



**CHAMBERS**  
Global Practice Guides

# Mining

Israel – Law and Practice

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Gornitzky & Co

2018

# ISRAEL

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## **LAW AND PRACTICE:**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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Gornitzky & Co's projects and energy team is involved in the vast majority of the major infrastructure and energy projects and transactions taking place in Israel. These involve large scope desalination plants, power plants (solar and others), solar fields, and more. The team handles energy, transportation, desalination, non-commercial projects as well as privatisation processes, tenders, BOT and PFI. In the field of mining,

the team handles all aspects that pertain to mining regulation in the State of Israel, including petitioning for permits before the Inspector of Mines in the Ministry of Energy and Water. In addition the firm acts on behalf of our clients to obtain prospecting permits, exploration permits and prospecting licences, as well as other licences in relation to any mining activity which is bound to be conducted in Israel.

## Authors



**Itay Geffen** heads the Infrastructure and Project Finance team, which is the only Israeli legal working group within this field that has experience in representing all three types of project finance clients – the State of Israel, concessioners (and their major subcontractors) and financiers. Itay is experienced in a wide range of national infrastructure projects, including: Transportation, Industrial, Renewable Energy, and Non Commercial/Accommodation transactions.



**Jack Smith** heads the Energy practice at our firm and specialises in energy, project finance and international business transactions, including: Natural Gas / Fuel Supply; Power Generation; Financing; Private Electricity Sales; Oil and Gas Exploration; Solar Power; Wind Power; Regulatory; and M&A.

## 1. General Structure of Mineral Ownership and Regulation

### 1.1 Ownership of Mineral Deposits

Any ore removed from the area for which a prospecting permit, an exploration permit or a prospecting licence were granted, are the property of the government of Israel.

### 1.2 Regulation of Mining Industry

Mining in Israel is regulated under the Mining Ordinance.

The Mining Ordinance is regulating all aspects related to mines and quarries, focusing on Rights, permits and licences to prospect and explore ores and minerals; Rights and obligations applying to licences and permit-holders and mining rights-owners Powers and responsibilities of the Minister of National Infrastructures and the Mines Inspector; Registration aspects and Forms; and General instructions such as Penalties, financial sanctions and legal proceedings.

### 1.3 Administration of the Mining Industry

Mining corporations operate pursuant to exploration, prospecting and mining permits received by the Inspector of Mines in the licensing and permitting administration for natural resources in the Ministry of Energy and Water of the State of Israel.

## 2. Required Authorisations and Permits

### 2.1 Requirements to Conduct Prospecting

The Inspector is responsible for granting prospecting permits, exploration permits and prospecting licences, as well as other licences in relation to any mining activity.

The granting and renewal of these permits and licences are subject to the payment of the due fees under the Mining Ordinance, submission of the required application form, and meeting of the following criteria:

- (a) Prospecting permit will be granted subject to (i) personal criteria (age, education level, non-criminal experience and absence of proceedings by the Inspector vs the applicant), and (ii) financial robustness of the applicant;
- (b) Exploration Permit will be granted to an applicant having (i) adequate working capital, and (ii) sufficient technical knowledge or technical assistance to conduct an adequate exploration and geological measuring and explore the area; and
- (c) Prospecting licence will be granted to an applicant holding a Prospecting permit or an Exploration Permit, who (i) has presented satisfactory evidence for the existence of the target ore in the requested licence area, (ii) has marked the boundaries of that area in the manner prescribed, (iii) is having adequate working capital, and (iv) is having sufficient technical knowledge or technical assistance to conduct an

adequate exploration and geological measuring and explore the area.

## 2.2 Requirements to Conduct Exploration

See 2.1 Requirements to Conduct Prospecting above.

## 2.3 Requirements to Conduct Mining

In the event that a permit or licence-holder finds ore in worthwhile amounts it must inform the Inspector, orally or in writing, as soon as possible, of the finding by submitting a "Discovery Notice" in a designated form. Per the Inspector request, the permit or licence-holder shall submit details and samples from the ore discovered, supported by evidence and legal documentation. If the Inspector is satisfied that ore was discovered in worthwhile amounts, he will give the licence-holder a "Discovery Certificate".

