Mining Laws & Regulations 2025

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Canada is a constitutional monarchy, a parliamentary democracy and a federation comprised of 10 provinces and three territories. Canada's judiciary is independent of the legislative and executive branches of government. Responsibilities and functions under this democratic structure are distributed through a federal system of parliamentary government whereby the federal government shares governing responsibilities and functions with the provincial and territorial governments pursuant to the division of powers under the *Constitution Act, 1867* (see question 13.1). The Prime Minister, elected by the public, is the head of government in Canada.

Certain areas within the federal government's jurisdiction may affect a mining project, for example: Aboriginal rights; trade and commerce; railways; nuclear energy; and environmental matters that involve matters of federal jurisdiction, such as fisheries. However, most of the areas which will affect a mining project are within the provincial governments' jurisdiction.

1.2 Which Government body/ies administer the mining industry?

Pursuant to the division of powers under the *Constitution Act, 1867*, both the federal government and the provincial or territorial governments regulate mining activity in Canada (see question 13.1). Exploration, development and extraction of mineral resources, and the construction, management, reclamation and closure of mine sites are all primarily within the jurisdiction of the provinces and territories of Canada (with some exceptions). In Nunavut, the responsibility for administering public lands and natural resources is undergoing a formal transfer from the federal government to the territorial government as part of the Nunavut Lands and Resources Devolution Agreement, signed in 2024. It is estimated that the formal transfer of these responsibilities will be completed in 2027, following which, Nunavut will have its own mining legislation in place. Other than Nunavut (for the time being), each province and territory has its own mining legislation and mineral tenure system, though certain mineral rights in the Northwest Territories are administered by the federal government. The provinces and territories own the majority of the mineral rights in Canada, though mineral rights may also be held by private entities, by Indigenous groups and by the federal government.

Federal government involvement in the regulation of mining operations is limited to those undertakings that fall within federal jurisdiction. These specific undertakings include uranium in the context of the nuclear fuel cycle (i.e., from exploration through to the final disposal of reactor and mine waste), mineral activities related to federal Crown corporations, and mineral activities on federal lands and in offshore areas. The manufacture, sale, use, storage and transportation of explosives used in exploration and mining also all fall within federal jurisdiction. These are regulated under the federal *Explosives Act*. Federal jurisdiction also covers the export, import and transit across Canada of rough diamonds, which is regulated under the federal *Export and Import of Rough Diamonds Act*. The federal Extractive Sector

Transparency Measures Act creates stringent reporting standards for Canadian oil, gas and mining companies, in order to implement Canada's international commitments in combatting domestic and foreign corruption. All: (i) entities that are listed on a stock exchange in Canada; and (ii) entities that have a place of business in Canada, do business in Canada or have assets in Canada and that meet certain thresholds must report payments including taxes, royalties, fees, production entitlements, bonuses, dividends and infrastructure improvement payments of 100,000 Canadian dollars or more, in the aggregate, to local and foreign governments, including Indigenous governments.

Any mining disclosure (whether oral or written, and including presentations to investors and disclosure on a mining company's website) made available to the public in Canada is governed by National Instrument 43-101, Standards for Disclosure in Mineral Projects. This instrument was developed by the Canadian Securities Administrators and is administered by the relevant provincial and territorial securities commissions.

1.3 Describe any other sources of law affecting the mining industry.

The areas of contract law and tort law are generally regulated by the provinces pursuant to their "property and civil rights" powers delineated under the *Constitution Act, 1867*. These bodies of law are mostly "common law" (i.e., "judge-made" law, rather than law created under legislation by Parliament or legislatures). Common law can be superseded or modified by subsequent legislation. Recently, in the context of liability for human rights violations on international projects, Canadian courts have recognised that absent any conflicting domestic legislation, customary international law may form part of Canadian common law.

Québec, unlike the other provinces, is governed by civil law.

Civil law is a codified law that is written into statutes (e.g., the Civil Code of Québec) which are then strictly interpreted by the courts.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

In 2021, legislation introduced by the Government of Canada to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) received Royal Assent. The legislation obligates the federal government to take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP. The legislation, on its own, will not change federal laws or decision-making processes, but will establish a framework for the further implementation of UNDRIP into federal law – the legislation would not apply to matters within provincial or territorial jurisdiction.

In 2019, British Columbia (BC) became the sole province to pass legislation incorporating UNDRIP into provincial law under the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). In 2021, BC amended the Interpretation Act to require that provincial laws be construed in a manner consistent with UNDRIP. In 2022, BC released an action plan outlining the actions that it intends to undertake to implement DRIPA through 2027, which includes various UNDRIP compliance matters including new frameworks for resource revenue sharing and for policies and programmes relating to the stewardship of the environment, land and resources. In 2024, BC proposed amendments to the Land Act that would incorporate a model for joint decision making among Indigenous governing bodies and the Province with respect to grants of leases, licences, permits, rights-of-way and land dispositions on provincial lands. The proposal received considerable public attention and criticism and was ultimately set aside by the BC government to allow for further engagement with the public to

address concerns.

In 2023, the Government of Yukon released a discussion paper seeking input from the public and industry on proposed reforms to its mineral legislation. The proposed reforms include changes to royalty rates, shared decision making with Indigenous governing bodies, modernising Yukon's existing mineral management scheme (including the process of granting and acquiring mineral tenures) and improvements to mine closure planning and long-term monitoring processes.

A recent trend in many Canadian jurisdictions (including BC, Ontario, Saskatchewan, New Brunswick and Nunavut) has been the replacement of traditional ground-staking regimes with electronic mineral tenure registries. In the Northwest Territories, mining legislation amendments have been proposed to allow for the introduction of online mining rights administration systems. This development has had the effect of reducing the cost of staking mineral claims, which may indicate a willingness to allow for more speculative staking of claims. While electronic mineral tenure registries have made staking claims much easier, they are continuously being updated to address legal and technical challenges. For instance, in 2024, BC's Supreme Court ruled that BC's electronic system for issuing mineral tenures failed to implement an adequate consultation process with First Nations groups. The province was given 18 months to implement a consultation scheme that meets the constitutional duty to consult First Nations when recording mineral claims electronically. It is expected that other jurisdictions may provide for similar changes in the design of their electronic mineral tenure registries to avoid similar challenges.

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In 2024, the Nunavut Lands and Resources Devolution Agreement

was signed by the Government of Canada, officially transferring the responsibilities for Nunavut's public lands, natural resources, and rights with respect to water, from the federal government to the Government of Nunavut. There is speculation that this will increase local support for investment in the territory, as Nunavut is now entitled to receive royalties for resource development on public lands and has the ability to make decisions about the administration, development and management of resources on public lands in its territory. The two governments are currently in the process of transferring the existing responsibilities of the Government of Canada to the Government of Nunavut, which is expected to be completed by 2027.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

The mining industry is aware of and is tracking the adoption of UNDRIP at both the federal and provincial level. In many ways, UNDRIP represents the next step in a trend of increasing participation of Indigenous peoples in project development and approval. While requirements continue to evolve, Indigenous consultation and accommodation are now familiar components of project development and the approval process and it is expected that the mining industry will continue to adapt to any new changes to the regulatory framework that may result from the implementation of UNDRIP in Canada.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

Reconnaissance right requirements in Canada vary by jurisdiction. In the Northwest Territories, Nunavut, British Columbia, Manitoba, New Brunswick and Prince Edward Island, both individuals and companies are required to obtain a prospector's licence from the applicable provincial or territorial government in order to engage in prospecting for

minerals, subject to certain exceptions. There are similar requirements in Ontario and Québec, though those provinces do not directly issue prospector's licences to corporations. In Nova Scotia, individuals and companies are required to register as a prospector and pay the prescribed fees, but no "licence" is required for preliminary exploration with no ground disturbance.

