



Alburnus Maior  
Str. Berk 361  
517 615 Rosia Montana  
Alba County  
Romania.  
Tel/ Fax: +40 (0) 364 119 862  
Mobile: +40 (0) 740 342 104  
Email: [alburnusmaior@ngo.ro](mailto:alburnusmaior@ngo.ro)  
[www.rosiamontana.org](http://www.rosiamontana.org)

## **Risk Analysis Update** **TSX:GBU**

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### **Introduction**

The aim of this short report is to provide investors and other interested parties with updates on key issues in relation to the Rosia Montana gold-mine proposal. This report follows the structure used by Gabriel Resources in their recently issued *Third Quarter Report*. The focus here is on providing information which is noticeably omitted from the Gabriel Resources' report, in order to give a fuller picture of the legal and political context of the project, and the risks to investors.

### **Highlights**

- Update & Results on the litigation cases regarding Urbanistic Certificates No.78/2006 and No.105/2007, respectively
- Update & Results on the litigation cases regarding archaeological discharge certificates No.4/2004 & No.5/2004, respectively
- Update on the licensing procedures; including the Environmental Impact Assessment (EIA)
- Update & Results on Gabriel Resources' Resettlement & Sites
- Update & Results on Gabriel Resources' Demolition Program
- Update & Results on the Cyanide Ban Legislative Proposal
- Analysis and Discussion

### **Update & Results on the Litigation cases regarding Urbanistic Certificate No.78/2006 and No.105/2007, respectively**

#### **1. Annulment of Urbanistic Certificate No. 78/26.06.2006**

On 11<sup>th</sup> November 2007, the Tribunal at Cluj-Napoca took a definitive decision to annul Urbanistic Certificate No.78/26.06.2006. The Certificate had been granted by the Alba-Iulia County Council to Rosia Montana Gold Corporation (RMGC) to continue mainly with the EIA procedure. The legal action was submitted by the Independent Centre for the

Development of Environmental Resources<sup>1</sup> (ICDER) and the court's decision remains valid until the irrevocable resolution of the case. RMGC's request to intervene was rejected.

The annulment of this act via a final and irrevocable court decision removes the legitimacy of all licensing procedures that are based on Urbanistic Certificate No.78/26.06.2006.

In the proceedings leading to the final annulment of the act, ICDER successfully proved that: a) the Certificate does not list the full inventory of natural and historic protected areas including their buffer zones, b) it does not contain all industrial facilities for which RMGC wishes to obtain a construction permit (such as the tailings management facility), and c) that it infringes upon the principle of local autonomy given that it imposes the elaboration and approval of one single Urbanistic Zonal Plan for all municipalities directly affected by the RMGC Industrial Development Area.

## **2. Linkage of the requests for the suspension of Urbanistic Certificate No.105/2007**

In early August 2007, Gabriel Resources requested and obtained Urbanistic Certificate No. 105/2007. Alburnus Maior and ICDER each subsequently submitted a legal challenge, asking the respective courts to verify whether in the light of Romania's new Administrative Litigation Law, Urbanistic Certificate No.105/2007 is suspended *de jure*. On 20<sup>th</sup> September 2007, the Alba-Iulia Tribunal decided to bring together the two challenges that requested the suspension of Urbanistic Certificate No.105/2007. However, in order for the case to continue Romania's Constitutional Court will first have to judge a claim brought forward by Gabriel Resources, meaning that any discussion on the case to suspend Urbanistic Certificate No.105/2007 is likely to take several months.

## **3. Rejection of RMGC's appeal against the suspension of Urbanistic Certificate No. 78/26.06.2006**

On 19<sup>th</sup> September 2007, the Cluj-Napoca Court of Appeal rejected RMGC's appeal against the suspension of Urbanistic Certificate No.78/26.06.2006.

## **4. Suspension of RMGC's Urbanistic Certificate No.78/26.06.2006.**

On 20<sup>th</sup> July 2007, the Tribunal at Cluj-Napoca accepted a request for suspension of Urbanistic Certificate No.78/26.06.2006 that had been granted by the Alba County Council to RMGC. The request was submitted by ICDER, who successfully proved that there was an urgent need to suspend the Certificate due to the irreversible damages that would be caused if the Certificate remained valid. The suspension is valid until the main case is solved in a final and irrevocable manner.

## **Update & Results on the litigation cases regarding archaeological discharge certificate No.4/2004 & No.5/2004, respectively**

### **1. Suspension of Archaeological Discharge Certificate No.4/2004**

On 11<sup>th</sup> July 2006, Romania's Supreme Court admitted Gabriel Resources' appeal against the annulment of archaeological discharge certificate (DC) No.4/2004 and sent the case for re-trial to the Brasov Court of Appeal. At the time of writing the trial continues. Whilst DC No.4/2004 is not annulled, it remains suspended until a final and irrevocable decision has been reached.

