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Consumer Protection Practices followed by the Independent Commission for Mines and Minerals



Policy Study



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Institute for Development Policy - INDEP

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Note:

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1. Introduction

The Independent Commission for Mines and Minerals (ICMM) is an Independent Agency which is defined by the Constitution of the Republic of Kosovo. This Agency exercises its mining activities in accordance with Law no. 03/L-163 on Mines and Minerals, amended by Law No. 04/L-158, and secondary legislation issued in accordance with this law, and the Mining Strategy. The ICMM operates independently, exercising powers and functions assigned to it under this law.

The responsibilities and powers of the ICMM are defined in accordance with the Law on Mines and Minerals. This Agency is vested with the general authority and responsibility to ensure: the application of the law and the optimal utilization of mineral resources, and the issuance of secondary legislation in accordance with the law. The ICMM also has duties related to the issuance, transfer, extension, suspension and revocation of Licenses and Permits, the establishment and maintenance of a mining cadastre and a GIS database, and the issuance of rules for the internal organization and operation of the ICMM.

The ICMM Board exercises all the powers of the ICMM. Any decision required to be taken by the ICMM, according to the Law on Mines and Minerals, must be taken by the ICMM Board. The Director of the ICMM manages the day-to-day operations of the ICMM, and exercises all functions delegated by the ICMM Board. The ICMM structure consists of the substantial departments and other departments or support units for the ICMM tasks and responsibilities.

Regarding the staff salaries and grading in the ICMM, they are regulated by the Law on Salaries. Board Members are appointed professional staff, and their salaries are determined by the Assembly of the Republic of Kosovo. The director and other executive staff are civil servants and their salaries are determined according to the legislation on civil servants (with paygrades/coefficients). Due to the specific nature of the ICMM activity, in addition to the base salary, the ICMM staff also enjoys salary supplements, as approved by the Ministry of Finance and the Assembly of Kosovo, according to the job specifications for the positions.

During 2019, ICMM has filed 47 criminal reports with the relevant Prosecution Offices against companies or natural persons conducting their mining activity without a license or permit from the ICMM. During 2019, ICMM has prepared and sent to the appropriate addresses 54 Decisions on

Administrative Fines against unlawful operations, total of which amounts to €511,503.42. During 2019, ICMM engaged into assessing whether conditions were met for issuing Execution Proposals to private enforcement agents, and further, it prepared and submitted 110 Execution Proposals, which contain many decisions on administrative fines.

The ICMM Complaints Review Committee has held 22 hearing sessions to review complaints and requests from various parties addressed to the ICMM. According to the evidence we have for 2019, the total number is 53 complaints, of which 50 have been reviewed, and the remaining ones are to be reviewed in the following year. 41 decisions upon complaint review were prepared, upon decisions of the Board, thereby including several complaints filed by the end of 2018, prepared further in 2019.

2. ISO10002 standard and complaints

This assessment system is based on the ISO 10002 Standard Complaints Management program. ISO 10002 is a grievance redress process developed by the International Standardization Organization (ISO) in 2004. This process is available to organizations of all sizes and all sectors. ISO 10002 certification supports companies with their grievance management, so that their clients are satisfied and their products are innovative.

According to ISO 10002, customer satisfaction is defined as "customer perception of the extent to which customer requirements are met", while a complaint is an "expression of dissatisfaction with an organization, in relation to its products or complaints - the complaint management process itself, when an express response or resolution is expected".

The evaluation of the customer complaints system was conducted with this system, also known as the "Customer Complaints System Evaluation Matrix (ISO10002)". This matrix is divided into sets. Each set contains its indicators as an independent column, this further continues with a column of explanations and comments, the evaluation formula, scores and the verification method

section. These sections allow for a comprehensive assessment of the complaint systems used by other Kosovo institutions and organizations.

The first set of this matrix contains the section labeled "Principles". This section elaborates the organization's commitment to establishing and implementing a complaint review process. The evaluation within this set continues with the evaluation of the capacity and competencies of such organizations, and their transparency in handling such complaints. The process further continues with the complaint redress approach, clear addressing of grievances, payments, information integrity and confidentiality of personal identification information of the complainants.

