. In countries with good practice on reclamation, such as Canada, the financial requirements are reviewed regularly in order to ensure that the funds set aside are sufficient and guaranteed by the license holder.

V.3 Taxation

Performance of the third EI value chain component (“Taxation”) scores very high with respect to de jure and high with respect to de facto performance. Noteworthy is the performance of “Mining Tax Administration” rules.

Figure 11: Value Chain Stage 3--Indicators

	Indicators
De Jure Performance (3.26)	Tax Policy and Instruments (2.82)
	Mining Tax Administration Rules (3.70)
De Facto Performance (3.02)	Mining Tax Administration (3.02)
	Mining Tax Auditing (N/A)

Tax Policy and Instruments (2.82)

The taxation system of Kazakhstan is primarily regulated by the Tax Code [Code No. 120-VI of the Republic of Kazakhstan on Taxes and other Obligatory Payments to the State Budget, dated 25 December 2017] which became effective on 1 January 2018. The taxation system and the interpretation and application of tax laws and regulations in Kazakhstan are under development.

In general, mining companies in Kazakhstan are subject to general taxes and payments as well as specific subsoil use taxes and payments. In this regard, the mining companies shall maintain a separate tax accounting of the activity under the subsoil use license/subsoil use contract (contractual activity) and other activity (non-contractual activity). Companies as well as joint ventures registered in Kazakhstan are treated as Kazakhstan residents for tax purposes. The Kazakhstan residents are taxed on their worldwide income, *i.e.*, income received both in and outside Kazakhstan.

General taxes applicable to all companies

Corporate income tax (CIT). Taxable income of the mining company is subject to CIT at rate of 20%. The taxable income is determined as a difference between the aggregate annual income and the statutory deductions including depreciation and adjustments. The deductions generally include all expenses related to the business activities which are aimed at income generation and supported by documents. Losses pertaining to subsoil use contracts may be carried forward for up to 10 years. Tax losses may not be carried back.

Withholding income tax on non-resident’s income. Mining companies are also subject to withholding taxes on income from dividends, capital gains, interest and royalties at rate of 15% payable upon actual distribution of dividends among their non-resident shareholders which can be reduced under the relevant

treaties for the avoidance of double taxation²⁹. The Tax Code allows for exemptions from the dividend withholding tax under certain circumstances, for example if the mining company performs further processing³⁰ of not less than 70% of the extracted mineral resources within the 12-months period prior to the first day of the month when dividends were distributed. This exemption from the dividend withholding tax was removed in the recent amendments to the Tax Code (see below).

Capital Gains tax at a rate of 15% on profits generated from the transfer of shares/ participation interest in a Kazakhstani legal entity or from the (indirect) transfer of shares/ participation interest in a foreign legal entity, if 50% or more of the value of its shares/participation interest or its assets derives from assets located in Kazakhstan (extra-territorial capital gains tax). For capital gains realized outside of the country, the legislation is applied on a case-by-case basis.

Value added tax (VAT). Mining companies registered as VAT payers shall charge VAT on their taxable turnover recognized as any sale of goods, works, services as well as taxable import to Kazakhstan excluding exempted turnover or the cases when the place of supply of goods, works, services is not Kazakhstan. Companies must register as VAT payers when their turnover during a calendar year exceeds 20,000 MCI. Even if the mining company does not have to register as the VAT payer, it can do it voluntarily by applying to the tax authorities.

Mineral resources sold in of Kazakhstan are subject to 12% VAT. A 12% VAT also applies to the transfer of land use licenses. Turnover arising from sales of refined gold to the National Bank of the Republic of Kazakhstan is taxed at 0% VAT (subject to certain conditions). Imports of goods and equipment are subject to 12% import VAT. Sale and import of certain types of goods (work, services) can be wholly exempted from VAT. Zero-rate VAT is charged on exports.

In addition, the mining companies may be subject to the reverse-charge VAT at rate of 12% in case of receipt of works or services from non-residents not registered as the VAT payers in Kazakhstan, and where concurrently such works or services are deemed to be supplied in Kazakhstan under the 'place of supply' rules. VAT paid for goods, works and services purchased by the mining company, including the already paid reverse-charge VAT and import VAT paid at customs (input VAT), may be generally offset against VAT charged by the mining company to its customers (output VAT) when determining its own VAT liability before the budget. However, offset is not available in case VAT incurred due to supply which is either exempt from VAT or deemed to be supplied outside Kazakhstan.

Payroll taxes: (i) Social tax rate — 9.5%; (ii) Social contributions — 3.5%; (iii) Medical contributions — 3%; and (iv) Statutory professional pension contributions — 5%.

Property tax. Rates vary from 0.1% to 1.5% on the average annual balance value of taxable objects per accounting books, depending on the type of business.

²⁹ At present Kazakhstan signed 55 double tax treaties with foreign countries. Most of the double tax treaties signed by Kazakhstan either exempt from the Kazakh withholding tax or allow to reduce the tax rate down to 5-10% upon the condition that the treaty provisions and certain documentary support requirements (certificate of residence, etc.) are met.

³⁰ Further processing is recognized as any processing which follows the primary processing which includes such types of activities as picking up, crushing or grinding, classification (sorting), briquetting, agglomeration and enrichment by physicochemical methods (without qualitative changes in the mineral forms of minerals, their aggregate-phase state, crystal-chemical structure), and may include processing technologies recognized as special types of works for the extraction of minerals (underground gasification and smelting, chemical and bacterial leaching, and hydraulic and hydraulic mining of alluvial deposits).

Land tax applies to industrial land (including mines) and varies from KZT 48.25 to KZT 5.790 per hectare depending on the type of land. The rate can either be increased or decreased by local state authorities (by up to 50%).³¹

Specific taxes for mining companies

Signature bonus. The signature bonus is a lump-sum one-time fixed payment paid by a subsoil user for acquisition of the subsoil use rights and for expansion of subsoil use area. It is paid to the budget at the taxpayer's location no later than ten working days from the date of issue of such a license. The amount is calculated on the basis of the rates expressed as a multiple of MCIs and varies depending on the type of subsoil use contract/license (exploration or mining), type of mineral resource and confirmed reserves. The terms of the signing bonus are provided in the subsoil use contract/ license.

Reimbursement of Historical Costs for Exploration. The payment for reimbursement of historical costs is a one-time fixed payment for reimbursement of costs incurred by the State for geological study and filed development before the subsoil use contract was signed. The amount is calculated by the State authorized body based on provisions of the law and is indicated in the agreement on provision of geological information (so-called confidential agreement). The fee is not applied to licenses for the exploration or mining of solid minerals issued after December 31, 2017.³²

Minerals Extraction Tax (MET). The MET is levied on the physical volume of the minerals (taxable volume of extinguished reserves) extracted by the mining company. MET shall be paid separately under certain MET rates in respect of each type of the extracted minerals, ranging from 0%-18.5%. For example:

- Aluminum: 0.38%;
- Chromium ore (concentrate): 21,06%;
- Copper metal: 8.55%;
- Gold, silver: 7.5%;
- Iron ore (concentrate, pellets): 3.64%;
- Lead metal: 10.4%;
- Manganese and iron manganese ore (concentrate): 3.25%;
- Nickel metal: 7.8%;
- Tin metal: 3.9%;
- Zinc metal: 10.5%;
- Mineral raw materials containing precious and colored stones: 12.0%;

The MET is calculated on the basis of the value of taxable volume of extinguished reserves. For those minerals for which there are officially published price quotations (such as recorded on the London Metal Market or London Bullion Market Association), the tax base is determined based on the average quotation for such minerals. For other types of mineral the value is calculated based on a weighted-average selling price of minerals, or the actual production cost of extraction and primary processing (enrichment) determined in accordance with International Financial Reporting Standards (IFRS) and the requirements of the accounting and financial reporting legislation of the Republic of Kazakhstan, increased by 20%. In some cases, the 0% MET rate may be applied to all types of mineral resource and mineral raw material extracted from off-balance reserves.³³ The MET rates were increased in the recent amendments to the Tax Code (see below).

³¹ EY (2021).

³² EY (2021).

³³ EY (2021).

Fee for the use of land blocks. Mining companies having a subsoil use license on exploration or production of solid minerals shall pay the fee for land plot use for the validity period of the license. The rate of fee varies depending on period and type of the license. Payment rates are established in MCIs in the following amounts: (i) From 1 to 36 months of the license for exploration: 15 MCIs per block; (ii) From 37 to 60 months of the license for exploration: 23 MCIs per block; (iii) From 61 to 84 months of the license for exploration: 32 MCIs per block; and (iv) From the 85th month of the license for exploration: 60 MCIs per block. The fee for land plot use under the subsoil use license for production of solid minerals is levied in the amount of 450 MCI for each square kilometer of the block.

Environmental fee. An environmental fee is payable by mining companies for the actual volume of environmental emissions and the disposal of manufacturing waste. The fees for the disposal of waste from mining and quarrying industries are as follows: (i) overburden rocks – 0.002 MCI (approximately \$0.013) per tonne; (ii) host rocks – 0.013 MCI (approximately \$0.08) per tonne; (iii) rock refuse – 0.010 MCI (approximately \$0.065) per tonne; and (iv) slag and slime – 0.019 MCI (approximately \$0.12) per tonne. The fee for the disposal of ash and ash waste formed in the course of metallurgical processing of ore, concentrates, agglomerates and pellets containing minerals, as well as production of alloys and metals, is 0.330 MCI (approximately \$2.1) per tonne. If the amount of the environmental fee is less than 100 MCIs (approximately \$650), a mining company is entitled to obtain an emission certificate from the Ministry of Energy. The emission certificate allows for environmental emissions to be made within the specified limits at a flat rate.³⁴

Incentives. No special conditions or incentives of any kind are negotiated with companies in Kazakhstan. However, subsoil users investing into the processing of solid minerals more than 7 million monthly calculation indexes (MCIs) (approximately US\$ 55 million, at an exchange rate of KZT450/US\$1) are entitled to conclude an agreement on processing of solid minerals, which envisages certain tax, customs and other investment preferences. However, no agreement has ever been concluded.

Recent changes to the fiscal regime for mining. In June 2022, the Parliament approved the draft law “On introducing amendments and additions to the Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget” (Tax Code)” and the draft law “On the enactment of the Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget” (Tax Code)”. The new bill introduces an increase in MET rates for exchange-traded metals by 50%, and for other minerals by 30%. It is proposed to apply 0 MET to new projects where production will start after December 31, 2022, for up to 5 years, until their profitability reaches 15%. It also provides for a revision of taxation on dividends paid, a limitation on deductions for intangible services purchased from affiliates, a revision of digital mining fee rates, among others. All exemptions for dividend withholding taxes for non-residents were excluded. A threshold of 30,000 MCI will be set for residents. There is also a limitation of deductions for intangible services purchased from related non-resident persons in the amount of 3% of taxable income.

Tax stabilization generally is not available for solid minerals and all taxes shall be paid according to the current tax legislation. However, the subsoil use contracts that entered into force prior to 1 January 2009 can be granted tax stability, except for when legislation is amended to ensure national and ecological security; regulate health, tax and customs issues and protect competition. From this date, subsoil use contracts do not have tax stability and tax liabilities are computed under common regime based on the current tax law. The excess profit tax has been removed from the new Tax Code with legal effect from 1 January 2018. In addition, from 2023 Entrepreneurial Code makes available tax stability, including MET rates and mechanisms of calculations, for 10 years to subsoil users, other than in petroleum sector, which

³⁴ EY (2021).

are making capital expenditures and expenditures on new fixed assets in the total amount of at least 75 mil MCIs (approximately US\$ 575 million, at an exchange rate of KZT450/US\$1) during 8 years.

Mining Tax Administration Rules (3.70)

While taxes and payments from oil and gas companies are sent to the National Fund of Kazakhstan, taxes and payments from mining companies go to the national budget and local budgets. The mining sector is one of the biggest contributors to the budget.

The **State Revenue Committee** (SRC) of the Ministry of Finance of the Republic of Kazakhstan is the tax and revenue authority that among other things, ensures the receipt of taxes and payments to the budget, and customs regulations in the Republic of Kazakhstan. SRC is the only state entity authorized to collect taxes, including customs payments.

The Tax Code prescribes the main tax administration rules for mining companies. Statutory accounting records are maintained in accordance with the Law on Accounting and Financial Reporting, under which most companies should prepare financial statements under International Financial Reporting Standards (IFRS). Depending on the type of license, Kazakhstani legislation may envisage conducting an audit of the subsoil user.³⁵

Generally, subsoil users should maintain separate tax accounting (i.e. ring-fencing) for contractual and noncontractual activities, except for specific cases. That is, tax obligations under each subsoil contract are accounted for separately from each other, and separately from non-contractual activity. However, these provisions do not apply to contracts for the exploration or extraction of common minerals.³⁶ Kazakh law allows the provision of a license for solid minerals as a pledge. Such pledge shall be registered by the MIID. The SSU Code abolished the requirement to obtain the MIID's consent for the creation of a pledge.

Transfer pricing. Kazakhstan has a unique position on transfer pricing whereby all cross-border transactions may potentially be inspected for transfer pricing compliance, regardless of whether the parties are in any way related. All traders of mineral products will be considered affiliated parties if more than 50% of their turnover originates from one single producing firm. When calculating corporate income tax by the subsoil user for each individual subsoil use contract, the income from the sale of extracted mineral raw materials that have only undergone primary processing (beneficiation) is determined based on the price of their sale subject to compliance with legislation of the Republic of Kazakhstan on transfer pricing.³⁷ The Law of the Republic of Kazakhstan dated July 5, 2008 No. 67-IV "On Transfer Pricing" prescribes the following methods for determining a market price: (i) Comparable uncontrolled price method; (ii) Cost plus method; (iii) Resale price method; (iv) Profit split method; and (v) Net margin method.

Thin capitalization rules. A mining company is entitled to fully deduct its expenses on payment of interest under loan obligations upon CIT calculation. A general 4-to-1 debt-to-equity limit applies across all sectors to both Kazakhstan and non-Kazakhstan sourced financing obtained from / guaranteed by a related party or obtained from an entity registered in a tax haven.