The holder of a Discovery Certificate will have the right, during one year, to apply for mining rights, or for a mining lease contract from the Inspector, with respect to the ore or minerals mentioned in the Discovery Certificate and with respect to an area that does not exceed the maximum rates determined for such rights or mining lease rights (as described in section 3.3 Rights Acquired by the Title Holder below).

During one year from the date of the Discovery Certificate issuance, the Discovery Certificate-holder shall enjoy an exclusive mining right or mining lease contract in respect of the above said limited area. The Discovery Certificate-holder may waive (in writing) such rights. Failure to satisfy the Minister of National Infrastructures for having adequate working capital and sufficient technical knowledge or technical assistance to ensure the proper development of mining actions shall expose the Discovery Certificate-holder for sanctions.

## 2.4 Environmental Requirements to Conduct Exploration and Mining

Pursuant to the National Parks Law, any activity within a nature reserve or a national park (including exploratory operations) requires prior approval by the Nature Reserves Authority. Under the provisions of the applicable National Outline Plan, up to a third of the areas declared as national parks and/or nature reserves may be designated to a purpose other than a national park and/or a nature reserve.

## 3. Duties and Rights Derived from a Mining Title or Concession

### 3.1 Rights Granted by Mining Title to Holder

A mining right or a mining lease contract will not be granted to the holder of a discovery certificate where the holder does not have sufficient capital or technical capability to mine the ore in the area contemplated in an application. In case that

a year has elapsed since a discovery certificate was given, in respect of the area, and the Discovery Certificate-holder did not submit his application for a mining right or a mining lease contract, or where his or her application was denied by the Inspector due to insufficient capital or technical capability to mine the ore, The Minister may grant mining rights or a mining lease contract to another person not holding a discovery certificate, with respect to the same area; provided, however, that (i) the area is not (a) included in a valid prospecting licence, in which worthwhile amounts of ore have been apparently discovered, or (b) in respect of which an application for a mining lease has been filed; and (ii) an area in respect of which an application for a mining right or for a mining lease, has been filed but rejected or withdrawn.

In case a mining right or a mining lease is granted to a person other than the Discovery Certificate-holder, the Minister of National Infrastructures may impose additional charges and use them in order to compensate the holder of the discovery certificate for the area, should that be necessary.

The engagement of the Israel Land Administration in a lease contract with that holder is exempt from a mandatory tender.

### 3.2 Duties Acquired by Title Holder

The holder of the permit or of the licence is precluded from transfer of any ore without the Inspector's agreement. Nevertheless, the holder of the permit or of the licence may remove samples of ore in order to examine their quality and commercial value.

The holder of a prospecting permit, an exploration permit or a prospecting licence must present reports to the Inspector, concerning any ore which was removed from the ground, and the operations conducted by the holder within the permit or licence area.

### 3.3 Rights Acquired by Title Holder

Mining rights are granted for a one-year period, but may be renewed for further one-year periods. A mining right entitles the holder to enter the areas in respect of which the mining rights were granted, mine inside them in order to look for the alluvial ore and to take and transfer the aforementioned ore obtained, subject to payment of rental fees to the owners of the land, and royalties to the treasury of the State of Israel, as set forth in the Ordinance.

The area contained in a mining right shall not exceed the maximum area set forth in the Ordinance, which is: in case of prospecting area for precious minerals – 1%, and in case of prospecting area for non-precious – 0.5%.

A mining lease contract is granted for a period not to exceed 30 years.

At the end of the aforementioned mining lease contract period, the miner will receive a pre-emptive right to renew the lease under proper and fair conditions, so long as the ore is produced in worthwhile quantities.

A mining lease grants a miner the right to enter the grounds described in the lease, and the exclusive right to mine the ore described in the lease, including every operation needed for the exploitation, purchase and receipt of ore, raising them to the ground and transporting them, subject to the payment of rental fees to the owners of such grounds, and royalties to the treasury of the State of Israel as in the Ordinance.

The right to lease will be granted to the companies in respect of land whose area does not exceed twice the maximum area granted pursuant to an exploration permit.

The owners of a mining right or of the right for a mining lease must file a report once every six months, describing the quantity and value of the ore found thereby.