The first set also contains an evaluation of accountability. In this evaluation, each organization should establish and maintain a system of accountability in complaints and reporting on decisions and actions in the handling of complaints. The set of indicators also evaluate the priority the organization assigns to increased effectiveness and efficiency of the grievance redress process, as well as the timeliness of grievance handling.

The second set in this matrix contains the section known as the "Complaints Handling Framework". This part of the assessment addresses the context of the organization, thus identifying and addressing external and internal issues relevant to the purpose of the organization and affecting its ability to meet the objectives in terms of grievance addressing. This further goes on with the stakeholder identification, the scope of the handling process, leadership demonstration, and developing clear customer-centered grievance redress policies.

This part also includes the responsibilities of top management. Within this set, there is also an evaluation of the management staff that bear responsibility for the process of handling complaints to be well-planned, designed, developed, operated, maintained and continuously improved, in accordance with the complaint handling policy of the organization. This management staff should also be responsible for identifying the resource allocation, and ensuring concrete action is taken to remedy possible issues, prevent such issues from occurring in the future, and record all potential events.

The third set contains the section titled "Operationalization and the complaint management process". Within this set, communications, the receipt of complaints and the follow-up of complaints are evaluated. This is due to the fact that such information regarding complaints should

be provided in clear language and, as far as is reasonable, in formats accessible to all, so that no complainant is disadvantaged and for all such information to be effectively addressed.

In the context of tracking complaints, a broader assessment is required. Complaints tracking evaluation consists of: initial assessment of complaints, investigation of complaints, response to complaints, communication of the decision as well as closing of complaints. These evaluations allow for an accurate disclosure to clients within the framework of complaints handling.

The fourth set contains the "System Maintenance and Improvement" section. This set contains indicators for the evaluation of information collection, complaint analysis and evaluation, and the evaluation of the satisfaction with the complaint management. The organization must record the its internal performance of the grievance redress process, and establish and implement procedures for recording grievances and responses, and the utilization and management of such records, including also the protection of all personal information and ensuring the confidentiality of complainants.

The fifth set establishes the monitoring system. This section includes auditing and improvement. With this part of the evaluation, the organization should regularly conduct or ensure audits to evaluate the performance of the grievance redress process. In addition to the audit part, the organization must consistently improve the effectiveness and efficiency of the grievance redress process. As a result of these evaluations, the organization can continuously improve the quality of its products and services.

3. Analysis of the Administrative Instruction on Complaint Review within the ICMM

In its annual report, the Independent Commission for Mines and Minerals presents its records on complaint review. Details of such complaints are usually attached to the annual report in the form of appendices, but they are also presented generally within the Report's section on the Legal Framework. By such reporting, customers and the wider public are informed about the records on the review of complaints.

The review of complaints is based on the Administrative Instruction "ICMM 07/2016 - AI on the procedure of appeals review", issued in 2016. The purpose of this instruction is to determine the rules and working procedures for reviewing the complaints of the parties as addressed to the ICMM. This instruction provides on the complaint review procedure, but also determines the decision-making authorities within the ICMM on complaints that parties file against ICMM decisions.

The ICMM presentation of records for such appeals review within the framework of the annual reports began in 2016. There were no records on complaints/appeals or their review in earlier reports. With the issuance of this Administrative Instruction, the quality of reporting was improved, thereby helping to clarify further the grievance redress process for the complainants and the reviewing party.

The Administrative Instruction provides all details of the complaint review proceedings. This Instruction provides that all complaints/appeals are received by the Registry Office, which forwards the complaints to the Legal Department. This department further processes complaints and forwards them to the Complaints Review Commission. The Commission is an independent body within the ICMM and is established by the managing Board.

The remaining parts of this Administrative Instruction provides on the operating procedures of this Commission. Recommendations and decisions of this Commission are issued upon review of the

complaints. The instruction also provides on the content of decisions of the ICMM. Decisions must have the name of the ICMM as a public administration body. The ICMM must issue the decision containing the number, date of issuance of the decision, identity of the party, facts, clarifications, reasoning within such decisions.