Export restrictions. Under the Precious Metals Law, the owner of raw minerals containing precious metals (eg, gold) is obliged to propose to the Kazakhstan National Bank (which has the priority right to buy) fine

³⁵ EY (2021).

³⁶ EITI (2018).

³⁷ EITI (2018).

gold refined at foreign gold-refining plants. Moreover, a Kazakh subsoil user, before exporting gold from Kazakhstan to a foreign refinery, shall obtain waivers of local refining plants. In some cases, the authorities may establish temporary bans (eg, for export of gold). For example, in February 2015, the Government issued a ban on exports of ferrous metal scrap and gold-containing materials. In other cases, exporters shall preliminarily obtain export licenses (eg, for the export of natural crude stones, nonferrous metals, precious metals and precious stones and diamonds).

Export duties are applied to metals as follows:³⁸

- Waste and scrap of ferrous metals; ingots of ferrous metals for remelting (charge ingots). Rate: 5% of the customs value, but not less than 5 euros per/ton.
- Cooper scrap and waste. Rate: 10% of the customs value, but not less than 84 euros per ton.
- Primary aluminum alloys. Rate: 10% of the customs value, but not less than 76 euros per ton.
- Secondary aluminum alloys in ingots or in liquid state. Rate: 3% of the customs value, but not less than 22 euros per 1 ton.
- Aluminum waste and scrap. Rate: 10% of the customs value, but not less than 76 euros per ton.

Mining Tax Administration - De Facto (3.02)

The tax legislation in Kazakhstan is the object of frequent changes and therefore is subject to inconsistent application and interpretation. In certain situations, changes may be retroactive. Parliament adopts changes to the Tax Code proposed by the Tax Authority (including the Ministry of Finance). Since the date of the introduction of the new Tax Code (1 January 2018), it has been amended 36 times. The additional amendments to the Tax Code has been recently adopted by the Parliament. Upon the adoption of amendments to the Tax Code, such amendments are applied to taxpayers after some time (usually 6 months), so taxpayers can prepare for such amended provisions of the Tax Code.

Companies argue that sudden and frequent changes in the tax regime have led to investment deferrals. Although many believe that the tax burden for mining in Kazakhstan is not excessive, they feel under pressure from the tax authorities that consider that the activity is not generating enough revenues, as seen by the recent increase of the Mineral Extraction Tax (MET) rates.

The definition of the tax base for the calculation of the MET applicable to solid minerals is based on the physical volume of recovered minerals, reflected in reports approved by the State Commission for Reserves (GKZ RK) under the Committee of Geology, whilst taking account of potential losses during that recovery. These losses are estimated on the basis of a technical assessment carried out by a state authority (currently the Committee of Geology) at the development stage of the mineral deposit area, without reference to possible post-processing readjustments so as to reflect actual losses, rather than by reviewing actual sales and the disposal of mine tailings. For common minerals, the MET is applied on the volume of recovered minerals, without references to deductions for losses. The use of mineral reserves as a tax base, as opposed to the more common sales/profit-based royalties, is a concern for mining companies, given the potential risk of liability for tax payments irrespective of the commercial viability of reserves at any given moment.

Most countries apply a unit-based royalty on the volume, weight or value of minerals contained at the mine mouth, i.e., extracted minerals prior to processing. For metallic minerals, the royalties are usually applied to value of minerals sold, not to the reduction of reserves resulting from minerals produced. The use of mineral reserves as a tax base, as opposed to the more common sales/profit-based royalties will continue to be a concern for operators, given the potential risk of liability for tax payments irrespective of

³⁸ EY (2021).

the commercial viability of reserves at any given moment. Changes in the anticipated volume of reserves can change because of market conditions of the conduction of additional exploration work.

However, the State Revenue Committee believes that the adoption of the royalty system would represent a risk for Treasury because of their lack of capacity to monitor and verify the real production of mining companies. They prefer to rely of the Committee of Geology and their certification of depletion of reserves, arguing that the current system minimizes losses during production and is an incentive to the use of modern technologies. The advanced MET payments are good for Treasury because they are predictable as in in planned economy but can put pressure on companies in times of declining demand. A careful modelling exercise would be needed to assess the potential impact of the shift to royalties on tax collection, calibrating the royalty rates to compensate for eventual revenue losses while providing incentives to mineral processing, and ensuring that the reform is tax neutral or meets the government's objectives of increased revenues without threatening the industry's competitiveness.

In summary, Kazakhstan's tax regime is complex and confusing for mining companies, especially in terms of the mineral extraction tax (MET). For example, the taxation conditions for balance sheet and off-balance sheet reserves are completely different, although they can be mined and processed together. Companies need to have estimates of normalized reserve losses approved by a state entity and keep records of them, the actual parameters of which are often difficult in practice, and subject to corruption risks. As a result, at least until January 2024, Kazakhstan will have two systems of reserves accounting - the Soviet administrative Institute of Reserves Accounting State Commission (GKZ RK) and the international self-regulatory KAZRC, which is part of the CRIRSCO family.

Mining Tax Auditing - De Facto (N/A)

Although the Committee of Geology is responsible for approval of reserves estimated under GKZ standards and determining the loss of reserves during the production process, the SRC conducts the field inspections with a risk assessment based on data comparisons (past trends and industrial norms) among similar types of taxpayers. The focus of the analysis is the concentrate production at the extraction stage. Audits are conducted if any risks are detected. The SRC has about 35 staff on its unit dedicated to subsoil users. Lack of budgetary funding and heavy staff turnover are undermining SRC's institutional capacity.

Because instructions for taxpayers in the mining sector are not issued, uncertainty on the wat the tax regime is enforced is causing repeated disputes between taxpayers and authorities increase the context of uncertainty about how provisions are to be applied. Issues have reportedly arisen from guidance provided to taxpayers (which they sometimes find to be insufficient for making expensive investment decisions), and from differences in interpretation of legal provisions by tax authorities.

Companies argue that, in case of dispute between a taxpayer and the tax authorities, all gaps and ambiguities of tax legislation tend to be interpreted in the favor of the administration. Although most cases end in court litigation, in a few cases, some conflicts were solved through out-of-court settlements.

Room for Improvement in "Taxation"

- ◇ Government should consider conducting a financial modelling analysis to assess the feasibility and desirability of replacing the MET by a simple royalty-based contribution. Moving to a system of taxing companies based on their sales of mineral products would bring Kazakhstan in line with most other countries. The model should estimate the impact of the potential budget instability created by the new regime and calibrate royalty rates to avoid revenue losses.

- ◇ Government could use this opportunity to evaluate the need to introduce further changes to the mining tax regime to make it more progressive, in consultation with the industry. Thorough diagnostic analysis is needed prior to contemplating further any tax law further changes. Future legislation on mineral taxation would benefit from more systematic and inclusive consultation.
- ◇ Considering how often the tax regime has experienced changes in the recent past, Government should consider reintroducing and/or application of tax stabilization clauses upon revisiting tax framework in the context of completion of transition to mineral reserves certification system of CRIRSCO. Investments above a certain threshold (say US\$ 400 million) could be eligible for the stabilization of some taxes (and not other legal provisions) for a given period of time. In view of the country’s history of frequent and sudden tax changes, this option is probably necessary in order to attract long term investment.
- ◇ The government must ensure that the competent agencies have sufficient administrative and auditing capacity, respecting accounting practices and accountability as well as internationally accepted transparency practices.
- ◇ The SRC should provide additional training to tax administration officials in the enforcement of the tax regime, transfer pricing avoidance, and the execution of tax audits of royalty-based contribution framework.

V.4 Revenue Distribution and Management

The scoring is very low in this stage of the value chain (“Revenue Distribution and Management”), especially the de jure performance. Several items were rated “very low” in both dimensions. Only the performance with respect to resource revenue transparency is in the “low” range.

Figure 12: Value Chain Stage 4--Indicators

	Indicators
De Jure Performance (1.00)	Revenue Sharing Rules (1.00)
	Fiscal Stabilization Rules (1.00)
De Facto Performance (2.00)	Revenue Sharing Arrangements (N/A)
	Fiscal Stabilization (1.50)
	Resource Revenue Transparency (2.50)

Revenue Sharing Rules (1.00)

There are no mechanisms to share the revenues of the mining sector with subnational authorities in Kazakhstan. In practice, revenue sharing occurs through the obligation to finance the social development

of the relevant region and its infrastructure, which is expressed as a percentage (generally, 1-2% of exploration/production costs or investments) and such amounts are sent to the budget of the local executive body (akimat) of the relevant region. This obligation applies to subsoil use contracts and can potentially be applied to the subsoil use licenses if the company decides to transfer its subsoil use right from the contractual regime to the licensing regime.

Fiscal Stabilization Rules (1.00)

The institutional architecture for Revenue Management includes a strategically oriented Ministry of National Economy (MNE) and an implementation-focused Ministry of Finance (MoF) which controls the NFRK, while the National Bank of Kazakhstan (NBK) acts as the National Fund's trustee and asset manager. As of January 1, 2021, the National Fund's assets were USD 58.7 billion or around 34% of GDP.³⁹

Fiscal Stabilization De facto (1.50)

The National Fund of Kazakhstan (NFRK) accumulates direct taxes from the oil and gas sector, normally equivalent to more than 50% of all state budget revenues. The NFRK fully accumulates the share of the Republic of Kazakhstan under the Production Sharing Agreements - 99.3%, almost completely - rent tax on export (98.2%), bonuses (46.8%), revenues from users of natural resources on claims for compensation for harm by organizations of oil sectors (91.0%), excess profits tax (86.6%), the lion's share of the mineral extraction tax (70.7%). The twin objectives of the Fund are, on the one hand, to save these funds for future generations, and on the other, to maintain the necessary level of government spending, primarily social, in the event of a fall in oil prices.

Kazakhstan's system of public financial management has been the subject of wide-ranging reforms over recent years, aimed at strengthening the capacity to support the country's strategic development. Two new fiscal rules were adopted by Parliament in late 2021 to be implemented with the 2023 budget, with the aim to safeguard sustainability and intergenerational equity and make fiscal policy more countercyclical. The first focuses on a medium-term budget framework and should be supported by stronger institutions and transparency. The operational fiscal rule (either on expenditure growth or the non-oil balance) should be anchored in multi-annual budgeting, with potential deviations from targets corrected through regular budget updates.⁴⁰

A newly implemented NFRK Rule restricts the annual consumption of oil revenues from the Fund to a "guaranteed transfer" of approximately US\$ 6 billion. Non-oil tax revenues in Kazakhstan are low by international standards. In the long run, resilience and sustainability of economic growth will require greater economic diversification.

Resource Revenue Transparency (2.50)

One of the most important innovations of the SSU Code is the principle of access to information in the sphere of subsoil use. The code provides open and free access to information on auctions, government decisions, licenses and contracts for subsoil use, as well as to geological information, with the exception of data that are commercial secrets of subsoil users or information relating to state secrets.⁴¹

³⁹ US State Department (2021).

⁴⁰ IMF (xxx).

⁴¹ White & Case (2018).

Civil society constituencies believe however that the Kazakhstan legislation regulates the information disclosure in the subsoil use sector poorly and complain that Article 77 of the new SSU Code prescribing disclosure of information (see below) has not been regulated yet, lacking the definition of specific mechanisms to implement it. For example, not all information required to be disclosed is published (contracts, beneficial owners, etc.), not all companies provide reports and the sanctions for failure to submit reports by subsoil users is insignificant.

DISCLOSURE OF INFORMATION (Article 77 of the Subsoil Code):

1. Content of the license or contract persons controlling the subsoil user.
2. Total amount of expenses made by the subsoil users way / annual breakdown.
3. Amounts paid for land use / annual breakdown.
4. Securing liquidation of the subsoil use operations' consequences including security (e.g. pledge), amount of security and the name of the institution that issued such a security.
5. Registered pledge over the subsoil use right including registration date, name and location of the pledge holder.
6. Data on transfer of subsoil use right including legal basis and time, amount of the share transferred, name and location of the acquirer.
7. Ratio of local content in the goods, works and services acquired by the subsoil user, if ratio of the local content is envisaged by the contract or the license.
8. Expenses amount for education of Kazakhstan employees, scientific research, science, technical, experimental works in Kazakhstan, social economic development of the region and development of infrastructure thereof, social economic support of local population that was made by the subsoil user provided that such obligations are envisaged in the contract.

Beneficial Ownership. An important requirement established by the SSU Code is disclosure of information on legal entities and individuals, as well as states and international organizations that directly or indirectly control the subsoil user (clause 3 of article 195).⁴²

Kazakhstan started implementing the Extractive Industries Transparency Initiative (EITI) in 2005 and became compliant in 2013. In 2017, Kazakhstan underwent another validation process. On February 13-14, 2018, the EITI International Board decided that Kazakhstan had made significant progress in implementing the EITI, with a number of recommendations for improving its further implementation.⁴³

The Code on Subsoil and Subsoil Use requires entities conducting mineral exploration and mining operations for solid minerals (not for common minerals) to submit to the competent authority the reports provided for by the EITI Standard, confirmed by an auditor in accordance with The Law of the Republic of Kazakhstan «On Auditing». Collaborative efforts within the EITI framework include improving the transparency of the National Fund of the Republic of Kazakhstan, a sovereign wealth fund that receives the majority of its revenues from the extractive sector.⁴⁴

Room for Improvement in “Revenue Distribution and Management”

⁴² White & Case (2018).

⁴³ EITI (2017).

⁴⁴ EITI (2016).

- ◇ Consideration should be given to the introduction of mining revenue sharing mechanisms to the benefit of impacted areas to compensate them for the negative impacts of extraction, such as pollution, loss of traditional livelihoods and higher costs of everyday non-tradable services.
- ◇ Regulation of information disclosure in the mining sector should be clearly defined and strictly enforced.

V.5 Local Impact

This section looks at the rules and policies and their enforcement with regard to the local impact of mining in the Republic of Kazakhstan. It scores “high” on de facto dimensions and “low” on de jure considerations, with a “very low” score on “CSR and Social Issues” as a result of largely non-existing rules. De facto performance overall scores slightly higher, with strong performances is “Local Supplier Development” and “Employment”.

