



IZMENE I DOPUNE ZAKONA O RUDARSTVU I GEOLOŠKIM ISTRAŽIVANJIMA

AMENDMENTS AND SUPPLEMENTS OF THE LAW ON MINING AND GEOLOGICAL EXPLORATIONS

JPM

JANKOVIĆ POPOVIĆ MITIĆ

UVODNE NAPOMENE

Dana 20. aprila 2021. godine Narodna skupština Republike Srbije je donela Zakon o izmenama i dopunama Zakona o rudarstvu i geološkim istraživanjima (u daljem tekstu: „ZRGI“) koji je stupio na snagu dana 28. aprila 2021. godine.

ZRGI sadrži izmene koje bi trebalo da ostvare pozitivan uticaj na određene segmente poslovanja u rudarsko-geološkom sektoru. Razlozi zbog kojih je donet ZRGI ogledaju se u potrebi preciziranja pojedinih rešenja i bližeg normativnog uređivanja pojedinih pitanja, usklađivanja sa zakonskom regulativom iz oblasti zaštite životne sredine i drugim domaćim pravnim aktima, uvođenja e-uprave a što će doprineti efikasnijem, bržem i boljem obavljanju delatnosti geoloških istraživanja i rudarstva.

Uzevši u obzir sve posebnosti raznih vrsta mineralnih sirovina i geoloških resursa, težilo se tome da se jasno odrede uslovi pod kojima se iste mogu koristiti uz poštovanje zaštite javnog interesa i potrebu privlačenja budućih investicionih ulaganja privrednih subjekta u predmetnim oblastima. U nastavku je dat pregled najbitnijih izmena uvedenih ZRGI.

FOREWORD

On 20th April 2021, the National Assembly of the Republic of Serbia adopted Law on Amendments and Supplements of the Law on Mining and Geological Explorations (hereinafter referred to as: “Law on Mining”), which entered into force on 28th April 2021.

Law on Mining contains amendments aiming to achieve positive impact on certain segments of doing business in mining-geological sector. Reasons for adoption of Law on Mining are need for clarification of certain solutions and more detailed regulation of specific issues, compliance with environment legislation and other domestic legal acts, introduction of e-administration which will lead to more efficient, faster and better conduction of mining activity and geological exploration.

Taking into account specificities of various mineral and geological resources, lawmaker strives to clearly determine conditions under which they can be used, respecting national interest and need to attract future investments of companies in the subject areas. Herewith, an overview of the most significant amendments introduced by Law on Mining.

IZMENE I DOPUNE ZAKONA O RUDARSTVU I GEOLOŠKIM ISTRAŽIVANJIMA

Jedna od većih novina koje su predviđene ZRGI jeste osnivanje Komore rudarskih i geoloških inženjera Srbije u roku od šest meseci od stupanja na snagu ovog zakona. ZRGI je definisao i nadležnost, organe, sedište, način finansiranja Komore.

Među nadležnostima Komore će spadati i izdavanje licence fizičkim licima za obavljanje različitih delatnosti za koje je kao obavezan uslov predviđeno posedovanje licence (izrada izveštaja o mineralnim resursima, elaborata, sprovođenje nadzora nad geološkim istraživanjima itd.). Do izmena zakona, izdavanje licence je bilo u nadležnosti Ministarstva rudarstva i energetike (u daljem tekstu: „Ministarstvo“). Dodatno su izvršene i izmene i preciziranja u pogledu zahteva za stručnim obrazovanjem fizičkih lica koja se bave gore navedenim poslovima.

Određeno je da je privredno društvo, odnosno drugo pravno lice i preduzetnik koji vrši geološka istraživanja i eksploataciju mineralnih sirovina bez potrebnih odobrenja, dužno da nadoknadi štetu vlasniku za zauzeto zemljište, a Republici Srbiji odnosno budžetu autonomne pokrajine trostruku tržišnu vrednost iskopane mineralne sirovine ili drugih geoloških resursa i da izvrši sanaciju i rekultivaciju zemljišta na kojem je obavljalo istraživanje i/ili eksploataciju mineralne sirovine ili drugog geološkog resursa.