Prospector's licences (or their equivalent) can be obtained in the majority of jurisdictions by contacting the applicable provincial or territorial governmental authority, completing the requisite form and paying a small fee. In most cases, prospector's licences expire after a period of time (for example, one year in British Columbia), but can be renewed.

Prospector's licence requirements differ from jurisdiction to jurisdiction. In general, the government does not have the discretion to refuse to issue a licence; prospector's licences are granted automatically if the applicant meets the statutory criteria. However, it should be noted that a prospector's licence can be cancelled or suspended for a contravention of applicable mining legislation.

In the Northwest Territories, a prospector may also obtain a "prospecting permit", which grants the holder exclusive rights to explore and have mineral claims recorded within the assigned boundaries of a given permit area for a specified period of time. Similarly, in Saskatchewan, holders of permits issued by the Minister of Energy and Resources are granted the exclusive right to explore the lands in question and subsequently can convert the permit into a mineral claim.

Reconnaissance right requirements are less stringent in the Yukon, Alberta, Saskatchewan and Newfoundland and Labrador, as one can conduct certain prospecting activities without a licence or other formal registration.

3.2 What rights are required to conduct exploration?

In Canada, any significant exploration by a prospector will require that prospector to hold the mineral rights to the area of interest. Mineral rights are obtained by "staking" a mineral claim, or a "licence" or a "permit" in some jurisdictions. The permitted methods for staking a claim vary from jurisdiction to jurisdiction, and include physically staking a claim on the ground, on a map or through an online computer registration system. Applicable fees and documents are often required to complete the staking and recordation process and in some jurisdictions (for example, the Yukon), there may be a requirement to notify or engage with Indigenous groups prior to recordation or prior to conducting exploration programmes on recorded claims.

The provinces and territories (other than Nunavut) each have their own mineral tenure system; however, certain mineral rights in the Northwest Territories are administered by the federal government. Nunavut (except with respect to Inuit-owned lands) utilises a mineral titles system administered by the federal government.

For federally owned lands within the provinces, the federal *Public Lands Mineral Regulations* regulates the issuance of exploration and mining rights (in the form of a lease). The federal regulations differ from the provincial systems in that they provide for a competitive bidding process for mineral claims.

In order to retain a mineral claim, prescribed amounts of work must be conducted thereon. In addition to exploration, an "assessment report" describing the exploration and its costs must be filed each year with the relevant mining recorder. If the prescribed exploration costs are not incurred, most jurisdictions permit a claim holder to pay an amount of money *in lieu* of incurring exploration costs. If the assessment report is not filed, or if money is not paid *in lieu*, the claim will be forfeited by the holder.

The duration of a claim will differ from jurisdiction to jurisdiction. In some jurisdictions (such as British Columbia), a mineral claim may be renewed indefinitely. In other jurisdictions, a mineral claim may only be held for a limited period of time. For example, in the Northwest Territories, a mineral claim may be held for a maximum of 10 years and after such time, it will expire, unless it has been converted into a lease or an extension has been granted by the relevant mining recorder.

In general, a mineral claim or licence only entitles the holder to the right to conduct exploration and not any additional mining operations, subject to certain exceptions. The Yukon is an exception to this general proposition.

A mineral claim holder will generally have rights of access to explore the claim; however, if the surface is privately owned, a notice to, or an agreement with, the surface owner will usually be required. The legislation in most provinces and territories provides for some form of tribunal or other dispute resolution mechanism to resolve disputes between the holders of mineral claims and surface rights owners (see question 8.2). If there are parties who hold other rights to the land, notice to such parties may also be required.

The above describes the situation where minerals are held by the applicable government. However, minerals may also be held by private entities and originate from either Crown grants or patents or freehold tenures that were issued as part and parcel of another type of grant, such as historic railway grants. The owner of such privately held minerals is entitled to conduct reconnaissance and exploration activities and develop those minerals, provided that he or she obtains the necessary surface access (in cases where the surface is separately held).

In some cases, Indigenous groups may hold the surface rights and/or mineral rights, in which case it is necessary to

negotiate with the applicable Indigenous group the terms on which one can access the lands and conduct exploration activities thereon. Surface access may take the form of a licence or exploration lease and exploration activities may be governed by an exploration agreement.

3.3 What rights are required to conduct mining?

Generally, mineral claims must be replaced by mining leases prior to commencing mining activities, the Yukon being an exception. A mining lease is a longer-term and more secure form of tenure than a mineral claim.

Mining leases permit full exploitation of the resource (subject to obtaining other required permits and authorisations for mining activities) and, depending on the jurisdiction, generally have a term of 10 to 30 years and provide that rent is payable annually to the government that issued the lease. Mining leases are renewable for further periods, provided annual rent is paid and the terms and conditions of the lease are complied with.

The same comment as set forth above regarding the exploration of privately held minerals is applicable to mining activities.

A mineral operator must acquire a government permit approving the proposed mining project. For a major mining operation, the mineral operator will be required to submit a detailed mining plan and reclamation plan, and may also be required to submit an environmental assessment (see question 9.1).

Where Indigenous groups hold the surface rights and/or mineral rights, land tenure may take the form of a surface lease and the right to develop the minerals may take the form of a mineral production lease. The Indigenous group and mining company will frequently also negotiate an impact and benefit agreement. This agreement offers a negotiated means to mitigate detrimental impacts of the project and to provide economic benefits for the Indigenous group and its members. It

documents one of the bases on which the mining company has acquired its “social licence to operate”.

3.4 Are different procedures applicable to different minerals and on different types of land?

Generally speaking, there are different sets of rules depending on the type of substances being mined, and there are varying requirements depending on the type of land in which the minerals are located.

The rules governing hard rock minerals (including precious metals), placer minerals, coal and industrial minerals are often set out in different legislation. The federal *Export and Import of RoughDiamonds Act* provides for controls on the export, import or transit of rough diamonds across Canada, and for a certification scheme for the export of rough diamonds to comply with Canada’s obligations under the UN’s Kimberley Process. regulation of uranium and thorium includes additional rules with respect to their production, refinement and treatment. These rules are within federal jurisdiction for the purpose of national security and to fulfil Canada’s international obligations in respect of such minerals.

There are also varying regimes depending on the owner of the land under which the minerals are located. The surface land may be owned by a private entity, by Indigenous groups or by the Crown, and may be subject to Aboriginal rights.

To access any privately-owned land, the recorded holder of the mineral claim will generally be required either to: (i) issue a notice of access to the surface owner; (ii) come to an agreement for access with the landowner; or (iii) obtain an order from the provincial or territorial authority. Generally, the recorded holder of the mineral claim will also be required to compensate the surface rights owner for damage caused to the surface, and sometimes for the access granted. Depending on the jurisdiction, where the parties cannot agree,

compensation may be determined either by a dispute resolution mechanism provided for in the legislation, by reference to the competent tribunal, or by application to court. Exceptionally, in Québec, where an agreement cannot be reached, the holder of mining rights will then have to resort directly to expropriation procedures.