Figure 13: Value Chain Stage 5--Indicators

	Indicators
De Jure Performance (2.42)	Local Content Rules (2.20)
	Employment Policies (3.10)
	Rules on Community Engagement (3.38)
	CSR and Social Issues--Rules (1.00)
De Facto Performance (2.62)	Local Supplier Development (2.69)
	Employment (3.24)
	Community Engagement (2.29)
	CSR and Social Issues (2.28)

Local Content Rules (2.20)

Promotion of purchase of local goods, works and services by subsoil user is one of the key targets of the Government of the Republic of Kazakhstan. Ever since 2010, when the notion of local content was introduced, the requirements and liability for non-compliance have become more and more stringent. While currently there is no separate strategy on the promotion of local supply of goods and services, this matter is addressed almost in any major program document (strategy, national plan etc.).

The SSU Code stands as the primary mechanism for regulating local content in Kazakhstan’s mining sector and includes comprehensive requirements to be included in bidding and licensing related to employment, procurement of goods and services, and technology transfer. Under the Code, all mining license holders (and all subsoil users under subsoil use contracts) are required to support local supply and the employment of Kazakhstan nationals. This includes a requirement to purchase local works and services (at least 50% of total purchases), to provide at least 50% of jobs to Kazakhstan nationals and to finance their training (at

least 1% of production expenses incurred by the subsoil user in the previous year), as well as R&D works. Preference is given to Kazakhstani producers if within 20% of foreign bid price.⁴⁵

On November 15, 2016, Kazakhstan's Government approved the road map to bring the national legislation in compliance with Kazakhstan's obligations under the membership in the World Trade Organization (WTO). The road map envisages amendments in the regulations applicable to the national content in goods, works and services acquired by subsoil users in Kazakhstan. Since January 1, 2021, the percentage of local content requirement in works and services should not exceed 50%.

Local content still remains one of the obligations of subsoil users to which the government pays most attention. The MIID through its Industrial Development Committee, among other issues, is responsible for promotion of local content. While it do not focus exclusively on the mining sector, the entity is the key agency for the promotion of local content. Subsoil users annually report to the MIID on the purchased goods, works and services and the rate of local content in them, and the information is subsequently used by the MIID to produce Government reports.

For solid mineral license holders, the penalty for breach of obligations regarding the implementation of minimum local content in works and services corresponds to 30% "of the cost of works and services related to the unfulfilled volume of obligations", while regarding the financing of Kazakhstani personnel training and research & development is equivalent to the total sum of the unfulfilled obligation.⁴⁶ In the past, failure to fulfil the local content obligations has been used by the government to unilaterally terminate subsoil use contracts both in the mining and the oil & gas sectors.

Kazakhstan utilizes an electronic procurement system to regulate procurement. All goods, works and services for subsoil use operations must be procured through the mandatory use of an online procurement system (Decree 133/2013, Art. 6.4). The electronic procurement system screens companies that wish to participate in the procurement process. Additionally, there is a prohibition on procurement between suppliers and consumers where there is a conflict of interest.

Local Supplier Development (2.69)

Although Kazakhstan committed to the removal of some local content requirements after 2021, in the context of the country's ascension to the WTO, the SSU Code confirmed some of the rules applicable to the mining sector. According to the EITI 2017 report, out of the total amount of goods, works and services procured by subsoil users that were reconciled amounted to 713.8 billion Tenge, with a share of local content of 55.1% (393.4 billion Tenge).⁴⁷ Government is currently preparing a list of items that must be exclusively purchased from local manufacturers and plans to increase the sanctions for non-compliance, including license withdrawal.

Some junior exploration companies argue however that the local contractors often have qualified staff but lack modern equipment, largely because of limited access to finance both for exploration companies and contractors. The stock market in Kazakhstan is mostly closed for exploration companies that need to resort to private investors for external financing or use their own money. Once a project reaches the feasibility study phase, it becomes possible to try to access bank loans both from domestic and foreign banks.

For mining companies, local content is mainly achieved through fuel and lubricants, overalls, non-standard equipment, metal structures, etc. Most modern mining equipment and spare parts are not produced in the

⁴⁵ CCSI (2020).

⁴⁶ CCSI (2020).

⁴⁷ EITI (2017).

country, while explosive materials (mainly saltpeter) are purchased from neighboring countries. Some companies argue however that the rules are not flexible, often complicating access to foreign technology.

Regarding supplier development, most of the major mining companies regularly enter into agreements or memorandums of understanding with either local authorities or regional associations of local suppliers where they agree to supply/purchase goods produced in the proximity to their sites or to enter into some sort of an off-take agreement. In some cases, major mining companies have entered into a contract for financing of set-up of a local manufacturing enterprises (e.g. to produce overalls). This practice, however, is mostly ad hoc and sometimes such agreements are entered into under pressure/complaints from the producers' side and do lead to systematic growth of local suppliers.

A voluntarily agreement between subsoil users, the MIID and the National Chamber of Entrepreneurs "Atameken" to stimulate entrepreneurship in the sector was recently introduced. The aim of this agreement is the support of local producers, though it is not clear yet what such agreement actually implies. It does not give any preferences to subsoil users and, given their voluntary nature, it is unclear how it will promote local supply.

On the other hand, under the updated industrial policy law, Government wants to push mining companies to integrate downstream in the processing of minerals or be required to sell part of their raw mineral production at a discount in the domestic market, to promote downstream processing. There is no clarity however on how government intends to implement these plans without adversely affecting investment climate in mining sector.

Employment Policies (3.10)

The country's employment policy is reflected in a variety of laws and regulations. The main one is the Labor Code, which regulates the employment relationship between employers and employees in Kazakhstan and is generally pro-employee and provides limited grounds to terminate an employment contract. Labor relations arise by executing a labor contract.

The Labor Code and the Law on Trade Unions No. 211-V dated 27 June 2014 permit employees to establish trade unions by initiative of a group of not less than ten people with common professional and industrial interests. Local trade unions created within one or more enterprises can create trade unions alliances. Trade unions and trade union alliances represent employees and execute public control over the observance of rights and lawful interests of their members. Generally, trade unions are granted with significant rights for performance of their public control functions and employers may not obstruct their public control function.

Kazakhstan legal entities may sponsor and employ foreign workers subject to regulations applicable to foreign labor. Most categories of foreign labor must receive a valid work permit to work in Kazakhstan and their employment must be within the limits provided in subsoil users local personnel requirements. Work permits are issued in accordance with annual quotas established by the Government for the various regions and cities of Kazakhstan.

Subsoil users must comply with domestic local content requirements with respect to its personnel. Also, the Subsoil Use Code requires mining companies to make allowances for training of Kazakhstan nationals, including their employees. This can be done either by employer provided trainings or outsourced. In addition, there is a general requirement for all employers to conduct training of employees on occupational health and safety.

The legislation of Kazakhstan provides a restriction on the number of foreign employees that may be hired by a Kazakh employer/ local host entity (so-called "ratio requirement"). Currently, the total number of

foreign employees of a Kazakh employer must not exceed 30% of the total number of 1st and 2nd Categories (CEOs and deputy CEOs of companies; leaders of business divisions/department); and 10% of the total number of 3rd and 4th Category employees (professionals; and skilled workers respectively)

Kazakhstan is party to the UN Convention on the Rights of the Child 1994 which protects children from economic exploitation and from any work that may endanger his health or interfere with his education or be harmful to his health and physical, mental, spiritual, moral and social development. One of the principles of Kazakhstan Labor Code is prohibition of discrimination in the sphere of labor, forced labor and the worst forms of child labor. At the same time, the Civil Code of Kazakhstan allows minors to work from the age of 14.

For many years the Government is in cooperation with various international institutions, including UN Women, on the subject of women rights' protection and elimination of discrimination. The Kazakhstan's Constitution provides that no one may be subjected to any discrimination based on origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances, including in relation to the right of equal pay. Kazakhstan has ratified a number of international conventions aimed at elimination of work discrimination between genders and there are a number of legislative acts that address this issue.

In 2006 the National Commission for Women and Family and Demographic Policy under the President of the Republic of Kazakhstan was established and functions up to date. One of the objectives of the commission is to facilitate achieving equal opportunities for women and men in the economic sphere, further development of entrepreneurship among women, increasing the competitiveness of women in the labor market. The Kazakhstan Labor Code reflect the same prohibiting discrimination on the basis of gender, providing that an employee has the right to equal pay with any discrimination which is mirrored by the obligation of an employer to ensure equal pay for equal work.

The Ministry of Labor and Social Protection of Population is the authority responsible for ensuring compliance with the labor law requirements. The Ministry has territorial departments and labor inspections which are in charge of monitoring and control over enforcement of the labor law.

Employment De Facto (3.24)

Regarding employment opportunities for women, opinions differ between companies and civil society respondents. The latter note that there is a conditional division into the so-called "male" and "female" professions, with some "prohibited professions", many of which are related to the mining industry. They reckon that "male" professions are paid much higher and believe that the rules prohibiting the employment of women in certain types of work should be revised to reflect current trends.

Provision of vocational training is a key priority for most mining companies. The population living near mining companies tends to benefit from educational institutions they are trained in specialties that are in demand at these enterprises for the purpose of further employment.

Rules on Community Engagement (3.38)

Several legal and regulatory instruments regulate citizen engagement in the mining sector, including the Environmental Code and environmental regulations under which procedure and detailed requirements for holding consultations with the community is determined. The interaction with the community is held through public hearings, the procedure for the holding of such is established by the Rules for Conducting Public Hearings.

The SSU Code requires the creation of conditions necessary to ensure participation of the interested public and local executive bodies and territorial environmental authorities at all stages of the EIA. Before filing an application for obtaining the approval of the environmental authorities, subsoil users must conduct public hearings. They shall preliminarily inform the community where they plan to carry out subsoil use activities about the date, time and place of the forthcoming public hearings, as well as the order of access of interested persons to materials related to the environmental impact assessment of the project. There is no explicit requirement to provide the information to the public in an accessible and understandable format. All documents related to the hearing are provided by the entity initiating the public hearing in an electronic form to the local authorities, which are in turn required to publish them on their websites.

The procedure for holding public hearings prescribes the preparation of a minutes of the hearing, which includes the comments and objections raised by the public during the hearing. The minutes are made in writing and shall be published on the local executive authority's website. There is also a requirement to make a full record of the meeting which is also made available online. During screening and EIA scoping, the competent authority will collect, consider and take into account the comments and proposals of the interested authorities and the public. If during repeated public hearings the comments and suggestions are not removed, and the initiator does not agree with them, the case will be considered by an expert commission, which would include one representative of the National Chamber of Entrepreneurs of the Republic of Kazakhstan and one of accredited non-profit organizations in addition to the representatives of the public and state authorities.⁴⁸

From the SSU Code perspective, there is no definite obligation to take into account the results of consultations in the design and operation of a mine. The Instruction on Preparation of Reclamation Plans only requires that public opinion is taken into account when formulating the tasks of reclamation. Also, the requirement for consultation with the local community is not generally addressed in the SSU Code which does not require consultations in all cases.

Subsoil users that apply for a retention status in respect of their mining areas are obliged to support workers engaged in works on the mining plots such as by transfer to another work (another work area), procuring training for acquisition of new specialties (professions) and upgrade of qualifications. If a subsoil user applies for investment preferences under an agreement for processing of solid minerals, it shall undertake, inter alia, the obligation to create and keep workplaces for Kazakh citizens on the mining and/or processing facilities.⁴⁹

Community Engagement - De Facto (2.29)

Most companies agree that the procedures for conducting public hearings led by local authorities are clear and well-regulated but they argue that local government agencies often do not have the ability to conduct them, delaying the approval process. They note that the use of water resources is often a recurrent problem discussed in the public hearings.

Civil society reports that the local population complains about the companies not advertising enough when public hearings are supposed to take place, scheduling public hearings during working hours, and ignoring their points of view. Women are present in public hearings, but not as representatives of women's groups that advocate for the interests of women and/or children. The information provided is often incomplete

⁴⁸ GRATA International (2021).

⁴⁹ GRATA International (2021).

and in a form that is difficult to understand, while hearing records are not always available. They also note that the legislation does not address funding requirements for legacy mines.

CSR and Social Issues - De Jure (1.00)

Generally, no mandatory CSR requirements apply to exploration and mining companies. However, according to the SSU Code, if the requested area for exploration or mining is located fully or partially at a distance of 1,000 meters of settlements and adjacent territories, then the applicant is required to enter into a Community Development Agreement with local executives and representative bodies to establish social and economic measures to support the affected population.

The legislation of Kazakhstan does not expressly provide what measures of support shall be the subject of such an agreement, but it is implied that financial contributions to the budget of the local regional authority will be used for the socio-economic development of the region, including resettlement or investment in social infrastructure, employment of locals etc. There are no specially protected communities, like aboriginal or indigenous people, in Kazakhstan.

CSR and Social Issues - De Facto (2.28)

Although the SSU Code provides for the signing of agreements on social support for population, when mining or exploration activities are carried out near population settlements, the procedure is not well-established. Social obligations related to the development of subsoil use activities are most of the resort of the companies' Corporate Social Responsibility. There is not a standard or model form agreement and the focus has been in providing social infrastructure focusing on servicing the population, especially in mono-towns.

Expenditures of social contributions to akimats under subsoil use contracts and various memorandums with subsoil users tend to be made in a non-transparent manner, without coordination with civil society. Akimats can spend the money arbitrarily, without objective guideline, fulfilling urgent needs without accountability by the affected communities who do not see the impact of these contributions. In general, the size of social payments is determined by akimats, as a function of urgent needs. This means that, in practice, any amount may be demanded from the subsoil user, which creates additional corruption risks.

Civil society regrets that the mining sector legislation does not spell out the obligations of subsoil users for local social and infrastructural development. Agreements are concluded between the company and the akimat and the local population does not always participate in the preparation of such agreements and often learns about them after the fact. The issues of jobs and environmental impact are priority issues, but the point of view of the mining company tends to prevail, often without the opinion of independent experts. Issues of women and gender equality are not addressed.