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<sup>1</sup> ICDER is an NGO based on Cluj-Napoca /Romania. It develops programs that contribute to the protection of a healthy and ecologically balanced environment and that foster the development of Romania's NGO sector.

Romania's Law no. 5/2000, protects the so-called Carnic Massif as a cultural monument of national interest. Archaeological Discharge Certificate No.4/2004 lifted this protection status for the whole massif, with the exception of a small zone in the south-eastern part called 'Piatra Corbului'.

The Cirnic/Carnic Massif contains the highest reserves of gold and is required for the first eight years of Gabriel's mine operations. Its exploitation is central to the project's feasibility.

The result of the suspension of Discharge Certificate 4/2004 is that Carnic Massif as a whole (= Cirnic Pit) is again under the protected status of a cultural monument of national interest. No construction permit may be granted without the archaeological discharge of all the areas under the project footprint. Moreover, according to article 11 of Romania's mining law (85/2003) "carrying out mining activities on lands on which are located historical, cultural and religious monuments, archaeological sites of important interest and natural reservations ... is strictly forbidden."<sup>2</sup>

## **2. Suspension of Archaeological Discharge Certificate No.5/2004**

In February 2004, Romania's ministry for Culture and the Cults - represented by Mircea Victor Angelescu and Emilian Gamureac - issued at the request of the RMGC, a new Archaeological Discharge Certificate (DC), number 5/2004. This covers all of the so-called 'Alburnus Maior – Rosia Montana' surfaces that had been partially researched in terms of archaeology between 2001 and 2003. Due to a legislative change in late 2003, the Ministry for Culture and the Cults simply issued DC No.5/2004 to confirm that the areas partially researched during 2001-2003 are also discharged under the new legislation in force.

On 4<sup>th</sup> September 2007 the Alba Iulia Court of Appeal suspended DC No.5/2004 with immediate effect. Gabriel Resources is a party to the case, and the suspension is valid until a final and irrevocable settlement of the case.

DC No.5/2004 comprised significant surfaces within the processing plant area as well as surfaces known as Gura Cornei, Carpinis, Gura Rosie, Iacobesti, Ignatesti, Seliste and areas for water and electric piping and access roads. With certain exceptions DC No.5/2004 also covers Corna Valley and its village, Carnic, Jig-Vaidoia, Tarina, Balmostesti-Gura Minei and the Carnic Massif (underground).

In the court proceedings leading to the suspension of the Discharge Certificate, Alburnus Maior proved that the Certificate was issued without the mandatory consultation and recommendation of Romania's Archaeological Commission and in violation of article 11 of Romania's mining law.

In light of the suspension of DC No.5/2004, all areas are again protected by the underlying Law No.5/2000. Whilst these areas are central to the project's current design, no construction permit may be granted without the archaeological discharge of all the areas under the project footprint.

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<sup>2</sup> Download the English version of Romania's mining law from [www.namr.ro](http://www.namr.ro)

## **Update on the licensing procedures; including the Environmental Impact Assessment (EIA)**

### **1. The EIA procedure for the Rosia Montana project**

On 13<sup>th</sup> September 2007, Romania's ministry for the Environment suspended the EIA procedure for an unlimited period. According to an explanatory note<sup>3</sup> published on the ministry's website:

“the Urbanism Certificate is an evidencing document necessary throughout the entire procedure of environmental impact assessment and of issuance of the environmental agreement. ... As regards to the case of the Project Rosia Montana, prior to the Urbanism Certificate no.105/27.07.2007, there have been filed two other Urbanism Certificates (i.e. the Urbanism Certificate no.68/20.08.2004 and Urbanism Certificate no.78/26.04.2004). Both these last mentioned Urbanism Certificates have been suspended by the courts of law. The suspension of the Urbanism Certificate is a decision taken by the court that stops the effects of this administrative act, in case of a pending litigation having as object the annulment of such act. ... On 02.08.2007 entered into force Law no.262/2007 that modified Law no.554/2004 on administrative litigation. One of the newly enacted provisions states for the suspension *de iure* of an administrative act that has the same substance as other administrative act suspended by a court. Such provision intends to limit the attempts of eluding the suspension decisions held by the courts by issuing or obtaining other administrative acts having the same substance as the suspended administrative act. ...Such suspension *de iure*, is compulsory also in the case of Urbanism Certificate no. 105/27.07.2007 for the project Rosia Montana, as this has the same substance as the Urbanism Certificate no.78/26.04.2004, that has been suspended by the court.”