Indigenous groups may also own the land in which the minerals are found. Where this is the case, permission for access must be acquired from the Indigenous group. For example, Inuit-owned lands in Nunavut require that surface access be obtained from the Regional Inuit Association and may require a licence or lease.

With respect to Crown land, a recorded holder of the mineral claim or lease will generally be permitted to access the surface of the land for the purposes of mining activities, though land-use permits or leases may be required in some instances. However, where land is subject to Aboriginal rights, Crown consultation and accommodation of the affected Indigenous groups will dictate access rights and requirements of mining proponents. The extent of consultation and accommodation will vary depending on the affected groups and their recognised rights. While consultation and accommodation is a Crown obligation, it is often the practice of mining companies to negotiate impact and benefit agreements with Indigenous groups in order to obtain community support for the project.

In some cases, modern treaties with Indigenous groups set out a framework or rules for consultation and/or co-management or joint decision-making reg

3.5 Are different procedures applicable to natural oil and gas?

In Canada, oil and gas licences or leases, which provide the holder with the right to produce oil and gas, are issued by

the provinces and territories (and the federal government, with respect to Nunavut) through a competitive bidding process. This differs from the first-come, first-served basis on which mineral rights are obtained.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

In jurisdictions where a prospector's licence is required, individuals who have reached the age of majority, and corporations, may generally apply for and hold such a licence. Ontario and Québec are exceptions in that they do not directly issue prospector's licences to corporations. Some jurisdictions, such as British Columbia and Prince Edward Island, specify that partnerships may also hold a licence. In other jurisdictions, however, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Generally, there are few restrictions on mining rights being directly or indirectly owned by a foreign entity. Most jurisdictions require corporations to be registered or otherwise authorised to carry on business in the jurisdiction in order to acquire a prospector's licence (or the equivalent).

If an acquisition of an operating Canadian mining business exceeds certain financial thresholds, it will be subject to government review under the Investment Canada Act (ICA). The review thresholds are generally updated each year. For 2024,

the review threshold is approximately 1.989 billion Canadian dollars in enterprise value for investments to directly acquire control of a Canadian business by trade agreement investors that are non-state-owned enterprises. The review threshold is approximately 1.326 billion Canadian dollars for WTO investors that are non-state-owned enterprises. The review threshold is approximately 528 million Canadian dollars in asset value for direct investments by WTO investors that are state-owned enterprises. The threshold for review is much lower for investors or vendors residing in non-WTO member countries (5 million Canadian dollars in asset value for direct investments and 50 million Canadian dollars in asset value for indirect transactions). In general, a proposed transaction that meets the review threshold cannot be completed until the federal Minister of Innovation, Science and Industry has made a determination that the proposed transaction is likely to be of "net benefit" to Canada. This ministerial review requirement does not apply to acquisitions of exploration properties or non-producing mines. In addition, the Canadian government has reserved the right to review any transaction if it considers that the investment could be injurious to national security and has identified additional issues relevant to foreign investment national security concerns, including the potential impact of an investment on critical minerals and critical mineral supply chains. To date, the Ministry of Energy and Natural Resources of Canada has identified a list of 34 critical minerals and metals for the purposes of the ICA.

In 2024, the federal Minister of Innovation, Science and Industry issued a new directive that signals to the mining industry that any transaction to acquire a Canadian headquartered mining firm engaged in significant critical minerals operations will only be found as a "net benefit" in the most exceptional of circumstances. At this time, there is no guidance from the federal government on what constitutes "exceptional circumstances" in this context, nor is there any

guidance as to what the minister means by "significant critical minerals operations". While the precise result of this new directive is uncertain, it indicates that the current federal government will be increasing their scrutiny on mining transactions subject to the "net benefit" assessment regime under the ICA.

There are also special rules applicable to uranium mining. Federal government policy (the Non-Resident Ownership Policy in the Uranium Mining Sector) requires a minimum of 51% Canadian ownership in uranium mining properties which are at the first stage of production, with exemptions from the policy if the project is *de facto* Canadian-controlled or if Canadian partners cannot be found.

Canada is a party to the Canada and European Union Comprehensive Economic and Trade Agreement (CETA) and the new Comprehensive and Progressive Agreement for TransPacific Partnership (CPTPP). Notwithstanding the terms of these treaties, the Non-Resident Ownership Policy in the Uranium Mining Sector will continue to apply. Canada has lodged reservations under both treaties such that exemptions from the Non-Resident Ownership Policy in the Uranium Mining Sector are only available where Canadian participants in the ownership of the property are unavailable.

4.3 Are there any change of control restrictions applicable?

The "net benefit review" and "national security review" rules discussed in question 4.2 apply in all instances where a non-Canadian acquires control, directly or indirectly, of a Canadian business.

In addition, proposed foreign investment may be subject to review by the Canadian Competition Bureau under the federal *Competition Act*. Where each of certain thresholds are met, a proposed investment requires pre-merger notification and either approval or expiry of a statutory waiting period

before the transaction may go forward. The Canadian Competition Bureau also has jurisdiction to review and challenge all mergers within one year of completion on the grounds that the transaction will result in a substantial lessening or prevention of competition.

In light of the new directive from the federal Minister of Innovation, Science and Industry (as described in question 4.2), non-Canadian investors contemplating a direct acquisition of a Canadian company engaged in significant critical minerals operations should anticipate additional scrutiny from the federal government, if their investment is subject to review under the ICA.

4.4 Are there requirements for ownership by indigenous persons or entities?

Please see question 10.1 regarding the Aboriginal and treaty rights of the Indigenous peoples of Canada.

4.5 Does the State have free carry rights or options to acquire shareholdings?

No, it does not.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

Mineral processing, refining and further beneficiation will generally be subject to the same legislative regimes that apply to mineral exploration and mineral extraction, as the provincial, territorial and federal statutes regulate all stages of the mining process. If mineral processing will be undertaken at the mine site, it will have been approved through the mine permit application and the environmental

assessment process, where applicable.

The majority of jurisdictions do not require mineral processing to occur within the province or territory of extraction. Nova Scotia is an exception to that general proposition; under Nova Scotia law no person can remove ore to a place for processing outside of Canada unless an exemption is obtained from the appropriate Minister. Similarly, the Ontario *Mining Act* provides that, unless an exemption has been obtained, ores and minerals extracted in that province must be treated and refined in Canada. In New Brunswick and Newfoundland and Labrador, the government may make an order requiring minerals to be processed within the province. In Saskatchewan, lease holders may not export quarriable minerals in their natural or unprocessed state without the written permission of the Minister of Energy and Resources, and diamonds must be presented for valuation at facilities located in Saskatchewan before they are removed from the processing facility or sold. Some jurisdictions, such as Manitoba, encourage the beneficiation of minerals inside the province by providing tax deductions that are permitted only for the processing of minerals within the province.

Other than as noted above, there is no general prohibition on the export of un-beneficiated minerals. However, there are mineral-specific exceptions. Pursuant to the federal *Nuclear Non-Proliferation Import and Export Control Regulations*, uranium may not be exported unless the Canadian Nuclear Safety Commission grants a licence. Similarly, diamonds may not be exported unless they have been issued a Kimberley Process Certificate and the transaction has been reported to the federal Minister of Energy and Natural Resources.

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Canada is a party to a number of international agreements relating to wastes and recyclable materials, under which it

has various obligations applicable to trans-boundary movements of hazardous wastes and hazardous recyclable materials.