In practice, the CSR contributions are made mostly by large mining companies which are listed on the foreign stock exchanges. Mining companies operating under the contractual regime are often required to make payments for development and maintenance of infrastructure of local importance and implementation of projects in accordance with the programs of social and economic development of akimats. The payment (usually based on a percentage of revenue received from sale of mineral products) are distributed among village, regional and oblasts funds and budgets.

For the most part, companies transfer all social infrastructure facilities to the balance sheet of the local authorities and achieve influence through the creation of social infrastructure facilities as part of their CSR efforts. However, the procedures for entering into the Community Development Agreement and allocation

of the funds by local executive body received under Community Development Agreement are not transparent and some companies argue that deductions from subsoil users for the socio-economic development of the regions are not used for their intended purpose.

Room for Improvement in “Local Impact”

- ◇ Strong government Local Supplier Development Programs designed and developed in partnership with the industry are needed to enhance the capacity of local suppliers.
- ◇ Government should strongly consider the introduction of Social Impact Assessments (SIA) for the mining sector, involving the systematic examination of the likely impacts of any planned exploration, project development or resource production activities on the surrounding communities.
- ◇ Government should align more closely the resources towards R&D and training programs provided by mining companies in accordance with the SSU Code with the requirements of the industry in terms of local content and employment. Enhanced transparency measures relating to how these contributions are used are needed to improve the effectiveness of the practice.
- ◇ The expectations of mine impacted communities and major international policy frameworks now require much more than a one-off consultation with communities prior to mine development, but ongoing consultations and community engagement throughout the life of the mining project. One way to implement ongoing community engagement, manage complex impacts, and promote sustainable benefits related to a mining project is through use of community development agreements. Government should regulate and systematically enforce the signing of CDAs on social support for populations affected by subsoil use activities so that they are prepared and implemented with transparency and the participation of affected communities.
- ◇ MoF or MNE should consider establishing guidelines and controls for the use of social contributions to akimats under subsoil use contracts. These contributions should be also reported under the EITI national report.

VI. Stakeholder Priorities

The analysis in Sections IV and V has treated every topic and each indicator equally. In giving a flat listing of shortcomings, the analysis overlooks an important aspect: some problems are more important than others. They either have a larger impact (positive or negative) on the functioning of the mining sector or they are perceived as indispensable areas that require reforms. The analysis of stakeholder priorities in this section is a first step towards identifying the topics that should be considered priorities, as seen through the eyes of the three main stakeholder groups in the mining sector: government, industry, and civil society.

During the interview phase of the MSD, all respondents were asked to identify their top priorities for the sector. Specifically, they received the voting template reproduced in [Annex V](#), and each respondent picked the topics evaluated in the MSD that they considered most important. For each topic, the respondents assigned a total of 100 votes distributed among the indicators that in their view were priorities and required special attention. Priority areas were defined as areas where reforms would be most likely to significantly improve the management of the sector with the aim of increasing its contribution to overall sustainable development. It should be taken into account that by definition each priority area is an indicator in the MSD framework.

The stakeholders' votes were standardized to 100 per respondent, giving equal weight to each respondent. The responses were then aggregated for each stakeholder group. The following table shows the top ten priorities for each sector (Figure 15). The table also gives the score for each priority topic. The analysis shows that:

- There are only two pop priorities shared among the three constituencies. They are “Local Content/Local Supplier Development” that ranks 3rd in government priorities and 5th on both industry and civil society priorities, following by “Sector Policy” that ranks lower in all three groups of voters.
- Government and Industry share four additional top priorities: (i) “Collection and Maintenance of Geological Information”, which ranks very high for both constituencies; (ii) “Intra-Governmental Coordination”, also a high-ranked top priority; (iii) “Mining Legislation and Processes”, another high-tiered top priority; and (iv) “Sector Dialogue”, or less relative importance.
- Civil Society Organizations appear to prioritize a somewhat different agenda and have only one additional top priority in common both with Government (“CSR and Social Issues”) and with Industry (“Environmental Impact Management”). “Community Engagement”, “Resource Revenue Transparency”, “Employment”, and “Social Impact Management” are only ranked as top priorities by CSOs.
- “License Allocation” is only ranked as a top priority by Government, while Industry is the only constituency to place “Tax Policy and Instruments” among its top priorities.

Figure 14: Shared Stakeholder Priorities

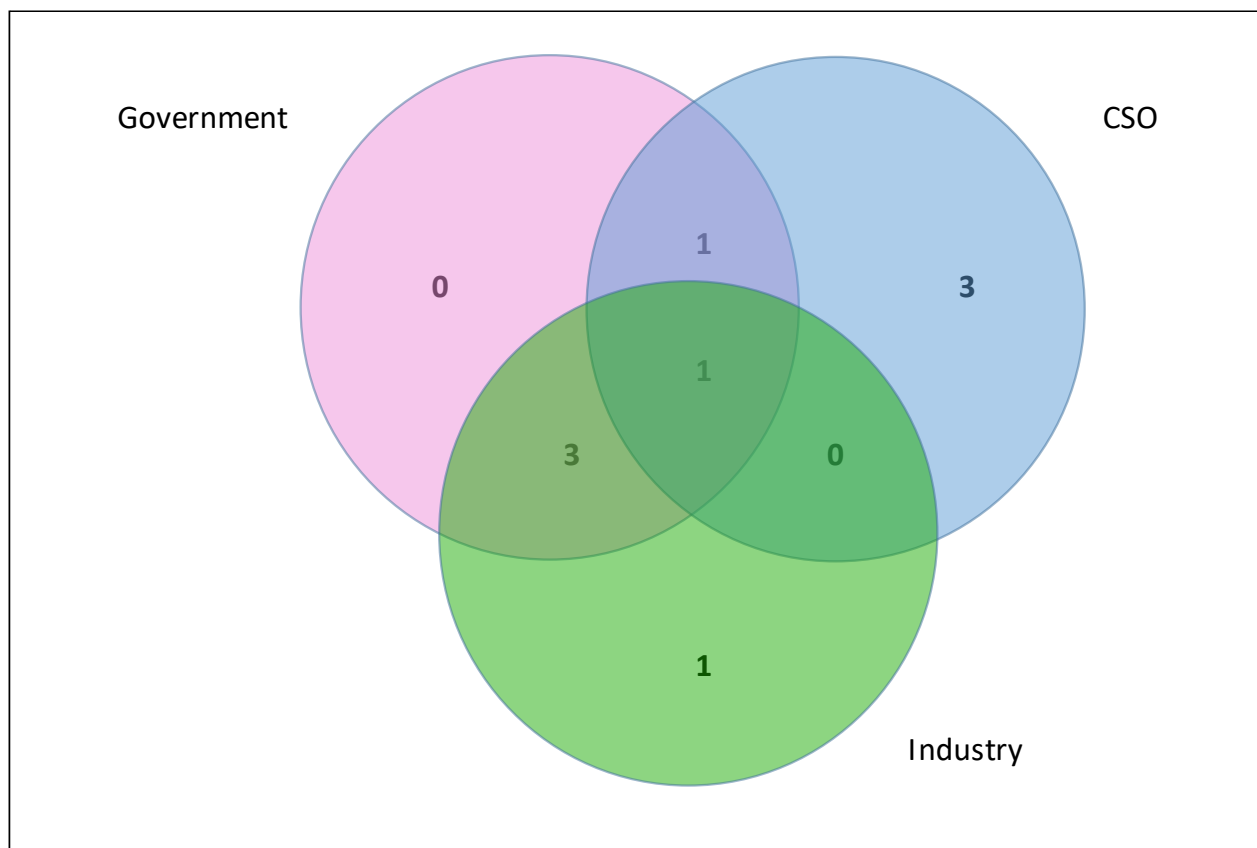


Figure 15: Top Ten Stakeholder Priorities

Topic	Votes (%)	Votes (% Cumulative)	Scores	
			De Jure	De Facto
Government				
Collection and Maintenance of Geological Information	25%	25%		2.46
Intra-Governmental Coordination	20%	45%	2.47	
Local Content/Local Supplier Development	15%	60%	2.20	2.69
Mining Legislation and Processes	10%	70%	3.10	
CSR and Social Issues	10%	80%	1.00	2.28
Sector Policy	5%	85%	2.50	
Sector Dialogue	5%	90%	2.59	
License Allocation	5%	95%	1.58	3.12
Industry				
Tax Policy and Instruments	13%	13%	2.82	
Collection and Maintenance of Geological Information	10%	23%		2.46
Mining Legislation and Processes	9%	32%	3.10	
Intra-Governmental Coordination	9%	41%	2.47	
Local Content/Local Supplier Development	8%	48%	2.20	2.69
Environmental Impact Management	7%	55%	2.41	2.67
Sector Policy	7%	62%	2.50	
Sector Dialogue	7%	69%	2.59	
Civil Society				
Community Engagement	20%	20%	3.38	2.29
CSR and Social Issues	20%	40%	1.00	2.28
Resource Revenue Transparency	15%	55%		2.50
Environmental Impact Management	12%	67%	2.41	2.67
Local Content/Local Supplier Development	8%	75%	2.20	2.69
Employment	7%	82%	3.10	3.24
Social Impact Management	3%	85%		2.71
Sector Policy	2%	87%	2.50	

VII. Strengths, Challenges, and Reform Agenda

This section concludes the report by noting the current strengths - where the rules are in line with good international practice and where there are competent and capable institutions. It then outlines the main medium- and long-term challenges and concludes by proposing a set of necessary improvements that could go onto a mining sector reform agenda that includes, firstly, policy improvements, and secondly, reinforcement of institutional performance and management.

VII.1 Strengths

Kazakhstan is endowed with abundant mineral resources, but its full geological potential has not been fully explored using modern technologies. The country's proved geological richness, geographic extension and low density of population increase the chances of finding large world class deposits that can be developed into profitable mines. Kazakhstan has an established mining industry and is currently a leading world producer of uranium, chromite, coal, iron & steel, copper, and zinc. If properly explored, the country's proved geological richness, geographic extension and poor density of population increase the chances of finding large world class deposits that can be developed into profitable mines.

Mining is an important driver of Kazakhstan's economy. The sector's share in GDP represented 17% in 2021, and 16% of exports. Mining and metallurgical companies employ more than 273,000 people. The government has recognized the competitiveness of its mining industry as a national priority. Key elements of the country's mining policy include fostering the discovery of new critical mineral resources, improving productivity and environmental protection, and increasing the share of higher value-added products.

The high concentration of mining operations with a few state-owned and large state-connected enterprises has delayed sector growth, hindering the development of a significant pipeline of new projects led by broader private sector participation. Most of the mines currently in operation were discovered during Soviet times and some of them still employ technology and management practices dating from that period. Despite cheap power, low labor costs, and reasonably adequate infrastructure, the industry lost competitiveness because of the depletion of high-quality reserves, intensity in carbon emissions and inadequate mineral exploration and investment.

The 2018 SSU Code aims to create a conducive legal and institutional framework for a successful mining development. The new code attempted to create a level playing field and increase competition by granting mining rights through the "first-come, first-served" principle, under which mineral licenses are awarded to the first qualified applicant. A lot of progress has been achieved: more than 1,900 new licenses were granted since the approval of the new code, leading to new investments in greenfield exploration by smaller companies that could generate a robust investment pipeline over the next 5 to 10 years. This would demonstrate that the legal reform is working and would establish Kazakhstan as a preferred jurisdiction by international investors.

Despite the mining code's early success, Kazakhstan still suffers from a lack of clarity about the government's objectives and strategies for the sector and lack of capacity from key institutions for sector development. Lack of coordination between the MIID and MENR (formerly MGNER) over the sector's management, as well as instability at MIID's leadership, delayed the opening of the entire country for subsoil use and greatly reduced the impact of reforms. The SSU Code implementation has also been hampered and lost steam by frequent changes at the top of the administration, the lack of replacement of departed knowledgeable civil servants in the Subsoil Use Department of the MIID, absence of modern digital mining licensing and geological database supporting management systems, diminishing opportunities created by the stagnation of the sector, and by budgetary restrictions.

VII.2 Challenges

Kazakhstan needs to increase its mineral resource base. Growth in mineral reserves is hindered by lack of transparency in license allocation and the power of connected parties to profit from a bureaucratic and inefficient system of allocation of areas for subsoil use through the Program for the Management of the State Subsoil Fund (PMSSF) and the industrial and innovative program. Government has allotted a substantial amount of funds to the creation of a digitized database for the open dissemination to investors of Kazakhstan’s geological information, but this task has been postponed several times and not been appropriately completed yet and it perceived as a threat by those government officials that prefer to keep the previous establishment in place.

Three essential reforms announced by the President must be urgently implemented to encourage more private investment in exploration. They are: (i) the creation of a modern National Geological Survey to provide comprehensive scientific support and open access to geological data to investors; (ii) extending the first-come, first-served principle for issuing subsoil use licenses to the entire country through unequivocal digital procedures and open access to geological data and relevant subsoil use information; and (iii) completion of the transition to an internationally recognized mineral reserves certification system of CRIRSCO.

The declining trend in sector productivity needs to be reversed. A distortive business environment, tilted in favor of a few state-owned, large state-connected and industrial enterprises, has been the driving force behind slow growth and technological modernization. New investors have been forced to compete on uneven terms because of gaps in the legislation and the unequal application of regulations that give preferential treatment to incumbent and state-owned exploration and mining companies. Strong productivity growth requires more trade openness and foreign investment, transfer of modern technologies, adequate human capital and infrastructure, access to finance, reliance on market mechanisms for resource allocation, and strong regulatory institutions.

The mining sector’s institutional organization suffered from ill-designed reforms. Key agencies have roles and responsibilities clearly defined but institutional fragmentation and lack of policy alignment between the MGENR and the MIID during 2019 – 2022 was blocking the implementation of an overall favorable legislation. In practice, charging the environmental authority with the responsibility for replenishing mineral reserves and having it conduct prospecting and exploration funded by the state creates a major conflict of interest and allocates taxpayer’s money on high-risks investments. Most mining constituencies have geology and mining regrouped under a single industrial or sectoral authority.