The contents of this instruction also clarify the procedure, content and deadline for filing a complaint. To facilitate complaint filing procedures, the ICMM has also published a complaint form, with its essential elements, on its website. This should facilitate the complaint filing for the complainants. This instruction also provides on the timelines for reviewing complaints.

In the annual reports, the complaint filing has shown to have progressed over the years. In the year of issuance of the Administrative Instruction, in its annual report, the ICMM only stated that it had handled 157 appeals and requests of companies or natural persons. It had provided no additional clarifications about these complaints.

The same pace of reporting continued in 2017. In such year, it was noted that the total number of complaints was 157. These appeals and requests were filed by companies or natural persons. However, detailed records on the types of complaints and the number of complaints are not shown in such reports.

A more accurate format of reporting regarding the review of complaints can be seen in the reports of more recent years. More precisely, this progress is observed in the annual reports of 2018 and 2019. In the 2018 report, ICMM stated that in 2018, the ICMM had filed 91 criminal reports with the relevant courts of jurisdiction against companies or natural persons conducting their mining activity without a license or permit from the ICMM.

Also, the report clarifies that in 2018, ICMM has prepared and sent to the appropriate addresses 93 Decisions on Administrative Fines against unlawful operations, and that 116 Execution Proposals were submitted. In terms of complaints and appeals, the total for 2018 was 78. It was also reported that a total of 81 decisions were prepared upon review of complaints, and adjudicated by the Board. All records were also attached in the form of appendices to the report.

In the 2019 annual report, there was an improvement in the quality of reporting. This is observed in the format of reporting. Similar to the prior year, in its most recent annual report, the ICMM

provides the details about the review of complaints and other forms. During this year, ICMM filed 47 criminal reports with relevant Prosecution offices, 54 Decisions on Administrative Fines against unlawful operations, total of which amounts to €511,503.42. It has also submitted 110 Execution Proposals.

In terms of appeals review, the report provides that 22 hearing sessions were held to review complaints and appeals from various parties addressed to the ICMM. According to the evidence held by ICMM for 2019, the total number is 53 complaints, of which 50 have been reviewed. It is also stated that it issued 41 decisions upon complaint review were prepared, and upon decisions of the Board, including several complaints filed by the end of 2018, processed further in 2019.

4. Consumer Complaints System Evaluation Matrix

		Indicator	Explanation	Evaluation Formula	Score
1	Set 1 - Principles	Commitment	The organization is actively engaged in establishing and implementing a complaint treatment process.	0-2	2
2		Capacity and Competence	Adequate resources are available to commit to handling complaints and are managed effectively and efficiently.	0-2	1
3		Transparency	The complaint process is clearly disclosed to customers, staff and other interested parties. Individual complainants are provided with appropriate information regarding the handling of their complaint.	0-1	1
4		Approach	A grievance process should be easily accessible to all complainants. Information should be made available on the details of filing and resolving complaints. The complaint process and supporting information should be easy to understand and use. Information must be given in clear language. Information and assistance should be made available in any language or format in which the products and services are offered or provided, including	0-2	1

			alternative formats, such as large format printing, Braille script, or audio-cassettes, to ensure no prejudice against any complaint.		
5		Feedback	The organization should address the needs and expectations of customers regarding the handling of complaints.	0-2	1
6		Objectivity	Every complaint shall be addressed equally, objectively and impartially throughout the complaint redress process.	0-2	1
7		Payments	Access to the grievance process should be free of charge for the complainant.	0-2	0
8		Integrity of information	The organization must ensure that the information regarding the handling of complaints is accurate and not misleading, and that the data collected is relevant, accurate, complete, meaningful and useful.	0-1	1

9		Confidentiality	Personal identification information of complainants shall be available on needs-basis, but only for the purpose of addressing the complaint within the organization, and shall be actively protected against disclosure, unless the customer or complainant consents to their disclosure, or such disclosure is required by law.	0-1	0
10		Customer-centered approach	The organization should use a customer-centered approach to complaint review, and must be open to feedback.	0-1	0
11		Accountability	The organization should establish and maintain a system of accountability in complaints and reporting on decisions and actions in the handling of complaints.	0-1	0
12		Improvement	Increased effectiveness and efficiency of the grievance redress process should be a permanent objective of the organization.	0-2	1
13		Timeline	Complaints should be dealt with as quickly as possible given the nature of the complaint and the process used.	0-1	0
Total set scores				/20	9
14	Set 2 - Complaints Handling Framework	Context	In planning, designing, developing, operating, maintaining and improving the grievance redress process, the organization should consider its context by:	/	