In addition to Canada's international obligations, the federal *Export and Import Permits* Act provides permitting requirements and associated fees for the export of goods listed on the Export Control List (a list of controlled goods). The Export and Import Permits Act provides authority to the Governor in Council to establish and amend the Export Control List for certain prescribed purposes. Notably, one such purpose is to ensure that actions taken to promote Canadian processing of natural resources produced in Canada are not rendered ineffective by unrestricted exportation. Currently, uranium is a controlled substance on the Export Control List where certain characteristics are present. It is important to refer to the Guide to Canada's Export Controls and to the Export Control List for any amendments that may affect the products being exported.

The *Export and Import of Rough Diamonds Act* restricts the export, import and transit across Canada of rough diamonds, while the *Nuclear Non-Proliferation Import and Export Control Regulations* requires a licence issued by the Canadian Nuclear Safety Commission for the export of uranium.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

In general, prospector's licences are not transferable.

Mineral claims are transferable, though the transfer is often subject to provincial, territorial, and federal legislative requirements. A general precondition to the transfer of a mineral claim is that it be in writing and executed by the holder of the claim or completed electronically if the applicable jurisdiction maintains an online mineral title

system. Several jurisdictions are more stringent and require the use of a prescribed form to validate a transfer, and in Nova Scotia, the transfer of an exploration licence (akin to a mineral claim) is also contingent upon the consent of the mining registrar. Transfers of mineral claims in certain jurisdictions, such as British Columbia and Ontario, are completed by the transferor and transferee through the online mineral title system.

Mining leases are generally transferable. The transferability of the lease will be governed by the terms of the lease in question and applicable legislation. A common requirement is that the transfer agreement be in writing and signed by the holder of the interest. In addition, in some jurisdictions, including, for example, Ontario and Nova Scotia, government consent is required in order to transfer a mining lease.

Another general requirement related to the transfer of a mineral claim or mining lease is that the transfer must be recorded in a prescribed office. In some jurisdictions, recordation of the mining lease is not required but is permitted.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Generally speaking, in Canada, indebtedness may be secured by all types of real and personal property under the real and personal property security regimes of each of the provinces and territories and by virtue of the common law. The nature of the charge granted to secure such indebtedness, for example, whether a mortgage, charge, pledge or other, will need to be considered in each circumstance.

There is some uncertainty as to whether a prospector’s licence can be charged as security for indebtedness.

It is possible to create a charge against a mineral claim or

mining lease. In some jurisdictions, consent of the applicable governmental authority will be required, such as in Ontario, where a mining lease cannot be mortgaged, charged, or made subject to a debenture, unless the applicable Minister consents in writing to the transaction.

Security documents granting such a charge are typically registered in the applicable mining registries against the mineral claims or mining leases, whose registration will serve as notice to third parties of the grant of the charge. In many jurisdictions, registration of documents purporting to charge mineral claims or mining leases is permissive; while in other jurisdictions, registration is mandatory in order to be given effect. Generally, the applicable legislation does not set a scheme of priorities for registered and unregistered charges or between them. Whether the security document validly and effectively creates a mortgage or charge is a matter determined by the common law.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

A prospector’s licence cannot be subdivided

In some jurisdictions, a mineral claim may be subdivided. For example, in British Columbia, which uses electronic mapping for mineral claims, claims made up of two or more mineral “cells” can be subdivided into claims that are no less than one cell in size.

With respect to the subdivision of mining leases, the state of the law is not uniform across Canada. Subdivision of mining

leases is not possible in British Columbia; however, an application can be made to reduce the land area subject to the lease, which will reduce the lease rental payments. Where subdivision of mining leases is permitted, the rules governing the subdivision vary by province and territory.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Mining activity in Canada can be structured in a variety of ways. A common structure is through a joint venture. Joint ventures can be formed through a variety of legal vehicles, including partnerships, corporations and unincorporated joint ventures.

Partnerships are governed by provincial and territorial legislation. General partnerships are generally defined as the relationship between two or more persons carrying on a business in common with a view to profit. Limited partnerships are a type of partnership created amongst partners of different classes: limited partners, who typically are not engaged in the management or control of the business and who, subject to certain exceptions, have limited liability in respect of the debts and liabilities of the partnership; and general partners, who operate and manage the business of the partnership and have unlimited liability. In some jurisdictions, such as the Northwest Territories and Nunavut, partnerships and limited partnerships are not permitted to acquire mineral claims or mining leases in their name.

Parties may incorporate a corporation to conduct a joint venture project. Usually, the joint venture property and assets are transferred to, and held by, the corporation and a shareholders' agreement will govern the conduct and management of the joint venture corporation. Joint venture corporations are governed by the provincial, territorial or federal legislation under which the corporation was incorporated. Incorporation in some jurisdictions may require the joint

venture corporation's board of directors to meet certain residency requirements, which is the case for federal corporations.

Unincorporated joint ventures are formed and governed by a contract. A benefit of the unincorporated joint venture is that parties to the contract have considerable flexibility in setting out the terms of an agreement. Typically, the joint venture property is held by one of the joint venture parties on behalf of the joint venture and operations are managed by one of the joint venture parties or, in some cases, a third party. In some cases, depending on the applicable legislation, the property and/or assets may be held as tenants in common. Income and losses of the mining activity conducted by unincorporated joint ventures are computed and taxed in the hands of the individual joint venture parties.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore for or mine secondary minerals?

The applicable legislation under which the mineral tenure in question has been obtained will often circumscribe the minerals that the tenure covers (e.g., hard rock minerals, placer minerals, coal or industrial minerals). For example, in British Columbia, the *Mineral Tenure Act* regulates the exploration and, in part, the development and mining of hard rock minerals and placer minerals, and the definition of what constitutes "minerals" is very broad. Similarly, a holder of a placer claim is entitled to explore for placer minerals. Other examples include the British Columbia Coal Act, which regulates the exploration and production of coal, and the British Columbia Land Act, which regulates earth, soil, sand, gravel, rock and other natural substances used for a construction purpose.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled also to exercise rights over residue deposits on the land concerned?

The entitlement to tailings and waste dumps depends on a determination of whether such materials belong to the mineral owner or the surface owner. Some provinces address the rights to tailings and waste dumps through legislation. For example, in British Columbia, tailings and waste dumps become part of the rights to a mineral or placer claim.

In provinces and territories where residue deposits such as tailings and waste dumps are not explicitly dealt with in legislation, the instrument that separates mineral rights from surface rights must be interpreted in order to determine the rights over such materials.

7.5 Are there any special rules relating to offshore exploration and mining?

Pursuant to international law, Canada has exclusive sovereignty over the territorial sea (12 nautical miles seaward from the low water line along the coast) and generally has the exclusive right to explore and exploit the mineral resources of the continental shelf (the area extending beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the low water line, whichever distance is greater).

The federal Oceans Act provides that provincial laws do not apply to the territorial sea or the continental shelf with respect to minerals or other non-living natural resources, unless regulations are enacted to make provincial laws apply.

Unlike in the oil and gas sector, there is no federal legislation currently in place that provides for the issuance of offshore mining rights.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Most often, pursuant to the applicable mining legislation, the holder of a prospecting permit will automatically be permitted to access the surface where the Crown holds the underlying mineral rights. Where the surface rights are privately held, the miner will either be required to issue a notice of access, come to an agreement with the surface owner or seek a court order. A right to compensation for entry and damage caused to the property is generally provided for in the applicable mining or surface rights legislation. The applicable legislation usually contains dispute resolution provisions to resolve disputes between a mineral rights holder and the surface owner.