Sector regulatory institutions must be strengthened in response to the government’s ambitions. This requires more robust and well-equipped institutions, less focused on process and with increased responsiveness, transparency, and accountability, so as to reach efficiency levels close to Australia and Canada’s mining industry. A central component of this is clear procedures and digitalization, creating integrated data-driven systems across all relevant institutions, easily accessible by investors and the public. Another priority is to address the perceived concerns over corruption.

Kazakhstan’s mining tax regime suffers from frequent changes and is subject to inconsistent application. The tax regime is complex, untransparent and confusing for mining companies and improvements to tax administration are needed to facilitate compliance and increase subsoil revenue mobilization. A key challenge is moving from the mineral extraction tax (MET) to a unit-based royalty on the value of extracted

minerals sold prior to processing. The use of mineral reserves as a tax base, as opposed to the more common sales/profit-based royalties, is a lasting concern for investors.

Local content remains one of the subsoil users obligations to which the government pays most attention. However, the country's manufacturing base is small and unsophisticated and is hindering efforts to increase local content in mining. Moreover, an inflexible application of the local content rules complicates mining companies' access to foreign technology. Good international practice focuses on SME supplier and cluster development, supported by technology and innovation startup programs meant to develop a service industry that can become competitive and source not just the local mines but compete internationally.

The legal framework is weak on social protection for communities impacted by mining. Although the SSU Code provides for the signing of agreements on social support for population, when mining or exploration activities are carried out near population settlements, the procedure is not well-established. In addition, social contributions to Akimats under subsoil use contracts and various memorandums with subsoil users tend to be spent in a non-transparent manner, without coordination with civil society. Resettlement of populations in the mining sector is also not regulated. The SSU Code does not provide rules or guidelines to facilitate an agreement on the modalities and amounts of compensation for the damage caused.

Transparency, inclusiveness and participation must be strengthened. Government needs to increase its efforts to reach out to all relevant constituencies and integrate their views in the policy formulation process. Overall, CSOs believe that the sector ministries do not facilitate access to information by the public and relevant databases are very difficult to find on government's websites. Several legal and regulatory instruments regulate citizen engagement in mining, including the Environmental Code. While procedures for conducting public hearings led by local authorities are clear and well-regulated, local government agencies often do not have the ability to conduct them, delaying the approval process.

Greater clarity is needed on the interactions between the SSU Code and the 2021 Environmental Code and Land Code. The way the Environmental Code is enforced is leading to much costlier and usually longer procedures for environmental approvals and compliance. For example, the procedure for obtaining environmental permits for exploration is complicated, forcing companies to undergo both screening and EIA procedures for nonsignificant earth disturbance. Moreover, global decarbonization and related pressures of global climate change are a new challenge, likely to affect Kazakhstan's mining exports given the carbon intensive nature of its energy and mining sectors and the country's ambition to achieve net zero emissions by 2060. Access to land surface regulated by the Land Code faces with difficulties related to ambiguity of compensation amounts payable to private landowners.

VII. 3 Reform Agenda

The President is determined to advance reforms to create a more vibrant and competitive mining sector. In this regard, this Mining Sector Diagnostic has identified areas with room for improvement, whether in the rules or in their implementation. Summarized below are our main recommendations for improvement arising from this report.

The regulatory environment could be strengthened to promote a level playing field for all firms and increase private investment. This means reforming policies and institutions that unfairly protect state-owned and other state-connected or industrial and innovative companies and nurturing favorable

conditions for attracting, retaining, and expanding private investors, while dealing comprehensively with corruption. More specifically, consideration should be given to:

- i. Auditing the results of the PMSSF and contemplate abolishing it. The first-come, first-served principle for granting mineral rights should be expanded to all the territory no later than by end 2023 (except in protected areas and zones where mining is banned). All loopholes, exceptions or preferential treatment to specific entities should be eliminated.
- ii. Simplifying the procedures and systems that support the licensing process to increase transparency and responsiveness to users, while increasing the value of surface rental fees for exploration licenses over time, to deter speculation.
- iii. Developing a systematic approach to inspections for checking on compliance by the license/contract holders and identify possible non-compliance that may lead to termination of some licenses/contracts.
- iv. Corporate governance policies for SOE are critical and should be reinforced when reforming and merging the main state-owned companies such as Tau-Ken Samruk and Kazgeology's exploration assets to boost competition and reduce the state's dominant presence in the industry.
- v. Completing transition to an independent and internationally recognized mineral reserves certification system of CRIRSCO to unify narratives of minerals resources by private and public sectors

The sector's institutional framework needs to be reorganized and strengthened. Most mining jurisdictions have the regulatory functions related to geology, exploration, extraction and metallurgical processing under the same government authority. Current mining authority should be organized according to three principal services/competences- Geological Survey (Service), Mining Licensing and Regulation, and Mining Inspectorate (monitoring and control). Going forward, it is key to ensure that these institutions build strong regulatory capacity, operate transparently and have enough budget, staffing resources, and real autonomy to exercise their mandates and coordinate with other state bodies. Staffing of the mining authority's central and regional inspection units for the monitoring of compliance with granted conditions and regulatory requirements for operations in mining sector should be a priority.

Government should accelerate the operationalization of the National Geological Service and consider modifying the role of the government in geology sector, streamlining its regulatory and control authority. The new entity should take over the management of the National Mineral Resources Data Bank and the government-sponsored program for the collection and interpretation of precompetitive geological data as a public good, which could be expanded to include modern technologies and approaches currently used in OECD countries. The Committee of Geology should be reorganized and superseded by National Geological Service acting in line with the objectives of mining reform of the SSU Code and the institutional model employed in countries such as Australia and Canada, where the tasks that are inherent to the private sector - such as services for geological exploration and work on specific private projects – are not carried by the state geological departments.

Government needs to adopt a credible and stable tax framework and consider using more progressive taxation tools. A thorough financial modelling analysis should be made to assess the feasibility of transitioning from the MET to a royalty-based contribution where companies are taxed based on their sales of mineral products, a system used by most countries. The model should estimate the impact of the potential budget instability created by the new regime and calibrate royalty rates to avoid revenue shortfalls. Profit-based royalties, like those applied in Chile and Peru (world first and second copper

producing countries), could be considered to make the tax regime more responsive to changes in commodity prices. After transition to royalty-based tax framework it is worth reinstating tax stabilization clauses - whereby investments above a certain threshold could be eligible for the stabilization of some taxes (and not other legal provisions) for a given period of time – as an alternative for inefficient tax exemptions (e.g. for beneficiation or marginal deposits). There is also a need to improve tax administration. Generally, tax and economic policies of the government related to mining sector should be brought in line with long-term agenda of mining reform of the SSU Code and specifics of the sector.

The legislative and institutional framework for mine closure and financial sureties must be finalized.

Introduced by the SSU Code, the current system of financial sureties and reclamation plans tends to underestimate the real costs of rehabilitation, exposing the budget to the risk of future liabilities related to abandoned mining sites. The environmental and industrial safety analysis of reclamation plans must be strengthened, and the soundness and adequacy of the final reclamation costs carefully assessed by relevant government authorities. The management of financial sureties and the use of funds for relevant reclamation work by the authorities should also be regulated.

Government-sponsored “Local Supplier Development Programs” designed and developed in partnership with the industry are needed to enhance the capacity of local suppliers. Government should align more closely the resources towards R&D and training programs provided by mining companies in accordance with the SSU Code with the requirements of the industry in terms of local content and employment. It is essential to connect business support programs with the broader objectives of the green transition envisioned by Kazakhstan, to prepare firms for new growth opportunities.

The following recommendations could be used to strengthen mining’s social protection and community development framework:

- i. Government should strongly consider the introduction of Social Impact Assessments (SIA) for the mining sector, either as stand-alone tools or as part of enhanced EIAs.
- ii. Thought should be given to the preparation of regulations for the resettlement of populations affected by the mining sector, as well as guidelines for the calculation of compensation and damages to private land caused by exploration activities, and systematically enforce the signing of model agreements on social support for populations affected by subsoil use activities.
- iii. MoF should consider establishing guidelines and controls for the use of social contributions to akimats under subsoil use contracts. Enhanced transparency measures relating to how these contributions are used are needed to improve their effectiveness.
- iv. For a more systematic approach to community development around mining sites, consideration should be given to the introduction of legally binding Community Development Agreements, which would negotiate and determine upfront the contributions to local development by large mining operations.

Subsoil use and environmental regulations and practices must be harmonized. Detailed regulations prescribing clear rules are needed to improve environmental licensing for subsoil use activities. MENR should consider adopting a more flexible enforcement practice and approach to the screening of exploration projects, while investing in the acquisition of more environmental baseline data. In parallel,

the coordination among the inspectorate entities of different ministries should be improved through specific regulations to reinforce compliance, and the capacity of staff and systems strengthened.

It is important to strengthen formal mechanisms and platforms for increased transparency and participation, providing them with a clear legal status and responsibility for decision-making. Regulation of information disclosure in the mining sector should be clearly defined and strictly enforced, in line with the principles of the general provisions of the SSU Code. The Extractive Industries Transparency Initiative (EITI) is playing an important role on improving the quality of the dialogue. However, these meetings are becoming extremely rare and the scope of discussions progressively reduced to the EITI report. This could potentially trigger Kazakhstan's suspension from EITI during the next Validation.

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ANNEXES

Annex I: MSD Methodology - Brief Description

MSD is a data-driven diagnostic of the mining sector. Data is compiled using a questionnaire containing 369 questions. The questions draw on two different data sources, specifically:

- Primary data on the country’s laws, regulations and procedures; these questions are related to de jure “rules.” This data is generated through a desk review of relevant documents; and
- Interview data from in-country interviews of representatives from government, civil society and industry. These questions refer to de facto performance.

The response to each question is scored on a scale of 1 (lowest) to 4 (highest). Specifically:

- Primary data questions typically deal with the existence of legally binding requirements. In some cases, primary questions are simple Yes/No questions that are scored as 4 or 1, depending on the response. In many other cases, primary questions explore whether the legally binding requirement is consistent with good practice. This is done through a series of sub-questions. The overall score then averages the sub-question scores.
- The interview questions have specific response options. Four, three or two options are given. An example of four options is “very satisfied / satisfied / unsatisfied / very unsatisfied” with the respective scoring of 1 to 4. An example of three options would be “fully / partially / not at all” with scores of 4 / 2.5 / 1. An example of two response options would be “Yes / No” with a score of 4 or 1. Interview questions may contain 2 or more sub-questions, in which case the overall score would be an average of the sub-question scores.

Interview responses from civil society and industry are averaged into one response for civil society and one for industry, respectively. Respondents also have an opportunity to provide comments to support or clarify their views. Questions are grouped into indicators and indicators are grouped into “topics” that represent the cells of the dashboard (indicators are shown in several Figures in the report and are clearly identified in the headings in Annex II). Aggregation of each step involves simple averaging. The resulting scores are divided into four groups:

- “Very Low” (scores of 1 - 1.75);
- “Low” (scores >1.75 to 2.5);
- “High (scores >2.5 - 3.25); and
- “Very High” (scores of >3.25 - 4).

The figures in the report translate these scores into color coding as follows:

Scoring Key:	Very low (1.00 - 1.75)	Low (> 1.75 - 2.50)	High (> 2.50 - 3.25)	Very High (> 3.25 - 4.00)
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Annex II: Question Scores

Number	Question	Data Source	Score
A	Mining Sector Management		
A1	Sector Policy		
1	Is there an approved mining sector strategy that is publicly available?	Primary	1.00
2	Is there a current multi-year national development plan that has a section on the mining sector and that is publicly available?	Primary	1.00
3	How satisfied is government with the mining sector development taking place in this country?	Interview Government	3.00
4	How satisfied is the mining industry with the mining sector development taking place in this country?	Interview Industry	2.38
5	How satisfied is civil society with the mining sector development taking place in this country?	Interview Civil Society	2.40
6	Is mining sector legislation in accordance with the mining sector strategy?	Interview Government	3.00
7	Is mining sector legislation (including policies and regulations) consistent with other relevant legislation (including policies and regulations)?	Interview Government	3.75
8	How satisfied is the mining industry with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Industry	2.38
9	How satisfied is the government with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Government	3.00
10	How satisfied is civil society with the country's mining legislation (e.g., is it reasonably up-to-date and addresses all relevant issues)?	Interview Civil Society	2.33
11	Is there an investment promotion strategy that adequately covers the mining sector?	Interview Government	3.25
A2	Sector Dialogue		
12	Is there a Chamber of Mines (or similar organization) that represents the mining industry?	Primary	4.00
13	How satisfied is the mining industry with the way the Chamber of Mines (or similar organization) represents the views of the mining industry?	Interview Industry	2.67
14	Are there civil society organizations that represent the views of civil society on a wide range of mining sector issues?	Primary	3.00
15	How satisfied is civil society with the way existing civil society organizations represent the views of civil society on mining sector issues?	Interview Civil Society	2.00
16	How satisfied is the government with the dialogue between the government and the mining industry on mining sector issues?	Interview Government	3.00
17	How satisfied is the government with the dialogue between the government and civil society on mining sector issues?	Interview Government	3.00
18	How satisfied is the mining industry with the dialogue between the government and the mining industry on mining sector issues?	Interview Industry	2.50
19	How satisfied is the mining industry with the dialogue between civil society and the mining industry on mining sector issues?	Interview Industry	2.71
20	How satisfied is civil society with the dialogue between the government and civil society on mining sector issues?	Interview Civil Society	2.17

