



Pursuant to article 59 paragraph 1, article 62, article 84 of the Law No. 03/L-163 on Mines and Minerals and Law No.02/L-28 on Administrative Procedure, the Board of the Independent Commission for Mines and Minerals in the meeting held on 27.04.2016 hereby issues this:

## ADMINISTRATIVE INSTRUCTION

(ICMM NO. 07/2016)

### ON PROCEDURE OF APPEALS REVIEW

#### Article 1

##### Purpose

The purpose of this Administrative Instruction is to determinate the rules and working procedures to review appeals of parties addressed to the ICMM, and as well the organization, authorizations and scope of the Appeals Review Commission and the ICMM Board as the highest decision-making body in the administrative appeals procedure.

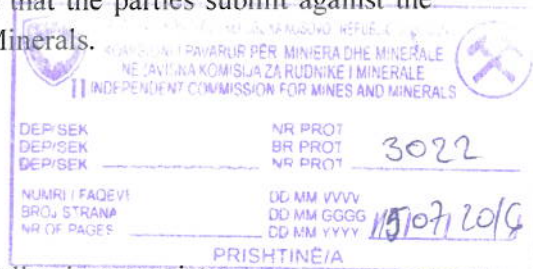
#### Article 2

##### Scope

This Administrative Instruction shall regulate the procedure of appeals review and it shall determine which bodies within ICMM decide on appeals that the parties submit against the decisions of the Independent Commission for Mines and Minerals.

#### Article 3

##### Definitions



1. Terms used in this Administrative Instruction have the following meanings:

1.1. **ICMM** - means the Independent Commission for Mines and Minerals;

- 1.2. **Appeals Review Commission** - means the Commission to review the appeals established by the ICMM Board, (hereafter the Commission)
- 1.3. **Board** - means the Board of the Independent Commission for Mines and Minerals
- 1.4. **Appeler or party** – means the party that has submitted an appeal against the decision of the ICMM
- 1.5. Other terms used in this Administrative Instruction have the definitions set by the Law No.03/L-163 on Mines and Minerals (amended by Law No.04/L-158) or the Law No.02/L-28 on Administrative Procedure.

#### **Article 4**

##### **The right to submit an appeal**

1. The right to submit an appeal against the decisions of the ICMM have all natural or legal persons dissatisfied with the decision of the ICMM and who have interest to seek the revocation, cancellation or modification of administrative act in compliance with the provisions of the Law No.02/L-28 on Administrative Procedure.

1.1. Appeal is not allowed against the Board decisions, Board decisions may be contested by article 13, paragraph 2 of Law No. 03/L-202 on Administrative Conflicts.

2. When an appeal is submitted for a decision, the implementation of the decision shall be suspended until the issuance of the decision on the appeal.

3. As exception according to LAP article 128.2 The implementation of administrative act shall not be cancelled in the following cases:

- a) when the administrative act refers to collection of fees, taxes or other budgetary incomes;
- b) when the administrative act relates to police action;
- c) when its cancellation is prohibited by law;
- d) when the immediate implementation is in the interest of public order, public health or any other public interest.

**Article 5**  
**Procedure and review of appeals**

1. Receipt of appeals addressed to the ICMM is done by the Registry Office, which is obliged to register appeals and to forward them to the Legal Department.
2. Legal Department shall proceed all appeals addressed to the ICMM to the Appeals Review Commission.
3. Appeals Review Commission shall prepare within 15 days recommendations and recommendation with appeals shall proceed to the Board.
4. Board within 30 days from the date of submitting the appeal is obliged to issue a decision about the appeal of the party.

**Article 6**  
**Appeals Review Commission**

1. Appeals Review Commission is an independent body within ICMM, this commission is established by the Board.
2. The Commission comprises of a chairman and 4 members, the chairman of the Commission shall be a lawyer by profession, with experience and knowledge for Law on Mines and Minerals and the Law on Administrative Procedure.
  - 2.1. If the chairman of the Commission is a part of the Legal Department, he has no right to work in the decisions taken by the Legal Department with the decision of Director, for the purposes to maintain impartiality.
3. The election of members of the Commission is made by the Board with the proposal of Director.
  - 3.1. Director shall consult with the Board on proposals for members of the Commission.
4. Mandate of the members of the Commission is three (3) years.

**Article 7**  
**Responsibilities of the Commission**

1. The Commission is responsible to review and make recommendations addressed to the Board on all appeals which the parties submit against the decisions of ICMM.
2. The Commission after reviewing the appeal of the party shall give recommendation by majority votes of the members, in compliance with the applicable respective legislation.
3. The Commission is obliged to perform his work honestly, conscientiously, impartially and in compliance with the applicable legislation.

**Article 8**  
**The working procedures of Commission**

1. The Commission meets in regular meetings or as needed.
2. Chairman of the Commission shall lead the work of the Commission.
3. Chairman of the Commission shall consult with the members of the Commission on setting the date, time and place of the meeting.
4. The Chairman of the Commission opens the meeting only when there is a quorum of at least three (3) members.
5. The Commission after receipt of the appeal first confirms the legality of the appeal, then it shall review the appeals in meeting based on letters submitted by the party.
6. The Commission may request additional evidence from the party on the issue that has to do with the review object on appeal.
7. The Commission shall decide whether to invite the party or witnesses at the meeting. If the Commission decides to invite the party or witness in a meeting, then a written invitation shall be sent to him.
8. The Commission may request from the ICMM and other institutions, additional evidence which are evaluated that may help to decide for the cases the Commission reviews.