Omogućeno je vršenje prenosa potvrde o rezervama mineralnih sirovina i resursa i/ili drugih geoloških resursa, što do sada nije bilo definisano.

AMENDMENTS AND SUPPLEMENTS OF THE LAW ON MINING AND GEOLOGICAL EXPLORATIONS

One of the biggest novelties envisaged by the Law on Mining is establishment of the Chamber of Mining and Geological Engineers of Serbia, within period six months from the entering into force of this law. Law on Mining defines competence, bodies, seat, manner of financing of the Chamber.

Among the competences of the Chamber will be issuance of license to natural persons for conducting various activities for which mandatory condition is having a license (drafting report on mineral resources, elaborate, performing supervision over geological explorations etc.). Prior to these amendments of the law, issuance of the license was in the competence of the Ministry of Mining and Energy (hereinafter referred to as: "Ministry"). Additionally, requirements for professional education of the natural persons conducting above stated activities are regulated in more details.

It is determined that company i.e., other legal entity and entrepreneur conducting geological explorations and exploitation of mineral resources without necessary permits, are obliged to compensate the damage to the owner for occupied land, and to Republic of Serbia i.e., budget of the autonomous province, three times the market value of the excavated mineral resources or other geological resources and to perform remediation and recultivation of the land subject to exploration, and/or exploitation of mineral or other geological resources.

Transfer of confirmation on reserve of mineral resources and/or other geological resources is allowed, which was not, until now, regulated at all.

ZRGI predviđa i brisanje licenci za pravna lica kao uslov za obavljanje sledećih poslova:

1. izrada i tehnička kontrola geološke tehničke dokumentacije,
2. izvođenje geoloških istraživanja i stručni nadzor za izvođene geoloških istraživanja,
3. izrada i tehnička kontrola investiciono-tehničke dokumentacije za izvođenje rudarskih radova, i
4. izvođenje rudarskih radova.

Navedena izmena je urađena radi usklađivanja dosadašnje prakse sa zakonom, s obzirom da nikada nisu doneti podzakonski akti koji uređuju izdavanje predmetne licence, te do sada svakako nijedno pravno lice nije ni imalo predmetnu licencu.

Law on Mining envisages that license for companies for conducting following activities are no more necessary:

1. draft and technical control of geological technical documentation,
2. performance of geological explorations and professional supervision over it,
3. draft and technical control of investment-technical documentation for conduction of mining works, and
4. conduction of mining works.

Subject amendments are envisaged in order to comply current practice with the law, having in mind that bylaws governing issuance of the subject license were never adopted and none of the companies have subject license.

S obzirom na to da je Geološki zavod Srbije obrazovan kao posebna organizacija koja obavlja osnovna geološka istraživanja i finansira se iz budžeta Republike Srbije, postoji potreba da se Zavodu prošire nadležnosti. U skladu sa pomenutom tendencijom, ZRGI je predvideo da Ministarstvo može Zavodu ustupiti određene geološke informacije iz izveštaja o rezultatima geoloških istraživanja I elaborate s tim da se prema navedenim dokumentima postupa u skladu sa oznakom „poslovna tajna”.

Nosioci odobrenja za primenjena geološka istraživanja su u obavezi, u slučaju podnošenja zahteva za produženje istražnog roka, da poseduju i izveštaj o ispunjenosti uslova koji izdaje Geološki zavod Srbije.

Takođe, ovim zakonom je predviđeno da u okviru odobrenog istražnog i/ili eksploatacionog polja i eksploatacionog prostora Geološki zavod Srbije može nesmetano vršiti osnovna geološka istraživanja bez saglasnosti nosioca odobrenja za primenjena geološka istraživanja i/ili eksploatacionog polja i prostora u cilju izrade osnovnih geoloških karata i specijalističkih studija za potrebe države, s tim da prethodno obavesti nosioca odobrenja o planiranim osnovnim geološkim istraživanjima i da se istim ne ugrožava izvođenje radova nosioca odobrenja.