21	How satisfied is civil society with the dialogue between the mining industry and civil society on mining sector issues?	Interview Civil Society	2.00
22	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Government	...
23	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Industry	2.78
24	Did an informed and meaningful national consultation take place during the preparation of the mining sector strategy?	Interview Civil Society	1.13
25	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Government	...
26	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Industry	3.50
27	Did an informed and meaningful national consultation take place during the preparation of the national development plan?	Interview Civil Society	1.75
A3	Roles and Responsibilities		
28	Is there a stand-alone Ministry of Mines with clearly defined responsibilities for the mining sector? If not, and mining sector issues are covered by a unit/section in a different Ministry, is this unit/section sufficiently empowered to deal with mining sector issues?	Interview Government	2.50
29	Does mining or other legislation assign clear authorities and non-overlapping responsibilities between government ministries/agencies in the mining sector?	Interview Government	4.00
30	Is there a clear understanding and acceptance of the various roles and responsibilities amongst the agencies involved in the management of the mining sector?	Interview Government	4.00
31	Is there a dedicated unit within the mining authority dealing with artisanal and small-scale mining (ASM)?	Primary	1.00
32	Is there a legally binding provision for the establishment and operation of a mining cadastre that specifies its authority and responsibilities?	Primary	4.00
33	Is there a legally binding provision that identifies the authority that issues exploration and mining licenses and is this authority separate from the mining ministry?	Primary	2.50
34	Is there a legally binding provision that provides for the use of mining-related standard contracts and/or development agreements, does the law define the signatory and is the signatory the same as the license issuer?	Primary	3.00
35	Are there legally binding provisions that identify which institution or institutions are responsible for approving EIAs and EMMPs as well as monitoring and enforcing compliance with legal requirements related to managing environmental impact?	Primary	4.00
36	Are there legally binding provisions that identify which institution or institutions are responsible for approving SIAs and SMMPs as well as monitoring and enforcing compliance with legal requirements related to managing social impact?	Primary	1.00
A4	Intra-Governmental Coordination		
37	In practice, are there disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Government	2.80
38	In practice, are there disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Industry	2.60
39	In practice, are there disagreements between government ministries/agencies over the roles and responsibilities regarding the mining sector?	Interview Civil Society	4.00

40	Has the government set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Government	2.50
41	Has the government set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Industry	2.43
42	Has the government set up formal mechanisms to share resources and information between institutions in the form of committees, task forces or working groups that bring together "mining sector practitioners"?	Interview Civil Society	1.90
43	Are there formal mechanisms for sharing information between government ministries/agencies working on the mining sector?	Interview Government	2.80
44	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information?	Interview Government	3.00
45	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information between government ministries/agencies working on the mining sector?	Interview Industry	2.60
46	How satisfied are you with the effectiveness of the formal mechanisms for sharing resources and information between government ministries/agencies working on the mining sector?	Interview Civil Society	1.80
47	Has a central information storage system and database been set up that effectively supports the maintenance, verification, and sharing of data for the mining sector?	Interview Government	2.00
48	How satisfied are you with the central information storage system and database?	Interview Government	2.00
49	How satisfied are you with the central information storage system and database that the government is using to maintain, verify and share data related to the mining sector?	Interview Industry	2.00
50	How satisfied are you with the central information storage system and database that the government is using to maintain, verify and share data related to the mining sector?	Interview Civil Society	2.20
1	Contracts, Licenses and Exploration		
B1	Rules for License Allocation, Oversight, and Transfer		
B1.1	License Allocation Rules		
51	Are there legally binding procedures for granting exploration and mining licenses that are consistent with good practice and compatible with other relevant legislation?	Primary	2.00
52	Do the procedures used in granting exploration and mining licenses ensure that licenses are only issued to qualified applicants and do rely on either "First Come, First Served procedures" or "Competitive Bidding"?	Primary	2.00
53	If competitive bidding is used for granting exploration licenses, are standardized bidding documents and contracts used and, if so, do the evaluation criteria emphasize work commitments?	Primary	...
54	If competitive bidding is used for granting mining licenses, are standardized bidding documents used and, if so, do the evaluation criteria emphasize investment commitment and premium payments?	Primary	...
55	Are there legally binding procedures for registering or granting licenses to artisanal and small-scale mining operators and, if so, can the registration/license be obtained from field offices, not just the mining authority head office?	Primary	2.50

56	Are there legally binding provisions regarding the timeframes for the issuance of exploration and mining licenses and the approval of exploration work programs?	Primary	2.00
57	Is there a legally binding requirement or guideline that requires that a map component be used to record license boundaries in the cadastre?	Primary	1.00
58	Are there legally binding provisions that an applicant be informed if a license application is denied or a license is cancelled and, if so, are they consistent with good practice?	Primary	2.20
59	Are there legally binding provisions that require exploration license holders to report exploration activities and results to the Geological Survey Department or the mining authority and, if so, are they consistent with good practice?	Primary	3.40
60	Are there legally binding procedures for granting licenses to mineral traders and are they required for trading minerals, gemstones, etc. produced by mining license holders as well as artisanal and small-scale mining operators?	Primary	1.00
61	Does the first-come first-served mechanism allow applicants to get a license directly for any unoccupied and unrestricted area?	Primary	1.00
62	Are there legal provisions that may prevent access to exploration of unrestricted areas on a competitive basis?	Primary	1.00
63	Are there legal provisions that allow for earlier revoked and relinquished license areas to be again made accessible for exploration?	Primary	1.00
64	Are all license applicants treated equally?	Primary	1.00
65	Does the law provide incentives for exploration companies in the event of discovery?	Primary	1.00
66	Does the exploration company automatically and unconditionally obtain mining rights upon discovery?	Primary	1.00
B1.2	License Management and Transfer Rules		
67	Are there legally binding provisions for penalties and sanctions for non-compliance with exploration and mining license conditions?	Primary	2.50
68	Are there legally binding requirements that exploration and mining licenses, contracts and agreements be made publicly available?	Primary	3.00
69	Are there legally binding provisions, such as state secrecy laws, that contain barriers to the disclosure of mining sector information?	Primary	2.00
70	Are there legally binding provisions that require license holders to provide the government with details of the beneficial ownership of the license and is this information made publicly available?	Primary	2.50
71	Does a company that holds an exploration license and is in compliance with exploration license conditions have a legally binding automatic priority right to apply for a mining license in that area—provided it does also meet the conditions and has provided all necessary information required for a mining license?	Primary	4.00
72	Are there legally binding provisions that permit exploration and mining license holders to transfer their licenses to an eligible party that meets the license provisions?	Primary	4.00
73	Do exploration and mining licenses provide for conditions related to only exploration and mining operations and commitments?	Primary	1.00

C1.1	Collection and Maintenance of Geological Information		
C1.1	Collection and Maintenance of Geological Information		
74	In practice, are exploration license holders delivering the required operational information to the Geological Survey Department (GSD) or mining authority on a regular basis?	Interview Government	3.00
75	In practice, does the GSD or similar organization maintain geological information from companies in a confidential manner until such time as it can be made publicly available?	Interview Government	...
76	In practice, does the GSD or similar organization collect geological information in a publicly accessible library?	Interview Government	...
77	Is there a government website that presents what national geological information is available or, if not at the national, at the sub-national level?	Primary	1.00
78	Is there a library with current national or sub-national geological information maintained by the Geological Survey Department (GSD) or a similar organization?	Primary	4.00
79	In practice, does the GSD or similar organization make use of the geological data collected from companies to improve government and public awareness/understanding of geological prospectivity?	Interview Government	4.00
80	In practice, does the GSD or similar organization make use of the geological data collected from companies to monitor compliance with license conditions?	Interview Government	4.00
81	In practice, does the GSD or similar organization have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	...
82	How satisfied is the mining industry with the way in which the Geological Survey Department (GSD) or similar organization is fulfilling its mandate?	Interview Industry	2.25
83	What percentage of the licensed ground is being serviced by active exploration?	Interview Government	...
84	How satisfied is the mining industry with the availability of geological maps for the most prospective areas?	Interview Industry	2.00
85	In practice, does the Mining Cadastre have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.71
86	How satisfied is the mining industry with the way in which the Mining Cadastre is fulfilling its mandate?	Interview Industry	2.11
87	In practice, is the topographic map for the cadastre compatible with GPS systems?	Interview Government	...
88	What percentage of the mining cadastre is up-to-date?	Interview Government	...
89	In practice, if there is a decentralized cadastre system in place, is the central office able to obtain updated information on a timely basis?	Interview Government	...
90	Is geological information about existing areas available online?	Primary	1.00
91	Is there open access to geological information about existing areas?	Primary	1.00
C1.2	Effective License Allocation		
92	In practice, is the information required for license applications publicly available?	Interview Industry	3.67
93	Are the procedures in the legal framework for the award of exploration and mining licenses followed in practice?	Interview Industry	3.29
94	Are the limits to discretionary power in the award of exploration and mining licenses followed in practice?	Interview Industry	3.29

95	In practice, is there a preference for local companies or producers in the award process of exploration and mining licenses?	Interview Industry	2.50
96	In practice, are exploration and/or mining licenses awarded to applicants which do not have the technical and financial capacity to fulfill license requirements and any associated work program?	Interview Industry	2.67
97	In practice, are the legislated timeframes for exploration and mining license awards and extensions followed?	Interview Industry	3.21
98	Are the timeframes for the approval of exploration work programs followed in practice?	Interview Industry	2.50
99	Are the timelines for deciding on exploration and/or mining license applications compatible with the timelines of other required permits?	Interview Industry	2.50
100	In practice, when licenses are denied or cancelled, are the procedures followed?	Interview Government	4.00
101	In practice, does the unit issuing exploration and mining licenses have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	2.71
102	How satisfied is the mining industry with the way in which the unit issuing exploration and mining licenses is fulfilling its mandate?	Interview Industry	2.42
103	What percentage of licenses are subject to boundary disputes between license holders due to the ambiguity of boundaries?	Interview Government	3.00
104	Are mining contracts and agreements signed and approved by the authority or authorities defined in the law?	Interview Government	4.00
105	In practice, how often do license cancellations or denials result in appeals?	Interview Government	4.00
106	If mining-related standard contracts and/or development agreements are used, are they used to modify provisions in the law?	Interview Government	...
C1.3	Effective License Management		
107	Is the government effectively managing compliance with exploration and mining license conditions?	Interview Government	4.00
108	In practice, does the unit managing the monitoring of licenses have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	4.00
109	How satisfied is the mining industry with the way in which the unit managing the monitoring of licenses is fulfilling its mandate?	Interview Industry	2.56
110	How satisfied is the mining industry with the authorities' practices regarding the extension of exploration and mining licenses?	Interview Industry	2.60
111	In practice, are license holders able to transfer their licenses to companies which meet the qualification criteria?	Interview Government	4.00
112	In practice, does a company that holds an exploration license for a certain areas and is in compliance with exploration license conditions have an automatic first priority to obtain a mining license in that area—provided it does also meet the conditions and has provided all necessary information required for a mining license?	Interview Industry	4.00
113	In practice, are exploration and mining licenses, contracts and agreements made publicly available?	Interview Government	3.25
114	If the answer to the preceding question is "No", are key details of exploration and mining licenses readily accessible?	Interview Government	4.00

115	In practice, does the agency or ministry responsible for awarding licenses for exploration and mining operate independently from the mining ministry, and without undue influence from the mining ministry?	Interview Industry	2.00
116	Do you perceive corruption as having a negative impact on mining-sector activities--in particular the licensing process?	Interview Industry	2.14
117	Is your company aware of the payment of bribes in the mining sector?	Interview Industry	4.00
2	Mining Operations		
B2	Mining Legislation/Processes, Land/Compensation/Resettlement, Environmental and Social Impact Management, ASM, OHS, Mine Closure--Rules		
B2.1	Mining Legislation and Processes		
118	Are there legally binding regulations which cover exploration and mining activities?	Primary	4.00
119	Are the laws and regulations governing exploration and mining operations readily available from a dedicated government source?	Primary	2.50
120	Is there a legally binding process to appeal decisions by mining authorities and, if so, is the authority that receives the appeal independent of the mining authorities?	Primary	4.00
121	If it exists, does the legally binding process to appeal decisions by mining authorities have the legal standing to overturn these decisions?	Interview Government	1.00
122	Are timeframes for the approval of mine development plans and the approval of extensions of mining operations set out in the regulations?	Primary	4.00
B2.2	Land, Compensation and Resettlement Rules		
123	Does the holder of a mineral right have legally guaranteed access rights to surface land?	Primary	1.00
124	Is there a legally binding established procedure for the resettlement of communities displaced by mining activities and, if so, does it follow internationally accepted principles such as the Equator Principles or the IFC Performance Standards?	Primary	1.00
125	Is there a legally binding procedure for the payment of compensation when exploration and/or mining activities interfere with land ownership or land use?	Primary	2.00
126	If mining is taking place in areas where armed conflict is taking place, are there legally binding requirements for a diagnostic review for appropriate actions regarding existing mineral rights in such areas?	Primary	1.00
B2.3	Environmental and Social Impact Management		
127	Is there a legally binding requirement that the clearance of the agency or ministry responsible for environmental protection be obtained before exploration or mining activities can commence and is the agency or ministry separate from the mining authorities or in a separate line of authority from the mining licensing agency?	Primary	4.00
128	Is there a legally binding requirement for companies to prepare and submit EIAs, EMMPs (or combined ESIA and ESMPs) and related reports including implementation and monitoring reports for review and approval by the concerned government agencies?	Primary	4.00
129	Is there a legally binding requirement for EIAs and EMMPs (or combined ESIA and ESMPs) and related implementation and monitoring reports to address mining's environmental impacts on women separately from the impacts on men?	Primary	1.00
130	Is there a legally binding requirement for E(S)IAs and E(S)MMPs (or other key environmental impact related documents such as monitoring reports) to be made public and is the requirement consistent with good practice?	Primary	3.00