In Prince Edward Island, Nova Scotia, Saskatchewan, the Northwest Territories and Nunavut (other than Inuit-owned lands), surface rights are not automatically granted as part of a mineral claim or lease. A land-use permit may be required for any work under a mineral claim. Work conducted on a lease will also require a land-use permit or a surface lease. On Inuitowned lands, a licence or lease may be required to gain access to the surface.

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

As most mining activity in Canada occurs outside of population settlements, mineral operators usually deal primarily with the Crown, rather than with private owners. In situations where a mineral operator wants to enter privately held land, the operator's obligations are set out in applicable legislation and the common law (and civil law in Québec). Generally, a mineral operator must either obtain the permission of the owner to enter their land, often in the form of a lease, or obtain an order from the prescribed authority allowing the operator to proceed without the owner's permission. However, in British Columbia, permission from the owner is not a necessary requirement. Under the *Mineral Tenure Act*, an

operator cannot begin mining activity unless the operator first serves notice to the owner of the surface.

The general common law rule requires the mineral owner to use the mineral owner's property so as not to injure the mineral owner's neighbour, the surface owner. Legislation also addresses the rights as between mineral owners and surface owners. For example, in British Columbia, an operator is liable to compensate the owner of a surface area for loss or damage caused by a mining operation.

8.3 What rights of expropriation exist?

In every Canadian jurisdiction, pursuant to the applicable legislation, the Crown is authorised to expropriate lands or interests in land. Depending on the legislation of the relevant jurisdiction, this authority of the Crown may enable a mineral owner to acquire surface rights. For example, under the British Columbia Mining *Right of Way Act*, a miner has a right to expropriate private land for access to a mine site where the owner of the land, or a person with an interest in the land, does not grant a right of way.

In exceptional circumstances, mineral rights have been effectively expropriated by the Crown, though, in such cases, compensation has generally been paid.

9 Environmental and Social

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

In most Canadian jurisdictions, there are statutorily prescribed environmental assessment requirements that apply to certain classes of projects that are over a certain threshold size. Most major mining projects trigger the impact assessment requirements. For example, the British Columbia *Environmental Assessment Act* requires an environmental assessment of any proposed new mine that will have a production capacity equal

to or greater than 75,000 tonnes per year of mineral ore.

While the process is not uniform across Canada, in some jurisdictions there may be a requirement for a public hearing. Other environmental authorisations or permits issued by provincial or territorial governments may be required.

In 2023, Canada's Supreme Court ruled that the federal environmental assessment scheme under the *Impact Assessment Act* (IAA) was unconstitutional. The IAA had previously allowed the Minister of Environment and Climate Change to conduct an environmental assessment if a proposed project was of a prescribed type or size. The Court ruled that this amounted to allowing the Minister to make decisions about whether a project was generally within the public interest, which was outside the federal government's power. In 2024, the federal government announced amendments to the IAA as a response to the Supreme Court ruling. The proposed amendments will limit the scope of activities subject to the IAA regulatory scheme in order to keep the IAA intact.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Mining projects must comply with both provincial and federal environmental legislation. Generally, provincial legislation will set requirements for the storage of tailings and other waste products.

For example, following the failure of a tailings storage facility in 2014, British Columbia updated its *Health, Safety and Reclamation Code for Mines in British Columbia* to require mines to develop and maintain a tailings management system that includes regular audits. Managers are required to retain an engineer of record to ensure that the mine's tailings storage facility has been designed and constructed in accordance with the applicable guidelines, standards and regulations. The manager and engineer of record must report

any unresolved safety issues to the Chief Inspector of Mines.

At the federal level, the Government of Canada may be responsible for regulatory decisions specific to tailings management if they involve uranium tailings, navigable waters, fish-bearing waters and fisheries, environmental matters of international and inter-provincial concern or federal lands. The Minister of Environment and Climate Change is required by the *Canadian Environmental Protection Act* to establish and publish a national inventory of releases of pollutants, including substances that are transported to waste rock storage areas and tailings-impoundment areas.c

The approval of mine closure plans to rehabilitate and restore properties after the completion of mining operations is provided for in the mining legislation of most Canadian jurisdictions. Most jurisdictions require financial security or a guarantee and an approved closure plan to be filed prior to the mine production. Certain jurisdictions require the closure plan to be filed prior to any exploration activities being undertaken.

9.3 What liabilities does a mining company face in the event that mining activities result in ground water or other contamination affecting third parties?

In general a company will be liable for damage, loss, and injury caused by contamination or pollution arising from its activities. Applicable federal, provincial and territorial environmental and/or mining legislation generally allows the government to regulate pollution, and to require the mining company to remediate or otherwise abate or mitigate any damage caused. Most of these regimes impose reporting requirements on the company.

In addition, third parties that suffer damage, loss or injury may be able to pursue not only an action in torts, but in some jurisdictions, statutory causes of action or other remedies

may also be available

9.4 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Generally, the provincial government will need to approve rehabilitation, restoration, reclamation or closure plan submissions prior to any mining activities, pursuant to provincial mining laws and regulations. Upon the closure of operations, the approved plans must be executed so as to restore the site to an acceptable condition.

9.5 Are there any social responsibility requirements (such as to invest in local infrastructure and communities) under applicable law or regulation?

Generally speaking, such requirements are not legislated, but rather are a potential outcome of consultations with communities and Indigenous groups. Many mining companies find ways to invest in local communities in a way that is meaningful in that particular area.

Although some municipalities may have requirements to invest in local infrastructure, many mining properties are located outside of the areas subject to such requirements.

9.6 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

In most jurisdictions, the development of a mine will require mine plans to be submitted and approved. In some jurisdictions, this is carried out in conjunction with the environmental assessment process; in others, mine planning and permitting requires a separate process under a separate regulator.

In some jurisdictions, specific reserves for areas of land, such as agricultural or environmental reserves, will require

additional authorisations or approvals for proposed undertakings that fall outside the specified uses. In circumstances where a mining project is located within the boundaries of a municipality or other local government, the applicable municipal laws such as zoning bylaws will need to be adhered to.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

In Canada, the *Constitution Act,* 1982 protects the Aboriginal and treaty rights of the Indigenous peoples of Canada. Aboriginal rights themselves are not strictly defined. The Supreme Court of Canada has defined these rights in relation to a spectrum dependent on the degree of connection with the land, the highest level of right being Aboriginal titles. Aboriginal rights can also be defined by treaty. Where Aboriginal rights remain undefined, they can continue to exist until a treaty is reached with the Crown or until they are proven by claimants and defined by the courts.

A 2014 Supreme Court of Canada decision, *Tsilhqot'in Nation v. British Columbia*, provided the first declaration of an Aboriginal title in Canada. While the decision provided for recognition of Aboriginal titles over a limited area of land only, it has had a significant practical impact on consultations with Indigenous peoples generally. The concept that an Aboriginal title can be established on a territorial basis has shifted the expectations of parties involved in negotiations and has accelerated other forms of land use agreements and treaties with Indigenous groups in Canada in the decade since the decision was released.