		14.1	Identifying and addressing external and internal issues relevant to the purpose of the organization and affecting its ability to meet the objectives in terms of complaints;	0-1	0
		14.2	Identifying stakeholders relevant to the grievance process, and addressing the relevant needs and expectations of such interested parties;	0-1	0
		14.3	Identifying the scope of the grievance redress process, including its boundaries and applicability, and taking into account external and internal issues and the needs of the stakeholders mentioned above.	0-1	1
15	Leadership and commitment		Senior management must demonstrate leadership, while the organization actively engages in the effective and efficient handling of complaints. It is especially important that commitment is shown and promoted by the top management of the organization.	0-1	1
	Policies		Senior management should establish a clear customer-centered complaint review policy. The policy should be rendered available and known to all staff. The policy should also be rendered available to clients and other stakeholders. The policy should be supported by procedures and objectives for each function and role of staff involved in the process.	0-1	0

16	Responsibilities of senior management	Top management should be responsible for:	/	
	16.1	Ensure that the complaint redress process and objectives are set within the organization;	0-1	1
	16.2	Ensure that the complaint review process is well-planned, designed, developed, operated, maintained and continuously improved, in accordance with the complaint handling policy of the organization;	0-1	1
	16.3	Identifying and allocating the management resources necessary for an effective and efficient complaint review process;	0-1	0
	16.4	Ensuring awareness raising of the complaints process and the need for a customer-centered focus throughout the organization;	0-1	0
	16.5	Ensuring that information on the complaints process is communicated to clients, complainants and, where appropriate, other direct stakeholders in an easily accessible manner.	0-1	1
	16.6	Appointing a complaint review management representative and clearly define their responsibilities	0-2	1

			and authorities in addition to the responsibilities and authority set out		
		16.7	Ensuring that there is a process for prompt and effective notification to senior management of any significant complaints;	0-2	0
		16.8	Periodically review the complaint review process to ensure that it is effectively and efficiently maintained and continuously improved.	0-2	0
		16.9	Reporting to senior management on the complaint review process, with recommendations for improvement	0-2	1
		16.10	Ensure that concrete action is taken to rectify problematic issues, prevent from happening in the future, and record potential events	0-2	1
Total set scores				/20	8
18	Set 3 - Operationalization and complaint management process	Communication	Information about the complaint process, such as brochures, leaflets or electronic information, should be made available to customers, complainants and other stakeholders. Such information regarding complaints should be provided in clear language and, as far as is reasonable, in formats accessible to all, so that no complainant is disadvantaged.	0-2	1

	Complaint Receipt	Upon initial reporting of a complaint, the complaint should be recorded with supporting information and a unique identification code. The record of the initial complaint should identify the remedy sought by the complainant and any other information necessary for the effective handling of the complaint including	0-3	1
	Complaints tracking	The complaint should be traced from the initial receipt throughout the process, until the complainant is satisfied or a final decision is made. Status updates should be made available to the complainant upon request and at regular intervals, at least at preset deadlines. Complainants shall be treated with courtesy and kept informed about the progress of their complaint, throughout the complaint redress process.	0-3	0
	18.1	Acknowledgment of complaints - Receipt of each complaint shall be promptly acknowledged to the complainant (e.g. by mail, telephone or e-mail).	0-2	1
	18.2	Preliminary review of complaints - Upon receipt, each complaint should be preliminarily assessed in terms of requirements such as severity, security and safety implications, complexity, impact and need, and the possibility of immediate action. Complaints should be	0-2	0

		addressed promptly in due regard of their urgency. For example, important health and safety issues need to be addressed as a priority.		
	18.3	Complaints Investigation - Every reasonable effort should be made to investigate all relevant circumstances and information related to a complaint. The level of investigation should be commensurate with the gravity, frequency of occurrence and severity of the complaint.	0-2	0
	18.4	Complaint Response - Upon proper investigation, the organization should provide an answer (see Appendix F), for example, in rectifying the problem and preventing it from happening in the future. If the complaint cannot be resolved immediately, then it should be handled in such a way as to lead to its effective resolution as soon as possible (see Appendix G for escalation).	0-2	1
	18.5	Communication of the decision - The decision or any action taken in relation to the complaint, concerning the complainant or the staff involved, should be promptly communicated upon the decision or action taken.	0-2	2