Izrada Bilansa mineralnih resursa i rezervi, resursa i rezervi podzemnih voda i geotermalnih resursa je prenet na ovaj organ.

Having in mind that Serbia Geological Institute is established as special organization for conducting basic geological exploration and is financed through the budget of the Republic of Serbia, need arises to extend competence of the Institute. In line with the stated tendency, Law on Mining envisaged that Ministry may give to the Institute certain geological information from the report on geological explorations and elaborates, with the obligation to act pursuant to the mark “trade secret”.

Holders of the approval for applied geological explorations are obliged, in case of filling the request for extension of the exploration period, to possess report on fulfillment of the conditions, issued by Serbian Geological Institute.

Also, this law envisages that within approved exploration and/or exploitation field and exploitation area, Serbian Geological Institute may uninterruptedly perform basic geological explorations, without consent of the holder of the approved geological exploration and/or exploitation field and area, in order to draft basic geological maps and special studies for the state needs. However, obligation of prior notification of the holder of the approval on planned basic geological explorations exists and is not to jeopardize conducting of the works of the holder of approval.

Drafting of the Balance of mineral resources and reserves, resources and reserves of underground water and geothermal resources is now in the competence of this body.



Jedna od značajnih novina koju predviđa ZRGI jeste ubrzavanje samog postupka pred Ministarstvom.

Naime, omogućava se da fizička i pravna lica sve zahteve i dokumentaciju mogu da dostavljaju Ministarstvu u elektronskoj formi uz upotrebu kvalifikovanog elektronskog potpisa, čime Republika Srbija teži da uhvati korak sa zemljama EU i da svoju e-upravu razvije na sve aspekte, uključujući formiranje i e-rudarstva.

Takođe, u cilju ubrzavanja administrativnog postupka, a i da bi se Zakon o rudarstvu i geološkim istraživanjima uskladio sa Zakonom o opštem upravnom postupku, na više mesta u zakonu gde je bila predviđena obaveza dostavljanja izvoda iz registra privrednih društava zajedno sa zahtevima, više ne postoji takva obaveza već će Ministarstvo samo da izvrši odgovarajuće provere, odnosno predviđena je mogućnost dostavljanja fotokopija radi uštede vremena.

One of the significant novelties envisaged by the Law on Mining is acceleration of the procedure before Ministry.

Namely, it is possible that natural and legal entities may submit to the Ministry all requests and documentation in electronic form, using qualified electronic signature. With this amendments, Republic of Serbia strives to catch up with the EU countries and to develop its e-administration on all aspects, including forming of an e-mining.

Additionally, in order to accelerate administrative procedure, and to make Law on Mining and Geological Exploration comply with the Law on General Administrative procedure, on several places, where an obligation to submit excerpt from the registry of companies along with the requests was envisaged, such obligation does not exist now, but Ministry will perform necessary checks i.e., it is possible to submit copies in order to save time.

Sam postupak po podnošenju zahteva je skraćen za ceo jedan korak, gde je sa ZRGI predviđeno da podnosilac odmah podnosi zahtev Ministarstvu zajedno sa neophodnom dokumentacijom, odnosno više ne postoji inicijalna provera od strane Ministarstva. Samim tim, ono lice koje prvo podnese potpuni zahtev sa svom propisanom pratećom dokumentacijom dobiće odobrenje za istraživanje.

Bitna izmena je takođe da prilikom podnošenja zahteva za izdavanje odobrenja za primenjena geološka istraživanja podnosilac zahteva uz neophodnu dokumentaciju dostavi pismo o namerama banke ili društva iz grupacije u okviru koje posluje podnosilac zahteva, da će za njegove obaveze izdati bankarsku garanciju ili korporativnu garanciju u roku do 30 dana od dana dobijanja rešenja za istraživanje metalčnih mineralnih sirovina, litijuma i bora, ili izjava društva da će u istom roku dostaviti menicu.