In certain circumstances, the Crown owes a duty to consult with the Indigenous peoples and to accommodate them where

appropriate, even where Aboriginal rights have not been proven. The extent of consultation and accommodation required of the Crown will vary depending on the circumstances. The impact of consultation obligations and Aboriginal rights with respect to reconnaissance, exploration and mining operations rights will thus depend on the individual circumstances of a given case.

There has been a move in some provinces' jurisprudence, such as British Columbia, towards recognising the impact of economic development on Aboriginal or treaty rights. In one such 2022 case, *Yahey v. British Columbia*, the court found that the cumulative impacts of economic development, rather than any one specific project, was sufficient to effectively pause all permitting within certain treaty lands. The impact of this decision on mining exploration and operations on other treaty lands has yet to be determined, but the decision is indicative of a general move towards a liberal interpretation of treaty rights and greater restrictions on economic development on certain lands.

In November 2019, the Government of British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), in order to affirm the application of UNDRIP to the laws of British Columbia, contribute to the implementation of UNDRIP and to support the affirmation of, and develop relationships with, Indigenous governing bodies. British Columbia has released an action plan outlining the actions that it intends to take to comply with DRIPA through 2027. British Columbia is the first province in Canada to start implementing legislation in accordance with UNDRIP.

In 2023 the Supreme Court of British Columbia heard *Gitxaala v. British Columbia (Chief Gold Commissioner)*, which challenged the online issuance of mineral tenures under the Mineral Tenure Act in areas where certain Indigenous groups have asserted an Aboriginal title but no treaty exists. The Court held that the provincial government owed a duty to

consult Indigenous groups with asserted titles, allowing BC's Gold Commissioner 18 months to design a consultation regime.

Where a treaty exists, some lands may be owned and/or administered by the Indigenous group, as discussed under question 3.3, in which case it may be necessary to obtain a licence or lease for surface use and/or for mineral exploration or development from the Indigenous group. Treaties generally specify whether the Indigenous group owns and/or administers both the surface and subsurface, or the surface only, for any given area. Many treaties also cover areas that are Crown land, but where the Indigenous group has certain rights under the treaty to specific types of consultation or consultation processes. In some cases such treaties include some form of co-management or joint decision-making regarding certain resource development in specific areas.

In June 2021, the Government of Canada passed legislation to implement UNDRIP. The legislation obligates the federal government to take all measures necessary to ensure that the laws of Canada are consistent with UNDRIP. In *Gitxaala*, the Court confirmed that while UNDRIP and DRIPA did not create binding law in British Columbia, both pieces of legislation should act as interpretative aids for the proper understanding of legislation. See question 2.1 for details.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

In general, worker health and safety falls within provincial jurisdiction unless the subject matter of the undertaking falls within federal jurisdiction. For example, federal government employees are governed under the *Government Employees Compensation Act*. Generally, this Act is administered by provincial and territorial workers' compensation boards and commissions.

The federal government also has jurisdiction over competency of workers dealing with uranium and thorium. The qualifications and training of certain workers who deal with uranium and thorium are governed by the federal *Nuclear Safety and Control Act*. The Act also creates offences relating to inadequate staffing and work practices at a uranium or thorium mine.

Each province and territory in Canada has its own workers' compensation board or commission, although the Northwest Territories and Nunavut have a combined workers' compensation board. These boards or commissions generally provide a preventative function by administering occupational health and safety laws, and an administrative function by administering insurance schemes for injured workers.

Some provinces and territories also have legislation and regulations that specifically apply to the mining industry in addition to workers' compensation legislation. For example, British Columbia has the *Health, Safety and Reclamation Code for Mines in British Columbia* (Code), which applies to both exploration and production mine sites in British Columbia. The Code sets out obligations for owners to develop a health and safety programme, and to establish a joint management worker health and safety committee. In addition, the Code prescribes reporting requirements for accidents, deaths and dangerous occurrences and the maximum hours of work at a mine site.

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Generally, the governing health and safety legislation of the province or territory where the work is conducted will impose obligations on owners, supervisors and employees. While these obligations are not uniform across the country, in general, mine owners are obligated to ensure that applicable laws and regulations are followed, and to take all reasonable precautions to ensure the health and safety of employees.

Supervisors generally have a duty to ensure that proper training is given to employees on site, and to ensure the safety and well-being of employees. Employees have an obligation to inform supervisors of any potential risks or dangers on the worksite, as well as to protect their own personal health and safety (see question 11.1).

12 Administrative Aspects

12.1 Is there a central titles registration office?

There is no central titles registration office in Canada. With the exception of Nunavut, which is primarily regulated by the Federal Department of Crown-Indigenous Relations and Northern Affairs Canada, and the Northwest Territories, which is regulated by both the federal and territorial governments, each of the provinces and territories is responsible for issuing prospector's permits (if applicable) and registering mineral titles.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

All provinces and territories provide for some form of dispute resolution mechanism in their respective mining legislation. In general, all decisions made by a tribunal or official carrying out a statutory function are subject to judicial review by the courts in the relevant jurisdiction.

Certain provinces, including Manitoba, Ontario, Newfoundland and Labrador, and New Brunswick, have created distinct tribunals that are separate from the department in charge of administering the mining legislation. Other provinces (including British Columbia) have internal dispute resolution systems with appeals to the courts.

13 Constitutional Law

13.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The jurisdictional powers of both levels of government, provincial and federal, are set out in the *Constitution Act, 1867*. The *Constitution Act, 1867* provides the federal government with the power to create laws in relation to trade and commerce, banking, navigation and shipping, sea coasts and inland fisheries, as well as other matters. On the other hand, the provincial legislatures have the power to create laws in relation to property and civil rights (including laws relating to property, contracts and torts), natural resources, and local works and undertakings, among other matters. There are, however, some matters that fall within the purview of both federal and provincial jurisdictions. In such a case, each level of government may create laws in respect of a particular subject matter insofar as it relates to their jurisdiction. For example, both the federal and provincial governments have their own form of environmental legislation. The federal government may regulate approvals for a proposed mine in an effort to protect fish, and the province may regulate that same proposed mine for reasons relating to emissions that could pollute the environment. Federal and provincial statutes which deal with the same subject matter may co-exist; however, if there is conflict or inconsistency between federal and provincial law, in the sense of impossibility of dual compliance or frustration of the federal law's purpose, the federal statute prevails.

Canada's three territories (the Yukon, Northwest Territories and Nunavut) do not yet have provincial status and are at different stages in terms of devolution of powers to their territorial government from the federal government. Their legislative powers are enumerated in specific federal statutes (the Yukon Act, the *Northwest Territories Act* and the *Nunavut*

Act). From a practical perspective, the territorial legislative powers are quite similar to those of the provinces under the Constitution Act, 1867, but the relevant statute must be consulted in each case.

13.2 Are there any State investment treaties which are applicable?

Please refer to question 4.2 with regard to the ICA.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

In Canada, there are both federal and provincial statutes that provide a number of deductions, allowances, and credits to a taxpayer engaged in qualifying mining activities, and to a taxpayer who invests in certain mining companies. A specific tax incentive that is unique to the resource sector in Canada, found in the *Income Tax Act* (Canada) (ITA), is the use of flowthrough shares, which enables junior mining companies to raise money for exploration and development by providing the investor with tax relief in exchange for their investment. Costs incurred for the purpose of determining the existence, location, extent or quality of an oil, gas or mineral resource in Canada are characterised as "Canadian exploration expenses" (CEE) under the ITA. A taxpayer can deduct from their reported income up to 100% of its cumulative CEE. However, accordingly, they are left with CEE deductions which they are unable to use. Flow-through shares allow corporations to monetise expenses that they are unable to use by entering into an agreement with an investor, whereby the investor subscribes for shares of the company and the company agrees to use the subscription proceeds to incur qualifying CEE which it then renounces to the investor. Under the ITA, the CEE are deemed to have been incurred by the holder of the flow-through shares rather than the mining company, so the investor is able to

deduct the CEE from the investor’s income for tax purposes.