131	Are there legally binding requirements for pollution prevention and management of air pollution, hazardous and non-hazardous wastes, chemicals and hazardous materials and pesticides?	Primary	4.00
132	Are there legally binding requirements for the protection of surface and ground water quality and the review and balancing of water allocations and are they consistent with good practice?	Primary	2.80
133	Is there a legally binding requirement for structures such as tailings dams and impoundments that hold mine wastes to be designed, operated and maintained according to internationally recognized standards that is consistent with good practice?	Primary	4.00
134	Is there a legally binding requirement for mining operations to identify, manage and protect biodiversity that is consistent with good practice?	Primary	2.50
135	Is there a legally binding requirement for mining operations to identify, manage and protect natural habitat that is consistent with good practice?	Primary	1.60
136	Is there a legally binding requirement that mine design and operations reflect anticipated trends in weather event severity and frequency related to climate change that is consistent with good practice?	Primary	1.00
137	Is there a legally binding requirement for mining operations to have an Emergency Preparedness and Response Program (EPRP) prior to commencement of mining operations that is consistent with good practice?	Primary	2.50
138	Is there a legally binding requirement for Emergency Preparedness Plans to be made public and is the requirement consistent with good practice?	Primary	2.50
139	Is there a legal provision for a simplified Environmental Permit for artisanal and small-scale mining (ASM)?	Primary	4.00
140	Is there a legally binding requirement for companies to prepare and submit SIAs and SMMPs (and related reports including Implementation and Monitoring reports) for review and approval by the concerned government agencies and is the requirement consistent with good practice?	Primary	1.00
141	Is there a legally binding requirement for SIAs and SMMPs (or other key social impact related documents such as monitoring reports) to be made public and is the requirement consistent with good practice?	Primary	1.00
142	Is there a legally binding provision establishing a grievance and complaints mechanism for environmental and social mitigation issues and is the complaints mechanism consistent with good practice?	Primary	1.00
143	Is there an authority with whom a grievance or complaint can be filed and has the authority put in place procedures for hearing as well as corrective procedures?	Primary	1.00
B2.4	Artisanal and Small-Scale Mining		
144	Is there an association that represents artisanal and small-scale miners?	Primary	1.00
145	Is there a government-run program that ASM workers and their families can access to get basic health and education services in the area where they work?	Primary	1.00
146	Are there legally binding provisions that provide for the legal operations of artisanal and small-scale mining (ASM) activities?	Primary	4.00
147	Are there legally binding provisions that permit ASM activities to take place, with the consent of the (non-ASM) license holder, on land for which an exploration or mining license has been issued?	Primary	4.00

148	Are there legally binding provisions that provide for the settlement of disputes between ASM and exploration and mining license holders?	Primary	1.00
149	Are there legally binding provisions for ASM that safeguard from potential environmental and other harm?	Primary	2.80
B2.5	Occupational Health and Safety		
150	Are there legally binding Occupational Health and Safety (OHS) standards and procedures, and, if so, do they include related education and training requirements and are they in line with internationally used standards?	Primary	4.00
151	Is there a grievance mechanism for workers for non-compliance with Occupational Health and Safety (OHS) standards and procedures, and, if so, does it include penalties in case of non-compliance?	Primary	3.50
B2.6	Mine Closure and Financial Sureties for Decommissioning		
152	Are there legally binding regulations which cover mine closure and reclamation activities?	Primary	4.00
153	Is there a legally binding requirement for a Mine Closure and Reclamation Plan (MCRP) to be prepared and is it consistent with good practice?	Primary	2.80
154	Are there legally binding provisions that outline what the MCRP must cover regarding environmental protection, remediation and reclamation as well as managing and mitigating potentially harmful social impacts?	Primary	2.50
155	Is there a legally binding requirement for the MCRP to be prepared in consultation with the affected communities and local government and is it consistent with good practice?	Primary	4.00
156	Is there a legally binding requirement for Mine Closure and Remediation Plans to be made public and is the requirement consistent with good practice?	Primary	1.00
157	Is there a legally binding requirement for mining companies to include progressive rehabilitation in the mining plan?	Primary	1.00
158	Are there legally binding provisions regarding a financial assurance mechanism related to mine closure that are consistent with good practice?	Primary	2.50
159	Is there a legally binding mechanism for rehabilitation of abandoned exploration and mining sites?	Primary	1.00
160	Is there a legally binding administrative mechanism for recovery/enforcement by the government of funds under rehabilitation financial sureties provided by exploration or mining companies?	Primary	1.00
161	Is there a legally binding requirement that funds set aside for rehabilitation be reviewed by the government authority regularly to take into account any changes in rehabilitation costs?	Primary	1.00
C2.1	Land, Compensation and Resettlement--Practice		
C2.1	Land, Compensation and Resettlement--Practice		
162	In practice, does the government enforce the legal requirements to resettle communities affected by mining activities?	Interview Civil Society	4.00
163	In practice, does the government enforce the legally binding payments of compensation when exploration and/or mining activities interfere with land ownership or land use?	Interview Civil Society	4.00
164	If mining is taking place in areas where armed conflict is taking place, does the government take appropriate actions in practice regarding existing mineral rights in such areas?	Interview Government	...

165	If mining is taking place in areas where armed conflict is taking place, how satisfied is the mining industry with the actions taken by government regarding existing mineral rights in such areas?	Interview Industry	3.00
C2.2 Environmental Impact			
166	In practice, do exploration or mining activities commence without obtaining a permit from the agency or ministry responsible for environmental protection?	Interview Government	3.50
167	Is the institution tasked with monitoring and enforcing environmental laws and regulations carrying out its task in a satisfactory manner regarding the mining sector from exploration to post-mine closure?	Interview Government	2.50
168	How satisfied is civil society with the way the institution tasked with monitoring and enforcing environmental law is carrying out its task?	Interview Civil Society	2.33
169	How satisfied is the mining industry with the way the institution tasked with monitoring and enforcing environmental law and regulations is carrying out its task?	Interview Industry	2.50
170	In practice are EIAs and EMMPs (or other key environmental impact related documents) approved by the mining authority before a mining right is granted and are the documents updated and approved on a regular basis with specified timeframes?	Interview Government	1.00
171	In practice is the implementation of EMMPs and other environmental impact management and mitigation requirements monitored and enforced systematically?	Interview Government	...
172	Are Environmental Impact Assessments (EIAs) and Environmental Management and Mitigation Plans (EMMPs) (or other key environmental impact related documents such as monitoring reports) made public in practice and are they widely available?	Interview Government	...
173	How satisfied is civil society with the public availability and accessibility of EIAs and EMMPs?	Interview Civil Society	2.20
174	In practice is surface and ground water quality being protected and water allocations reviewed and balanced?	Interview Government	...
175	In practice are structures such as tailings dams and impoundments that hold mine wastes designed, operated and maintained according to internationally recognized standards?	Interview Industry	3.50
176	In practice is biodiversity being identified, managed and protected?	Interview Industry	3.10
177	How satisfied is the government with the mining companies' design, operation and maintenance of structure such as tailings dams and impoundments that hold mine wastes?	Interview Government	...
178	In practice is natural habitat being identified, managed and protected?	Interview Industry	3.61
179	In practice do mine design and operations reflect anticipated trends in weather event severity and frequency related to climate change?	Interview Industry	3.57
180	In practice do mining companies have an Emergency Preparedness and Response Plan (EPRP) that is approved by Government, is reviewed, tested, and updated on a regular basis with reporting to the Government and is prepared and updated in close collaboration with the local community?	Interview Industry	2.95
181	Are Emergency Preparedness Plans made public in practice and are they widely available?	Interview Government	...

182	How satisfied is civil society with the public availability and accessibility of Emergency Preparedness Plans?	Interview Civil Society	2.00
183	In practice is the government monitoring and enforcing compliance with environmental requirements for artisanal and small-scale miners?	Interview Government	2.00
C2.3	Social Impact		
184	Are the institutions tasked with monitoring and enforcing social mitigation measures and requirements carrying out their tasks in a satisfactory manner?	Interview Government	...
185	How satisfied is civil society with the way the institutions tasked with monitoring and enforcing social mitigation measures and requirements are carrying out their tasks?	Interview Civil Society	2.20
186	How satisfied is the mining industry with the way the institutions tasked with monitoring and enforcing social mitigation measures and requirements are carrying out their tasks?	Interview Industry	2.63
187	In practice are SIAs and SMMPs (or other key social impact related documents) approved by the mining authority before a mining right is granted and are the documents updated and approved on a regular basis with specified timeframes?	Interview Government	...
188	In practice is the implementation of SMMPs and other social impact management and mitigation requirements and compliance with legal requirements monitored and enforced systematically?	Interview Government	...
189	Are Social Impact Assessments (SIAs) and Social Management and Mitigation Plans (SMMPs) (or other key social impact related documents such as monitoring reports) made public in practice and are they widely available?	Interview Government	...
190	How satisfied is civil society with the public availability and accessibility of SIAs and SMMPs?	Interview Civil Society	2.00
191	Is the grievance and complaints mechanism for environmental and social mitigation issues working well in practice?	Interview Civil Society	4.00
C2.4	Support for Artisanal and Small-Scale Mining		
192	If there is a unit in the mining authority dealing with artisanal and small-scale mining, does it have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	...
193	How satisfied is civil society with the way the unit dealing with artisanal and small-scale mining in the Mining Ministry of similar organization is fulfilling its mandate?	Interview Civil Society	2.33
194	In practice, does the government provide technical training to ASM miners to help improve their mining activities and, if so, is the training effective and inclusive?	Interview Civil Society	1.00
195	In practice, are small scale miners able to coexist with other mining activities?	Interview Civil Society	2.00
196	In practice, are large-scale mining operations able to coexist with ASM activities?	Interview Industry	2.31
197	In practice, are artisanal and small-scale miners operating in the formal market?	Interview Government	...
198	In practice, are the mechanisms for the settlement of disputes between ASM and other mining operations being used?	Interview Civil Society	3.00
199	In practice, do artisanal and small-scale miner associations participate in the monitoring, advocacy and protection of ASM mining and property rights?	Interview Civil Society	1.00
200	In practice, are ASM workers and their families able to access basic health and education services in the area where they work?	Interview Civil Society	4.00

C2.5 Occupational Health and Safety			
201	In practice, is the implementation of Occupational Health and Safety (OHS) standards and procedures including any related education and training requirements enforced?	Interview Industry	3.88
202	Is the grievance and complaints mechanism for operational health and safety working well in practice?	Interview Government	...
203	Is the grievance and complaints mechanism for operational health and safety working well in practice?	Interview Civil Society	3.50
204	In practice, does the government track the number of injuries and fatalities related to mining activities?	Interview Government	...
C2.6 Mine Closure and Financial Sureties for Decommissioning			
205	In practice is an initial Mine Closure and Reclamation Plan (MCRP) prepared and approved prior to the commencement of production?	Interview Government	4.00
206	In practice is a final MCRP prepared and approved prior to the commencement of mine closure activities and is it audited by independent experts?	Interview Government	2.50
207	In practice do mining companies consult communities and local government when developing and updating the Mine Closure and Reclamation Plan (MCRP)?	Interview Industry	3.93
208	How satisfied is civil society with the way mining companies consult with communities when developing and updating the Mine Closure and Reclamation Plan (MCRP)?	Interview Civil Society	2.00
209	How satisfied is local government with the way mining companies consult with communities when developing and updating the MCRP?	Interview Government	...
210	Are Mine Closure and Remediation Plans made public in practice and are they widely available?	Interview Government	2.50
211	How satisfied is civil society with the public availability and accessibility of MCRPs?	Interview Civil Society	2.00
212	How satisfied is the mining industry with the way the institutions tasked with monitoring and enforcing the environmental and social obligations associated with mine closure are carrying out their tasks?	Interview Industry	2.88
213	How satisfied is civil society with the way the institutions tasked with monitoring and enforcing the environmental and social obligations associated with mine closure are carrying out their tasks?	Interview Civil Society	2.33
214	In practice does progressive rehabilitation take place to reduce the scope and cost of work needed for mine closure and reclamation once production ceases?	Interview Industry	4.00
215	In practice are mining companies setting aside funds for mine closure consistent with the estimates in the MCRP and are the funds sufficient to cover the costs of premature closure as well as the cost of closure by third party contractors in the event this becomes necessary?	Interview Industry	3.06
216	Are adequate procedures in place regarding the funds being set aside for mine closure?	Interview Government	4.00
217	How satisfied are mining companies with the procedures in place regarding the funds being set aside for mine closure?	Interview Industry	2.80
218	In practice is government working to inventory abandoned mine sites, and determine the most effective way forward?	Interview Government	...
219	In practice, is the approved plan for moving forward with abandoned mine sites being implemented?	Interview Government	...

3	Mining Taxation		
B3	Tax Policy and Tax Administration Rules		
B3.1	Tax Policy and Instruments		
220	Are there legally binding provisions that prescribe which government agencies have the authority to collect taxes, royalties, and other payments (if applicable) from mining companies?	Primary	3.00
221	Are income and withholding tax payments and royalties from mining companies to government required by law to be placed in the national treasury or other designated accounts?	Primary	4.00
222	Are the rates, formulae and bases for the main fiscal instruments (such as income taxes, withholding taxes, indirect taxes and royalties) that apply to mining prescribed by law?	Primary	4.00
223	Are there legally binding provisions for the granting of tax incentives to mining companies and, if so, do they require that a cost-benefit analysis be conducted before granting the tax incentives?	Primary	4.00
224	Can the government negotiate fiscal provisions with mining companies that differ from those provided in the law and, if so, are these fiscal provisions being made public?	Primary	2.50
225	Are there legally binding provisions that ensure that the government has an adequate minimum revenue stream (relative to sales revenue) in all production periods?	Primary	1.00
226	Does the country employ an adequate mix of progressive and regressive fiscal instruments with respect to revenues from mining?	Primary	3.25
227	Are there legally binding provisions that require an annual disclosure of related party transactions?	Primary	4.00
228	Are there legally binding provisions regarding transfer pricing and, if so, are they consistent with good practice?	Primary	4.00
229	Are there legally binding provisions that limit the risk from thin capitalization and, if so, do they include interest rate caps and debt to equity caps?	Primary	...
230	Are there legally binding provisions that identify profits from the indirect or offshore transfer of exploration and mining assets/rights so that they are taxable in the host country?	Primary	...
231	In cases where the government holds equity shares in resource companies, are the actual benefits from equity holding greater than the costs for acquiring equity?	Interview Government	...
232	How satisfied is the mining industry with the stability over time of the fiscal terms for mining?	Interview Industry	2.13
233	Are there no or low tariffs on imports of capital equipment?	Primary	...
234	Do companies have to pay VAT or sales tax on imports of capital equipment?	Primary	...
235	Are there no or low tariffs (or non-tariff barriers) on raw material exports?	Primary	...
236	Does the fiscal regime allow for the implementation of internationally recognized good practice reporting on mineral resources and reserves?	Primary	1.00
237	Is the fiscal regime as applicable to mining companies stable?	Primary	1.00
B3.2	Mining Tax Administration Rules		
238	Is the current fiscal regime as applicable to mining companies based on an unbiased approach?	Primary	1.00
239	Are there legally binding provisions that specify which agencies collect mining sector payments and is the number of agencies involved relatively small?	Primary	4.00