9. The Commission receives the appeal as well from third parties which have an interest for the issue that is the review object on appeal.

10. In special cases the Commission may invite a third party to appear to the Commission.

11. A minutes shall be kept for each meeting, the minutes shall be kept by the members of Commission.

12. The minutes shall be signed by the Chairman of the Commission and other members of the Commission present at the meeting.

13. The signed minutes shall be sent to the Director and the Board.

## **Article 9**

### **Recommendations**

1. The recommendations issued by the Commission shall be professional, shall contain a brief summary and explanations regarding the appeal, including but not limited to:

1.1. To assess if the appeal is submitted within the time;

1.2. A summary of factual findings based on evidence submitted during the administrative proceedings or in facts provided by the administration;

1.3 A statement of the legal basis on which the act is based;

1.4. An explanation of the practical consequences of the act for parties in administrative proceeding;

1.5. The justification of the given recommendation;

## **Article 10**

### **Notice addressed to the Board**

After issuing the recommendations, the Commission is obliged to inform the Board about them and inform them for the remaining term for issuing a decision on the appeal, this notice must be in writing.

## **Article 11**

### **Decisions**

1. Decisions on appeals addressed to the ICMM are taken by the Board of the Independent Commission for Mines and Minerals.
2. The Board of ICMM shall take decisions on appeals after reviewing the appeal and recommendation issued by the Commission.
3. Board after reviewing the appeal and the commission's recommendation shall decide:
  - a) to confirm the validity of the act and reject the appeal;
  - b) to abolish/revoke the act and endorse the appeal;
  - c) to modify the administrative act by partially endorsing the appeal;
  - d) to instruct the competent administrative body to issue an administrative act when its issuance has been unlawfully rejected.
4. Preparation of decisions shall be done by Legal Department.
5. Decisions of the Board are decisions to which cannot be appealed but an administrative conflict may be initiated by the Law No. 03/L-202 on Administrative Conflicts.
6. The ICMM Board may review and reset the decisions taken in compliance with article 132 of the Law on Administrative Procedure, if it is determined that any mistake is issued due to some technical issues in contrary to the Law.

## **Article 12**

### **The content of decisions**

1. ICMM's name as the name of the public administration body that issued the decision, number, date of issuance of the decision;

2. The identity of the parties to whom the decision is addressed;
3. A summary of factual findings based on evidence submitted during the administrative proceeding or otherwise provided by the administration;
4. A statement of legal basis, on the basis of which the act is drawn;
5. A justification that must be clearly formulated and shall include an explanation of the legal and factual basis of the act.
5. An explanation that shall be of practical consequences of the act for parties to administrative proceeding;
6. A reminder that the parties have the right to appeal against the decision through court;
7. A reminder of the timeframes parties have to observe if they wish to submit a request for court appeal;
8. Date;
9. The signature of the Chairman of the Board or any other member of the Board with the authorization of the Chairman.

### **Article 13**

#### **Conflict of interest**

1. A conflict of interests is a situation in which a member of the Commission or members of the Board has a personal interest such that it affects or might affect the impartiality or objectivity of the performance of his/her official duty.
2. When anyone of the members of Commission or the members of the Board has knowledge that such a situation exists, then he is obligated to act in compliance with the provisions of the Law on Preventing Conflict of Interest in Exercising Public Function.

**Article 14**  
**The procedure, content and deadline to submit the appeal**

1. The appeal should be allowed;

1.1. In cases when there is an appeal against the decisions of the Board, the party is notified that the appeal is not allowed and he is advised to initiate administrative conflict in competent court.

2. Appeal from the party may be made within 30 days from the day of taking the decision from the ICMM.

3. The appeal shall be made in writing and sent to the ICMM, which it is obliged to issue a proof to the party on receipt of the appeal.

4. The appeal must contain the following data:

4.1. Name of the ICMM as an institution, to which the appeal is addressed;

4.2. Number and date of the decision challenged by the party.

4.3. The name of the appellant;

4.4. Date of submitting the appeal;

4.5. The reasons of submitting the appeal by emphasizing a concrete proposal regarding the issue that it is the review object on appeal;

4.6. The signature of the appellant;

5. In order to facilitate the work and make it easier the use of the right of appeal which it is a constitutional guaranteed right, ICMM will publish in the official website a form of appeal with the essential elements based on which it will be easier for the parties to prepare the appeal.

5.1. The Appeals Commission is obliged to review also the appeals that are not based on the form if they meet the conditions prescribed by the Law on Administrative Procedure.



6. Upon submission of the appeal, the party is obliged to attach to the appeal as well the decision or a copy of the decision issued by the ICMM, which is opposed by the appellant.

### **Article 15**

#### **Responsibility of Proof**

1. The responsibility of presenting the evidences and letters on which appeal is supported is on the party who submitted the appeal.
2. ICMM, upon his request shall provide access to the appellant to all documents related to the appeal.
3. The Commission is obliged to analyse all the documents in the ICMM archive which can be used as evidence to review the relevant appeal.

### **Article 16**

#### **The deadline to review the appeal**

The deadline to review the appeal by the ICMM is 30 days, ICMM is obliged within 30 days to issue a decision on the appeal of the parties.

### **Article 17**

#### **Transitional provisions**

1. Upon the entry into force of this Instruction, it is abrogated the Administrative Instruction on rules and procedures of appeals review, AI 001/2010 of the ICMM.
2. This Administrative Instruction shall enter into force 8 days after its publication in the Official Gazette of the Republic of Kosovo.

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Musa Shabani  
Chairman of the Board  
Independent Commission for Mines and Minerals