Additionally, the ITA and certain provincial statutes offer other investment tax credits to taxpayers for certain types of mining-related expenditure. The Mineral Exploration Tax Credit (METC) is a 15% credit in flow-through shares that can be claimed on specified CEE. While the METC was initially intended to be temporary, the Federal government has extended the life of the credit multiple times, and it will remain in place until at least 31 March 2025. In January 2017, the Canada Revenue Agency updated its “Guidelines for determining the tax treatment of certain exploration expenses” to confirm that costs associated with environmental studies and community consultations undertaken to meet a legal or informal requirement to obtain a permit are eligible for treatment as CEE.

14.2 Are there royalties payable to the State over and above any taxes?

There are a range of additional taxes imposed by the provinces and territories on mining operations within their boundaries. Ontario, Québec, Manitoba and Newfoundland and Labrador impose a profits tax ranging generally from 5% to 20%. BC, Alberta, Saskatchewan, Nova Scotia and New Brunswick generally impose taxes based on a combination of net revenue, net profits and/or production from mining operations. The remaining jurisdictions, other than Prince Edward Island, impose graduated royalties where the royalty rate increases with revenue, running as high as 14%. The foregoing is applicable to most minerals, but taxes or royalties on certain minerals, including coal, potash and uranium, are sometimes dealt with differently.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above

National Legislation?

Generally speaking, a mining company will be governed by federal and provincial laws in respect of its projects. Provincial legislation that should be considered by mining companies is discussed in several of the above questions. There may also be circumstances where municipal laws can affect a proposed mining project. For example, if a proposed operation is located within municipal boundaries, applicable municipal laws such as zoning laws and property taxes will need to be adhered to.

It should be noted that Québec amended its *Mining Act* and related regulations in order to provide municipalities with legislatively prescribed powers in relation to mining exploration and projects. If a mining company has acquired a right on municipal land, the amendments provide that a claim holder must notify the relevant municipality before beginning exploration work on the claim, and satisfy additional public consultation requirements before applying for a mining lease, subject to certain conditions. They also require mining lease holders to establish a monitoring committee in order to foster the involvement of the local community.

Other jurisdictions have not followed suit in adopting similar laws, and developments in British Columbia have taken a different direction. In a 2013 British Columbia Court of Appeal decision, municipal laws were found to be subordinate to conflicting mining legislation. The court held that municipal bylaws that frustrated the terms of the British Columbia *Mines Act* permits, issued by what is now the British Columbia Ministry of Energy, Mines and Low Carbon Innovation, were invalid.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Canada’s free trade agreements reduce the costs of exporting Canadian mined minerals and related value-added products. Such agreements should be taken into account by exploration or mining companies, as they can result in incentives for establishing production in Canada. Canada’s major free trade agreements include: the Canada-United States-Mexico Agreement (CUSMA); CETA; and the CPTPP.

Canada has also entered into a number of bilateral Foreign Investment Promotion and Protection Agreements (FIPAs) aimed at encouraging reciprocal investment in each country that is party to the agreement. For example, under the CanadaChina FIPA, both countries agree to a most-favoured-nation commitment, which ensures that investors from both countries are not discriminated against relative to other foreign investors. The effect of this agreement in Canada is that Chinese state-owned enterprises seeking investment in Canada will be treated on a merit basis, with considerations of business orientation and the extent of political influence over their affairs constituting significant factors.

The FIPA also provides for protections to both prospective and existing investments by allowing investors to benefit from protections found in their home country. Under the FIPA, Canadian investments will benefit from Canadian protection measures against risks of investor discrimination, expropriation without compensation and arbitrary decisions from the government, among others.

In addition, the FIPA provides that disputes that affect foreign investment, including those concerning resource development and environmental issues, will be dealt with through international arbitration as opposed to domestic courts.

However, the FIPA does not affect the Government of Canada’s ability to review or reject investments from China for reasons of national interest. “Net benefit” decisions under the ICA

are expressly excluded from the FIPA.

Some legislation in Canada allows compliance with similar legislation in foreign jurisdictions to substitute for compliance in Canada. For example, the federal *Extractive Sector Transparency Measures Act* allows payment reporting requirements of certain other jurisdictions to be satisfied *in lieu* of compliance with the Canadian statute, at the discretion of the Minister of Energy and Natural Resources.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Generally, recorded holders may abandon mineral claims and surrender mining leases upon notice or application to the provincial or territorial governing body. The procedure by which a recorded holder may do so differs from one province or territory to the next. For example, in British Columbia, the recorded holder wishing to abandon a claim or surrender a lease must register a discharge with the Chief Gold Commissioner, while in Manitoba a notice of abandonment must be filed along with reports, plans and statistical data.

Further, recorded holders may also apply for a reduction of claim areas, effectively entitling them to partially abandon their claim or lease. Where such reduction is permitted, the method by which the area shall be reduced, and the requirements for a reduction, vary by province and territory. For example, in British Columbia, the reduced claim area must comply with the following requirements: (i) it must consist of at least one cell; (ii) if there are two or more cells they must be adjoining; and (iii) the reduced area cannot result in open areas within the cell claim. In Saskatchewan, there is also a requirement that the reduced area's total length not exceed six times its total width.

Upon abandonment or surrender, all minerals covered by the mineral claim or lease revert back to the government or the holder of the underlying rights. The recorded holder may remove chattels and fixtures from the land abandoned or surrendered; however, authorisation to do so is required in certain jurisdictions, including Prince Edward Island. Further, timelines may be imposed for the removal of such property, such as in British Columbia, where the last recorded holder must remove all property within one year after the abandonment.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

In most jurisdictions, mineral claims may be renewed indefinitely from term to term until a lease is obtained or the claim is abandoned. However, in certain jurisdictions, mineral claims extinguish upon the expiration of a defined term. In the Northwest Territories, for example, the duration of a mineral claim is 10 years from the date it is recorded unless it is converted into a lease (subject to certain rights of extension).

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Relevant provincial and territorial mining ministries may cancel mineral claims and mining leases where a recorded holder is in breach of an obligation under the applicable legislation.

Mineral claims and mining leases are most commonly cancelled where recorded holders either fail to complete the required assessment work, fail to make payments *in lieu* of assessment work, fail to submit reports respecting the assessment work completed, or fail to make annual lease rental payments.

Generally, the cancellation of the mineral claim will take effect immediately upon the failure of the recorded holder to comply with the completion of, the reporting on, or the payment *in lieu* of, assessment work. With respect to mining leases, the provincial or territorial authority will more commonly issue a notice of cancellation, either affording the recorded holder a grace period to comply with the requirement or to enquire into the grounds for cancellation.

