

TACKLING CORRUPTION RISKS IN MINING

ACCESS TO INFORMATION [ENVIRONMENTAL IMPACT]

THE CHALLENGE OF CORRUPTION IN THE LICENSING OF SUBSOIL USE

Mining takes place in some of the most corruption-prone places on earth. According to the OECD, one in five foreign bribery cases involves the extractives industry.¹ Mining projects can span decades and involve hundreds of millions of dollars' worth of investment. Given these high stakes, there are strong incentives for corruption at the licensing stage of a mining project. Indeed, a study of over 130 corruption cases in the oil, gas and mining sectors found that one in four cases arose at the licensing stage.²

The discovery or suspicion of corruption in government decisions to grant licences for mining and exploration projects has significant consequences. It erodes public trust in the ability of government to manage the country's natural resource wealth. It erodes public trust in mining companies operating in the country. Corruption erodes trust and confidence in the mining sector as a whole.

ASSESS THE CORRUPTION RISKS

Transparency International has developed the Mining Awards Corruption Risk Assessment (MACRA) Tool³, a step-by-step guide to identifying vulnerabilities and corruption risks in the licence, permit and contract awards process. This tool can be applied and tailored to any operating context. The MACRA Tool helps ask the right questions to determine corruption risk exposure – the first step in any corruption risk mitigation and management strategy. The tool contains a list and explanation of 80 common corruption risks. Adopting a tiered approach, it provides guidance on how to “triage” and identify the corruption risks most relevant to the circumstances and how to assess likelihood and impact of those risks. Adopting a holistic approach to risk assessment, the MACRA Tool accounts for corruption risk factors in the legal framework, its implementation and practice, and the surrounding political and administrative context. This system-wide approach to

1 OECD, Foreign bribery report, (Paris: OECD, 2014): 8.

2 OECD, Corruption in the extractive value chain: Typology of risks, mitigation measures and incentives, (Paris: OECD, 2016).

3 M.Nest, Mining Awards Corruption Risk Assessment Tool, (Berlin: Transparency International, 2nd ed, 2017).

corruption risk assessment captures risks in the environmental and social impact assessment process and community consultation, as well as the allocation of exploration and mining rights.

RESTRICTED ACCESS TO ENVIRONMENTAL COMMITMENT DATA

Limited access to data on environmental commitment leads to inadequate control over the activities of mining companies in terms of environmental protection and compliance with license conditions.

Neither the Law on Subsoil nor the Law on Environmental Expertise contain requirements for the publication of information on environmental impact assessment.

The legislation requires to place on the website of the authorized state body for subsoil use only licenses and license agreements for the right to use subsoil, provided through a tender or auction.

However, in practice, the provisions of the law are not unambiguously interpreted and the website contains only some information data, such as the number, date of issue and validity of the license, name, contact, registration and tax data of the subsoil user, as well as the name, location, coordinates, type of useful fossil, the type of subsoil use and the size of the object area and, in some cases, the number and duration of the License Agreement.

In this connection, access to data on social and environmental obligations; on possible measures to support women and other vulnerable groups; the work program is limited, which in turn negatively affects the implementation of informal control over compliance with license conditions.

WHAT HAS BEEN DONE

In the frame of implementation of the National Action Plan for Building an Open Government in the Kyrgyz Republic for 2018-2020, the State Committee for Industry, Energy and Subsoil Use of the Kyrgyz Republic established a working group to ensure

transparency in the mining industry, which included representatives of government agencies, business and CSOs.

The working group has compiled a preliminary list of mining industry data to be published based on the results of the analysis, including data on environmental impact assessments.

At present, the development of a draft normative legal act of the State Committee for Industry, Energy and Subsoil Use is under way to approve the list of data to be published, as well as the format, methods and frequency of their publication.

RECOMMENDATIONS

It is necessary to make changes and amendments to the legislation in terms of detailed rules and regulations for disclosing data on the environmental obligations of subsoil users.

For government

- Investigate existing legal restrictions when publishing data on environmental obligations
- Develop and introduce into the legislation detailed rules and regulations for disclosing data on environmental obligations of subsoil users.

For Civil Society

- Conduct work to raise public awareness of environmental impact issues.

For mining companies

- Strive to maintain high standards of corporate social responsibility, particularly in transparency of activities and interaction with the population

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