Obaveze predstavljaju značajnu izmenu u samom postupku, a cilj je da se smanji broj privrednih društava koja apliciraju za odobrenja iz nadležnosti Ministarstva, a da nemaju sredstva ni interesa da izvođe geološka istraživanja.

Propisani su, odnosno, dodati novi uslovi na osnovu kojih će nadležni organ ukinuti rešenje o odobrenju za istraživanje pre isteka određenog istražnog roka, pa tako ukoliko nosilac istraživanja ne prijavi radove u roku od 15 dana pre početka radova ili ukoliko ne započne sa izvođenjem u roku od 90 dana od dana prijema odobrenja, Ministarstvo će ukinuti rešenje.

The procedure upon submission of the request is shorten for the whole step, whereby Law on Mining envisages that applicant immediately submits request with all necessary documentation to the Ministry i.e., initial check by the Ministry is repealed. Therefore, person who first submits fully populated request with all prescribed accompanied documentation, will be granted with the approval for exploration.

Important amendment is, that when submitting request for approval of applied geological explorations, applicant is obliged to deliver, along with necessary documentation, letter of intention of bank or company from group within which the applicant operates, that will issue a ,bank guarantee or corporate guarantee within 30 days as of the receiving resolution on exploration of metal mineral resources, lithium and boron, or statement of the company that it will in the same deadline deliver promissory note.

Such obligation represents significant amendment in the procedure aiming to decrease number of companies applying for approvals from the Ministry competence, without funds nor interest to perform geological explorations.

New conditions are prescribed on the basis of which competent body will repeal resolution on approval of exploration before expiry of the exploration deadline, so if the holder of the exploration does not report works within 15 days as of the commencement of the works, or if he does not commence with works within 90 days as of the receipt of the approval, Ministry shall repeal resolution.

OSTALE IZMENE

Među ostalim izmenama na koje se treba osvrnuti je i da je ZRGI odredio da su geološka istraživanja i eksploatacija mineralnih sirovina u javnom interesu, a s obzirom na to da su mineralni resursi odnosno mineralne sirovine od strateškog značaja za Republiku Srbiju. Izmene se odnose i na to da je predviđeno da se primenjena geološka istraživanja i eksploatacija urana, nikla i kobalta vrše uz prethodnu saglasnost Vlade.

Takođe, prema važećem Zakonu o rudarstvu i geološkim istraživanjima, nosilac istraživanja može sam da vrši stručni nadzor nad geološkim istraživanjima, dok je ova mogućnost sa ZRGI isključena (osim kod istraživanja nafte i gasa).

Dodatno, predviđena je novina u vršenju stručnog nadzora, koja se ogleda u obavezi vođenja dnevnika stručnog nadzora, čija će sadržina i forma biti naknadno propisana od strane ministra.

Ključna izmena je svakako i to da je sa ZRGI predviđeno da ako nosilac potvrde o rezervama i resursima u roku od šest godina od njenog donošenja ne podnese zahtev za odobrenje za eksploataciju i/ili eksploataciono polje, Republika Srbija istekom tog roka od šest godina postaje nosilac te potvrde o rezervama i resursima, i time stiče sva prava koja iz nje proizilaze u skladu sa ovim zakonom.

U skladu sa ovom izmenom ZRGI je predvideo i da Republika Srbija, danom stupanja na snagu ovog zakona, postaje nosilac rezultata geoloških istraživanja i potvrda o rezervama i resursima izdatim pre 2000. godine, ako po osnovu tih potvrda nosioci potvrda ili njihovi sledbenici nisu dobili odobrenja za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova i odobrenja za upotrebu rudarskih objekata.

OTHER AMENDMENTS

Among other amendments, it is worth mentioning that Law on Mining determines that geological explorations and exploitation of mineral resources are in public interest, having in mind that mineral resources are of strategic importance for Republic of Serbia. Amendments envisage that applied geological exploration and exploitation of uranium ore, nickel and cobalt are conducted with the prior consent of the Government.

Pursuant to the Law on Mining and Geological Explorations, holder of the exploration may conduct professional supervision over geological exploration itself, while such possibility is excluded by the Law on Mining (save for exploration of oil and gas).