Additionally, mineral claims and mining leases may also be cancelled for breach of the provincial or territorial mining legislation, and on various grounds set out in such legislation. A common ground for cancellation is the misrepresentation of the assessment work performed on the claim, though additional grounds may be found in different jurisdictions. For example, in Saskatchewan, there is a further ground for cancellation of a mineral claim or mining lease where an environmental assessment determines that the development should not proceed. In such cases, the legislation itself often provides a procedure for cancellation and review of the decision. In most instances, a notice of breach will be issued first, providing the recorded holder with a grace period to comply with the requirement, following which the provincial or territorial authority may order the cancellation where the recorded holder has not complied. However, in some instances, mineral claims may be cancelled without prior notice to the recorded holder. For example, in Manitoba, the provincial authority may cancel a mineral claim or mining lease without prior notice if it is satisfied that the claim was recorded as a result of a material misrepresentation in the application to record the claim or lease.

17 Mining Finance: Granting and Perfecting Security

17.1 In relation to the financing of mines, is it possible to give asset security by means of a general security agreement

or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Generally speaking, assuming it is not prohibited by its constating documents (for example, its articles and/or by-laws), a company incorporated in Canada (whether federally or at the provincial/territorial level) may grant security in all of its property (real and/or personal), assets and undertaking, or in specific items or kinds of property.

While jurisdictional differences exist across the country, the procedure for granting and perfecting security in Canada is typically as follows:

- First, the applicable company will enter into an agreement in favour of the applicable creditor granting security in one or more of its assets, with the type of agreement to be entered into dependent on the scope of assets against which security is being granted. These agreements include (i) general security agreements, where the security interest granted is in respect of all of the company's personal property (ii) mortgages, where a charge is granted in respect of specific interests in real property (for example, a fee simple or a leasehold interest), (iii) debentures, where the security granted is in respect of specific interests in real property and personal property, and (iv) specific security and/or assignment agreements, where the security interest granted is in respect of specific items or kinds of personal property.
- Second, subject to specific requirements in relation to certain types of assets, the creditor or its counsel will typically perfect the security granted by the applicable company by way of registration in accordance with applicable provincial, territorial and/or federal secured lending and security registration requirements.

While perfection by registration has priority over all other

perfection mechanisms in many instances, this is not always the case. As such, depending on personal property type, lenders and their counsel may choose to perfect their security interest(s) by other mechanisms, including perfection by control.

17.2 Can security be taken over real property (land), plant, machinery and equipment (whether underground or overground)? Briefly, what is the procedure?

Generally speaking, yes – please see question 17.1 above.

17.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Generally speaking, yes, a lender can take security over receivables where the chargor is free to continue to collect receivables prior to the occurrence of a default and the applicable debtors are not notified of the security. See question 17.1 above for details on procedure.

17.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Generally speaking, yes, security can be taken over cash deposited in bank accounts. The procedure to do so depends on whether or not the cash is deposited in a bank account held with the lender itself or with another financial institution.

17.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

incorporation is at the federal or at the provincial/territorial level. Granting of security in such shares is subject to restrictions, prohibitions and specific requirements, if any, contained in the constating documents of

the company whose shares are being pledged (for the purposes of this question 17.5, the "Issuer"), any shareholders' agreement in respect of the Issuer and applicable securities and corporate laws.

Assuming no such restrictions, prohibitions and specific requirements exist, the procedure to grant and perfect a security interest in shares includes the following:

- If the shares of the Issuer are certificated, (i) the applicable shareholder will typically grant a security interest in its shareholdings in the Issuer (for the purposes of this question 17.5, the "Pledged Shares") by way of a pledge agreement in favour of the lender and will execute (in wet ink) a blank power of attorney to transfer shares in respect of each share certificate representing the Pledged Shares and (ii) the lender will typically perfect its security interest by way of control (i.e., possession) of the original share certificate(s) representing the Pledged Shares and the original power(s) of attorney to transfer shares. In addition, the lender may choose to also perfect its security interest by way of registration in the applicable personal property registry. Perfection by control is critical in the case of security interests granted in certificated shares, as perfection by this mechanism has priority over all other perfection mechanisms, including registration.
- If the shares of the Issuer are not certificated, (i) the applicable shareholder will typically grant a security interest in the Pledged Shares by way of a pledge agreement and, subject to the requirements of the applicable *Securities Transfer Act* (or equivalent), enter into, together with the Issuer and the lender, a control agreement in respect of the uncertificated shares, and (ii) the lender will typically also perfect its security interest by way of registration in the

applicable personal property registry.

17.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

As described above, each Canadian province and territory has its own registries for the recording and registration of security interests in real and personal property. As a result, fees in relation to security are set by the individual jurisdictions and differ across the country. There are no stamp duty fees in Canada.

17.7 Do the filing, notifications or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

As with fees, filing, notification and registration requirements are set by the individual jurisdictions in Canada and the amount of time and expense involved differ across the country

Since each Canadian common law province and territory has its own electronic personal property registry allowing for immediate registration of a financing statement, the time involved in registering a security interest in personal property is typically minimal.

On the other hand, the time involved in registering security interests in real property in land title offices across Canada can differ significantly by jurisdiction.

17.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment at a mining operation?

Generally speaking, regulatory or similar consents are not typically required with respect to the creation of security

over real property (land), plant, machinery and equipment at a mining operation; however, consents may be required under applicable securities law and, among others, in cases where title to the applicable real property (land) is not held in fee simple by the company granting security. Lenders and their counsel are encouraged to consider regulatory or other consents required in connection with mineral claims and tenures, mining leases, and First Nations matters, among others, and to conduct sufficient due diligence to determine what consents may be required in conjunction with structuring and registering the security package for a loan.

18 Other Matters

Each Canadian jurisdiction must continue to work toward accelerating the permitting process for project development as well as increasing business certainty with Indigenous peoples.

Each level of government in Canada has been supporting these initiatives to attract investment. In 2022, the federal government released the Canadian Critical Minerals Strategy (CCMS), which is backed by nearly 4 billion Canadian dollars over eight years, and will be used to support research and innovation in the critical minerals sector, accelerate development of projects in Canada, strengthen partnerships with Indigenous peoples and to address key infrastructure gaps that enable sustainable production. All of the provinces in Canada, aside from Prince Edward Island and New Brunswick, also have a dedicated critical minerals strategy to encourage development in the mining industry following the federal government’s strategy.

In 2024, British Columbia launched the first phase of the Critical Mineral Strategy (CMS) which sets out clear actions to expand the province’s critical minerals sector. The three main goals of the CMS are to expand First Nations partnerships, increase business certainty to attract investment, and establish funding partnerships to advance

critical minerals projects.

In Ontario, the Ontario Critical Minerals Strategy (OCMS) was implemented in 2022 as a five-year plan to attract investment, promote further Indigenous participation, and create more high-quality employment opportunities in the critical minerals sector. As part of the OCMS, Ontario created the Critical Minerals Innovation Fund (CMIF) to help fund critical minerals innovation projects.

Note

many, many locations: 10 provinces and three territories, each with its own laws and, within each province or territory, Aboriginal land claim settlement areas or reserves; areas in which the surface is owned by the Crown or by Aboriginal groups or privately; and areas in which the minerals are owned by the Crown or by Aboriginal groups or privately. Canadian mining law is also commodity-dependent, with different laws applicable to hard rock minerals, coal, industrial minerals, petroleum and natural gas, uranium, etc.

As a cautionary note, all of that which is set forth above is intended to be indicative only. Even where topics are discussed in some detail, they are not intended to be complete, and nothing in this chapter should be relied upon as legal advice.

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