The lease fees in respect of mining rights and rights for a mining lease will be paid to the Inspector once a year in advance (hereinafter, the “rights” and the “lease fees”). In case the lease fees are not paid in a timely manner, they shall bear interest at a 5% rate; in case they are not paid within a month of the due date, the interest will increase to 10%.

### 3.4 Duties of Title Holder at End of Life

The Mining Ordinance outlines two legal arrangements for mining operations: mining rights or a mining lease. The Inspector will decide whether to prefer the mining to be conducted as a mining right or as a mining lease. The Minister of National Infrastructures may grant mining rights or mining leases with regard to areas as follows:

- any area in respect of which a non-exploration notice was issued;
- any area not included in a valid prospecting licence, in which worthwhile quantities of ore were apparently discovered, and in respect of which no application was filed for a mining lease by a person entitled to obtain a lease as above, pursuant to a discovery certificate;
- any area in respect of which an application was filed for a mining right or for a mining lease, which was rejected or withdrawn; and
- any area in which mining rights or mining leases were forfeited, waived or expired.

## 4. Environmental

### 4.1 Principal Environmental Laws

Pursuant to the National Parks Law, any activity within a nature reserve or a national park (including exploratory

operations) requires prior approval by the Nature Reserves Authority.

### 4.2 Bodies of Environmental Competence

Pursuant to the National Parks Law, any activity within a nature reserve or a national park (including exploratory operations) requires prior approval by the Nature Reserves Authority.

## 5. Miscellaneous

### 5.1 Restricted or Excluded Zones

The area contained in a mining right shall not exceed the maximum area set forth in the Mining Ordinance as described in section 3.3 **Rights Acquired by Title Holder** above.

### 5.2 Unilateral Termination of a Mining Title

The Minister may forfeit the rights in the following cases enumerated in the Ordinance:

(1) In case the lease fees are six months overdue and have not been paid;

(2) If an agreement or any of the conditions included in any right or in any lease contract (not including the lease fees agreements and the agreements regarding terms of employment) are violated. In such case, the forfeiture is subject to a written notice given to the infringer specifying the conditions breached and allowing the infringer to remedy the breach within the time specified in that notice. If the infringer fails to cure the alleged infringement before the date specified therein, it is expected that the right of the infringer or his contract will be terminated by the Minister of Development.

(3) Where a mining right/contract holder intentionally permits or executes acts in connection with a mine that is a waste of minerals, whether those minerals are included in his or her right or in his or her contract or not, he or she shall be liable to forfeiture of his right or contract by the Minister of Development.

### 5.3 Taxes of Royalties

The holder of a mining lease or mining rights is required to pay certain royalties to the treasury of the State of Israel, in addition to taxes as prescribed by the Income Tax Ordinance, as follows: (i) for precious ore or for an option to lease ore as above – by agreement between the lessor and the lessee, but no less than 5% of the ore or its worth when in the mine; (ii) for non-precious ore or for an option to mine ore as above – 2% of the ore or of its worth when in the mine.

The value of the aforementioned ore will be determined annually by agreement between the lessor and the lessee or, in the absence of agreement, by arbitration as prescribed in the

Ordinance. In determining the value of the ore, the average value of the raw materials mined during the past year will be taken into account, as established according to the price of the raw materials in the free market. In the absence of a price, it is according to the price available for the distilled product or final product, minus the expenses for distilling, processing, transportation and marketing, plus 10%. The royalties will be paid to the Inspector once every six months.

The Taxation of Profits from Natural Resources Law, 2011, provides for an “excess profit” charge payable in respect of profits resulting from the production of natural resources. Excess profits from the sale of a natural resource will be calculated, in respect of each tax year, at its end, as the difference between the adjusted operating profit for that year and 14% of the reduced cost of the fixed assets for that year. The charge for excess profits up to 6% of the reduced cost of the fixed assets is 25%, and is 42% for excess profits in excess of it.

**Gornitzky**

45 Rothschild Blvd.  
Tel-Aviv 6578403  
Israel

Tel: 972-3-7109191  
Fax: 972-3-5606555  
Email: [marketing@gornitzky.com](mailto:marketing@gornitzky.com)  
Web: [www.gornitzky.com/](http://www.gornitzky.com/)