Additionally, in conduction of professional supervision, obligation of keeping dairy of professional supervision is introduced. Content and form of the dairy shall be subsequently prescribed by the minister.

Key amendment is that Law on Mining envisages that if holder of the confirmation on reserves and resources within six years as of its rendering does not submit request for approval for exploitation and/or exploitation field, when such period of six years expires, Republic of Serbia shall become holder of such confirmation on reserves and resources acquiring all rights deriving from it in line with this law.

Pursuant to such amendments, Law on Mining envisages that Republic of Serbia, as of the day of entering into force of this law, become holder of results of geological exploration and confirmations on reserves and resources issued before 2000, if the holder of such confirmations or their legal successors did not acquire permission for construction of mining facilities and/or conduction of mining works and approval for usage of mining facilities.

Posebnu pažnju privlači zabrana stranim pravnim licima da direktno budu nosioci istraživanja i nosioci eksploatacije, što je bilo moguće prema ranije važećem Zakonu o rudarstvu i geološkim istraživanjima. ZRGI sada omogućava samo ograncima stranih pravnih lica da budu nosioci istraživanja i nosioci eksploatacije.

Na kraju, definisan je osnov za postizanje „Investicionog sporazuma”, koji Republika Srbija zaključuje sa investitorom u projekat eksploatacije.

It is worth mentioning that foreign legal entities are now prohibited to be direct holders of exploration and exploitation, which was allowed by the earlier applicable Law on Mining and Geological Exploration. Now, the Law on Mining allows only branches of foreign companies to be holders of exploration and exploitation.

Last but not least, basis for achieving “Investment Agreement” is defined, which agreement Republic of Serbia executes with investor in exploitation project.



Jelena Gazivoda



Jelena is a Senior Partner at JPM and a member of the Corporate/M&A and Banking and Finance department and Head of Mining and Energy department.

Jelena is a highly regarded legal expert with over 20 years of experience, advising on landmark transactions and projects of strategic importance for Serbia and the SEE region. Jelena is also a Lecturer at the Faculty of Law, University of Belgrade, and Lecturer at the Bar Academy, Bar Association of the Republic of Serbia.

Jelena is listed in the 'Leading Lawyers' section of the Legal 500 EMEA and IFLR 1000.

She is also ranked in the Chambers Europe (Corporate/Commercial) for Serbia.

Nikola Đorđević



Nikola is a Partner at JPM specialising in complex corporate, tax, M&A and energy law matters.

Nikola joined the firm in 2006. His practice concentrates on corporate, tax, M&A, banking & insurance and energy law advisory work.

He graduated from the Faculty of Law at the University of Belgrade in 2005. Nikola is well recognised by his special expertise in various industries and consistently provides clients with sound and commercially-minded legal advice.

Among Nikola's portfolio of clients are leading international and Serbian companies.

He is recommended by clients in the Legal 500 EMEA and IFLR 1000 for corporate and M&A law and Projects and energy.

Marko Mrđa



Marko is a Senior Associate at JPM experienced in Corporate/M&A and Banking and Finance matters.

His practice focuses on Corporate/M&A and Banking and Finance and involves providing advice to clients on various contractual arrangements.

Marko advises leading international and local clients on variety of corporate and banking law matters.

Bojana Javorić



Bojana is Senior Associate at JPM experienced in Corporate/M&A, Commercial, Regulatory and Mining legal matters.

Her practice focuses on Corporate/M&A and Regulatory work, including corporate restructurings, contractual arrangements and daily consultancy and representation for corporate clients.

Bojana advises leading international and local clients on various corporate and transactional matters.



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Autors: Jelena Gazivoda, Senior Partner, Nikola Đorđević, Partner and Marko Mrđa, Senior Associate

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JPM

JANKOVIĆ POPOVIĆ MITIĆ

6 Vladimira Popovića,
NBGP Apartments
11070 Belgrade, Serbia
T: + 381/11/207-6850
E: office@jpm.rs

www.jpm.rs