		18.6	Closure of appeals - If the complainant receives a proposed decision or action, such decision or action shall be carried out and recorded. If the complainant objects to the proposed decision or action, the appeal shall remain open. This shall be recorded, and the complainant shall be informed of the alternative forms of internal and external redress available	0-2	0
Total set scores				/20	14
	Set 4 - System maintenance and improvement	Collection of Information	The organization should record the performance of the complaint review process. The organization must establish and implement procedures for recording complaints and responses, and the utilization and management of such records, including also the protection of all personal information and ensuring the confidentiality of complainants. The information collected must be relevant, accurate, complete, meaningful and useful.	4	2
		Complaint Analysis and assessment	All complaints should be classified and then analyzed to identify systematic, recurring, and single-incident problems and trends, to help eliminate the root causes of complaints, and to identify opportunities for	8	3

			improvement or change in processes, products and services provided.		
		Gauging satisfaction with complaint management	Regular action should be taken to determine the complainants' satisfaction levels with the complaint review process. This can take the form of randomized surveys of complainants and other techniques.	8	2
Total set scores				/20	7
	Set 5 - Monitoring	Audit	The organization should regularly conduct or ensure audits to evaluate the performance of the complaint review process. Such audit should obtain information on: - process conformity with the procedures for handling complaints; - Suitability of the process and effectiveness in achieving the objectives of handling complaints.	10	3
		Improvement	The organization must consistently improve the effectiveness and efficiency of the grievance redress process. As a result, the organization can continuously improve the quality of its products and services. This can be achieved through corrective actions, actions taken in relation to risks and opportunities and innovative	10	2

			improvements. The organization should take action to eliminate the causes of existing and potential problems leading to complaints in order to prevent occurrence and recurrence, respectively.		
Total set scores				/20	5
GRAND TOTAL				/100	43

5. Conclusion and recommendations

- 1) The Independent Commission for Mines and Minerals, initially established by Regulation no. 2005/2 of 21 January 21 2005 (amended by Regulation no. 2005/38 of 29 July 2005 and Law no. 03 / L-81 of 13 June 2008, superseded by Law No. 03/L-163 on Mines and Minerals) is defined as an independent agency in accordance with Article 119, paragraphs 5 and 142 of the Constitution of the Republic of Kosovo and operates on the basis of legislation.
- 2) Within the Independent Commission for Mines and Minerals, there is also a Complaints Commission, which deals with the review of complaints and requests from various parties addressed to the ICMM. Based on the ICMM report in 2019, 22 hearing sessions were held to review complaints and appeals from various parties addressed to the ICMM. The total number of complaints during 2019 was 53, a number significantly lower than last year, which was a total of 78 complaints, which can be mentioned as a positive trend of the work done by the ICMM during the year.
- 3) The Independent Commission for Mines and Minerals (ICMM) has established a Complaints Commission within the ICMM. However, this Commission is not a distinct department, and consists of staff within the ICMM who are subordinate to the Executive Director. Since the Commission mainly deals with appeals against Board decisions, it would be much more useful if this institution were a separate department within the ICMM. This would preserve the independence of the Department and decisions on appeals would be more qualitative.
- 4) Currently, complaints may be filed upon a fee payment, and for the parties, this can be an obstacle to the enjoyment of their rights to appeal. This should be changed, and complaints should be free of any fees, in accordance with ISO 10002 standards.
- 5) An internal system should be established for recording, tracking and maintaining a record of complaints within the ICMM. This system would allow officials to have a clearer picture of complaints and allow them to improve and have a system for improving performance. There is no such system in the current situation, and differences in ICMM's responses to complaints are not always appropriate.