240	Are there legally binding provisions for mining sector tax payment processes and, if so, do they cover detailed arrangements?	Primary	4.00
241	Are there legally binding provisions for mining sector royalty payment processes and, if so, do they cover detailed arrangements?	Primary	4.00
242	Does the government have a simplified tax collection system for ASM?	Primary	4.00
243	Are there legally binding provisions that require regular tax, cost and physical audits to be conducted of mining operations and, if so, do the provisions apply to all mining taxpayers (excluding ASM) and are the audits risk-based?	Primary	4.00
244	Are there legally binding provisions for penalties and sanctions for companies for non-compliance with tax legislation?	Primary	4.00
245	Are there legal provisions for independent agencies to exercise oversight of the administration of the fiscal regime?	Primary	4.00
246	Are there legally binding provisions that require government officials with a role in the oversight of the mining sector to disclose information about their financial interests in any extractive activity or project (NB: These could be general, e.g. not mining-specific provisions)?	Primary	4.00
247	If they exist, are national mining companies limited to a commercial role and subject to fiscal regulation in the same way as other commercial companies?	Primary	4.00
C3	Mining Tax Administration and Auditing		
C3.1	Mining Tax Administration		
248	In practice, are policies and procedures related to mining taxation publicly available, easily accessed, and understandable by the taxpayer?	Interview Industry	3.33
249	In practice, are changes to mining tax legislation undertaken through a consultative process and, if so, how satisfied is the mining industry with the process?	Interview Industry	2.79
250	In practice, does the taxation authority issue guidance notes for mining sector taxpayers and, if so, how satisfied is the mining industry with these guidance notes?	Interview Industry	1.50
251	In practice, are the bases on which taxes are levied subject to disputes between taxpayers and the tax authorities and if there are such disputes are they resolved through active tax tribunals?	Interview Government	...
252	Does the tax administration have a large taxpayer unit/office or one specialized in natural resources/mining?	Primary	4.00
253	In practice, does the large taxpayer unit/office or the one specialized in natural resources/mining have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	...
254	In practice, how satisfied is the mining industry with the way in which the large taxpayer unit/office or the one specialized in natural resources/mining is fulfilling its mandate?	Interview Industry	2.50
255	In practice, are taxes and payments by mining sector tax payers only collected by the mandated agencies?	Interview Government	...
256	In practice, are income and withholding tax payments and royalties from mining companies to government placed in the national treasury or other designated accounts?	Interview Government	...
257	In practice, are the fiscal terms, including provisions for tax incentives in the law followed?	Interview Government	4.00

258	In practice, does the government negotiate fiscal terms and fiscal incentives with mining companies that differ from those in the mining and fiscal laws and regulations and, if so, does the government have well experienced and qualified representative to negotiate fiscal terms and fiscal incentives with mining companies and are the negotiated terms publicly available?	Interview Government	...
259	In practice, do government officials with a role in the oversight of the mining sector disclose information about their financial interest in any extractive activity or project?	Interview Government	...
C3.2 Mining Tax Auditing			
260	In practice, are tax, cost and physical audits of mining companies conducted systematically?	Interview Government	...
261	In practice, are the legally binding provisions regarding transfer pricing being implemented?	Interview Government	...
262	In practice, are there regular audits for domestic and international related party transfer pricing transactions?	Interview Government	...
263	In practice, are advanced pricing rules used for regularly occurring domestic and international related party transactions?	Interview Government	...
264	In practice, are there regular audits of mining companies for compliance with thin capitalization rules?	Interview Government	...
265	In practice, are the legally binding provisions on penalties and sanctions for non-compliance with tax legislation being implemented?	Interview Government	...
4 Revenue Management and Distribution			
B4 Revenue Sharing and Fiscal Stabilization--Rules			
B4.1 Revenue Sharing Rules			
266	Are there legally binding provisions regarding arrangements for resource revenue sharing between central and sub-national governments that clearly articulate the objectives of resource revenue sharing and do they specify how much should be transferred to sub-national governments?	Primary	1.00
267	Does the Ministry of Finance have written guidelines regarding when and how yearly budget allocations to sub-national governments should be disbursed?	Primary	1.00
B4.2 Fiscal Stabilization Rules			
268	Are there legally binding provisions that require a medium-term fiscal framework?	Primary	1.00
269	Are there legally binding provisions for a mechanism to protect budget expenditures from revenue volatility?	Primary	1.00
C4 Revenue Sharing, Fiscal Stabilization and Resource Revenue Transparency--Practice			
C4.1 Revenue Sharing Arrangements			
270	In practice, are the arrangements for resource revenue sharing between central and sub-national governments being followed?	Interview Government	...
271	In practice, does the Ministry of Finance follow its guidelines regarding when and how it disburses budget allocations to sub-national governments and do sub-national governments receive their entire yearly budget allocations?	Interview Government	...
C4.2 Fiscal Stabilization			
272	In practice, is the mechanism to protect budget expenditures from revenue volatility being applied?	Interview Government	1.00
273	In practice, have changes in commodity prices had a negative impact on budget performance?	Interview Government	2.00

C4.3	Resource Revenue Transparency		
274	Is all government spending from resource revenues appropriated through the national budget and, if not, are off-budget funds that manage resource revenues audited and subject to external oversight?	Primary	2.50
275	In practice, are the assets and liabilities of mining sector SOEs included in the public sector accounts as reported by the Ministry of Finance?	Interview Government	...
276	In practice, are the assets and liabilities of any natural resource funds included in the public sector accounts as reported by the Ministry of Finance?	Interview Government	...
277	In practice, does the country disclose details relevant to mining sector revenues, such as data on production, sales, reported profits and payments by fiscal instruments, through EITI or another disclosure process?	Interview Government	...
5	Local Impact		
B5	Local Content, Employment, Community Engagement, CSR and Social Issues		
B5.1	Local Content Rules		
278	Does the legal framework require/encourage/incentivize mining companies to employ and develop local communities?	Primary	1.00
279	Does the legal framework require/encourage/incentivize mining companies to develop supplier from impacted local communities?	Primary	1.00
280	Is there a policy for the promotion of opportunities for local, regional and national supply of goods and services to the mining industry that is consistent with good practice?	Primary	2.50
281	Are there site-specific agreements with mining companies that promote opportunities for local, regional and national supply of goods and services to the mining industry?	Primary	2.50
282	Is there an agency in the government whose mandate includes tracking demand and supply of goods and services needed by the mining sector and does this agency periodically conduct this assessment?	Primary	4.00
283	Does the legally binding requirement to prepare and submit SIAs and SMMPs support local and national employment, supply of goods and services, and business development?	Primary	...
B5.2	Employment Policies		
284	Is there a legally binding provision for mining companies to give equal employment opportunities to women from local communities?	Primary	1.00
285	Is there a legally binding provision for mining companies to provide on-the-job training?	Primary	4.00
286	Are there legally binding provisions that prohibit child labor including ASM child labor?	Primary	4.00
287	Are there government commitments to provide women with equal employment opportunities and conditions?	Primary	4.00
288	Are there legally binding rules that require employment equity, has an agency been designated to enforce the rules and has the agency put in place monitoring procedures and enforcement mechanisms?	Primary	2.50
B5.3	Rules on Community Engagement		
289	Is there a legally binding requirement for community stakeholder consultation throughout the mine life with affected communities and, if so, is it consistent with good practice?	Primary	2.71

290	Does this legally binding requirement for community stakeholder consultation conform with good practice in terms of record keeping, access, and use of information?	Primary	4.00
291	Is there a legally binding requirement that the results of community stakeholder consultations be used in preparing and updating EIAs, EMMPs, SIAs and SMMPs?	Primary	4.00
292	Is there a legally binding requirement for Community Development Agreements between mining companies, government and affected communities and, if so, is it consistent with good practice?	Primary	2.80
B5.4	CSR and Social Issues--Rules		
293	Is there a national policy on Corporate Social Responsibility (CSR) that applies to mining and is publicly available and is there an agency that is responsible for oversight of the policy and its application in different sectors including mining?	Primary	1.00
294	Is there a legally binding requirement for free, prior and informed consent, has an agency been designated to enforce the requirement and has the agency put in place monitoring procedures and enforcement mechanisms?	Primary	1.00
295	Are there legally binding requirements for local governments and companies to work together to manage the effects of the potentially rapid and disruptive in-migration around mining operations?	Primary	1.00
296	Is there a legally binding requirement for companies to collect data on, report on, and address the impacts of mining on women separately from the impacts on men?	Primary	1.00
C5	Local Supplier Development, Employment, Community Engagement, CSR and Social Issues--Practice		
C5.1	Local Supplier Development		
297	Has the government sought the views of a wide range of stakeholders in preparing the local content policy for goods and services within the mining value chain?	Interview Government	...
298	What percentage of goods and services is your company sourcing from local suppliers?	Interview Industry	3.33
299	How satisfied is the mining industry with the support provided for domestic suppliers in attaining local content goals?	Interview Industry	2.44
300	In practice, is there an agency in the government that is tracking demand and supply of goods and services needed by the mining sector and does this agency periodically track demand and supply?	Interview Government	1.00
301	In practice, does the Investment Promotion Agency (IPA) or similar organization have the capacity to fulfill its mandate in a satisfactory manner?	Interview Government	4.00
C5.2	Employment		
302	In practice, is your company providing on-the-job training for your employees?	Interview Industry	4.00
303	Are the laws prohibiting child labor, including ASM child labor, enforced?	Interview Civil Society	4.00
304	Is significant progress being made in implementing employment equity?	Interview Government	...
305	How satisfied is civil society with the government's actions to provide women with equal employment opportunities and conditions?	Interview Civil Society	1.75
306	How satisfied is civil society with industry's actions to provide women with equal employment opportunities and conditions?	Interview Civil Society	2.00

307	In practice are mining companies providing equal employment opportunities and conditions for women?	Interview Civil Society	3.70
308	In practice do mining companies value and respect their female employees?	Interview Civil Society	4.00
C5.3 Community Engagement			
309	In practice, are the consultations that take place between mining companies and affected communities meaningful?	Interview Civil Society	2.73
310	In practice are the consultations that take place between mining companies and affected communities comprehensive?	Interview Civil Society	2.44
311	Are the results of the mining company-community stakeholder consultations used in the preparation of relevant documents?	Interview Civil Society	...
312	In practice are community development agreements negotiated between mining companies and affected communities and local governments?	Interview Civil Society	1.75
313	In practice do women consider that mining companies and government are doing a satisfactory job addressing women's concerns and issues?	Interview Civil Society	2.23
C5.4 CSR and Social Issues			
314	In practice, how satisfied are mining community representatives with how industry, government and civil society collaborate in the planning and implementation of Community Social Responsibility (CSR) activities and with the participation of women in these activities?	Interview Civil Society	3.00
315	In practice, how satisfied is the mining industry with the planning and implementation of CSR activities?	Interview Civil Society	2.78
316	In practice are the health services in mining communities similar to or better than nearby non-mining communities?	Interview Civil Society	2.00
317	In practice are the education services in mining communities similar to or better than in nearby non-mining communities?	Interview Civil Society	1.00
318	In practice, do mining communities depend on regular support from mining companies for the provision of basic services?	Interview Civil Society	2.20
319	In practice are the effects of the potentially rapid and disruptive in-migration around mining operations adequately managed?	Interview Civil Society	4.00
320	Does the government recognize indigenous people on its territory and, if so, does it safeguard their rights in relation to mining?	Interview Civil Society	1.00
321	In practice do indigenous groups consider that mining companies and government are doing a satisfactory job addressing their concerns and issues of indigenous groups?	Interview Civil Society	2.50
322	If the Government has a policy of free, prior and informed consent, is it implemented in practice?	Interview Civil Society	...
323	If the government has a policy of free, prior and informed consent (FPIC), how satisfied is civil society with the implementation of this policy?	Interview Civil Society	2.00
324	In practice do women who are land users but not land owners receive adequate compensation for loss of land taken for mining?	Interview Civil Society	...
325	In practice does the government provide support to improve the productivity and incomes of female subsistence farmers who have had to relocate their agricultural activities due to mining development taking place?	Interview Civil Society	...

Annex III: Voting Template

Instructions: Below is a list of 25 topics that are important for the functioning of a country's mining sector. They are organized into six broad areas: mining sector management, plus the five stages of the IE value chain. Think of the topics your country's mining sector most needs to change and improve. You have 100 votes. Assign the votes among the 25 topics so that the number of votes indicates how important you consider the topic. You can divide your votes among whichever topics you choose, whether many or few. Specifically, if you think that only one topic is important, assign all 100 of your votes to that topic. On the other hand, if you think four topics are equally important, assign 25 votes to each of the four. Then again, if you think one topic is very important but two others are still relatively important, you could divide your votes 60-20-20.

	Indicators	Votes
Mining Sector Management	Sector Policy	
	Sector Dialogue	
	Roles and Responsibilities	
	Intra-Governmental Coordination	
Contracts, Licenses and Exploration	Collection and Maintenance of Geological Information	
	License Allocation	
	License Management and Transfer	
Mining Operations	Mining Legislation and Processes	
	Land, Compensation and Resettlement	
	Environmental Impact Management	
	Social Impact Management	
	Transportation of Minerals	
	Artisanal and Small-Scale Mining	
	Occupational Health and Safety	
	Mine Closure and Financial Sureties for	
Tax Policy and Administration	Tax Policy and Instruments	
	Tax Administration	
	Tax Auditing	
Revenue Management & Distribution	Revenue Sharing	
	Fiscal Stabilization	
	Resource Revenue Transparency	
Local Impact	Local Content/Local Supplier Development	
	Employment	
	Community Engagement	
	CSR and Social Issues	