According to the Ministry for the Environment, the EIA procedure will remain suspended until the relevant court case '*Alburnus Maior vs. the ministry for the Environment*' has been finally and irrevocably settled. In spring 2006, Sulfina Barbu, the former minister for the Environment also suspended the Rosia Montana EIA procedure for reasons related to the necessity of a valid and active Urbanistic Certificate.

### **2. The Strategic Environmental Impact Assessment (SEA) procedure for the RMGC Modified Industrial Development Area**

The environmental approval procedure for the so-called Urbanistic Zonal Plan (PUZ) for the RMGC Modified Industrial Development Area was at first expected to go through a simple approval procedure. However, after considerable civil society pressure, including from non-governmental organisations in Hungary, the Romanian environmental authorities decided in October 2006 that the above-mentioned licensing procedure would need to comply with the European Union's Strategic Environmental Impact Assessment (SEA) Directive. Given the plan's size the environmental licensing procedure also triggered the ESPOO Convention on environmental impact assessment in a transboundary context. In September 2007<sup>4</sup>, Hungary's minister for the Environment officially announced that Hungary will take part in the SEA procedure under the provisions of the ESPOO Convention. This means that there

<sup>3</sup> [www.mmediu.ro/dep\\_mediu/rosia\\_montana/NOTE\\_Suspension.pdf](http://www.mmediu.ro/dep_mediu/rosia_montana/NOTE_Suspension.pdf)

<sup>4</sup> <http://www.rosiamontana.org/documents/english/092007fodor.html>

will be public consultations in Hungary in addition to Romania. A SEA licensing procedure is by definition complex, and at least as lengthy as the EIA procedure for the project proposal which commenced in December 2004.

In August 2007, Gabriel Resources announced that it had finalized a draft environmental report for the SEA procedure. In September 2007 Alburnus Maior and the Independent Centre for the Development of Environmental Resources submitted an official complaint to the environmental protection authorities warning that the SEA Directive's provisions for public participation had been violated during this preparatory phase. The two NGOs requested that the whole procedure to be re-started and that RMGC be fined. Following this legal complaint, the competent authorities decided that the stage should be re-started and that RMGC will be fined for violating relevant legal provisions.<sup>5</sup>

### **3. The EIA procedure for Deforestation and Land Use Change**

In September 2006, RMGC applied for an environmental permit for the deforestation of 255 hectares of forests within the footprint of the proposed mine. In October 2006 Romania's Ministry for the Environment established that this particular EIA procedure is subject to the ESPOO Convention regulations and requested the project owner make the necessary preparations so that the potentially affected countries can be notified. In December 2006 RMGC withdrew this request, claiming that anticipated legislative changes in Romania might mean that they would not have to obtain a separate environmental accord in respect of the deforestation of the Rosia Montana area.

These legislative changes have to date not occurred, and in any event both the EIA Directive and the ESPOO Convention require a separate environmental accord for deforestation of large areas of land. Given that the area proposed for deforestation is larger than 50 hectares, the final approval for deforestation must be confirmed via a Romanian Governmental Decision. Any approval for deforestation in absence of a separate, corresponding environmental accord would be illegal.

## **Update & Results on Gabriel Resources' Resettlement & Sites**

### **1. Property Acquisition**

Alburnus Maior is a Romanian NGO consisting of property owners from Rosia Montana and Bucium who oppose Gabriel Resources' proposed development on social, environmental, cultural and economic grounds. In addition, the Orthodox, Roman-Catholic, Protestant and Unitarian churches count amongst Rosia Montana's single largest property owners, with several churches and cemeteries that would be directly impacted by Gabriel's proposal. During the course of 2003 these institutions made official statements confirming that their properties are not for sale.

According to Article 22 (f.) of Romania's mining law (85/2003)<sup>6</sup>, a mining activity may not commence without "the agreement of the landowner or land administrator on the access to areas needed to carrying out mining activities provided in the annual exploitation plan." Land ownership rights are guaranteed by Art. 44 of Romania's Constitution.

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<sup>5</sup> [http://www.rosiamontana.ro/doc/cidrm/raspuns\\_comentarii%20asociatii\\_proceduraSEA\\_RMGC.jpg](http://www.rosiamontana.ro/doc/cidrm/raspuns_comentarii%20asociatii_proceduraSEA_RMGC.jpg)

<sup>6</sup> Download the English version of Romania's mining law from [www.namr.ro](http://www.namr.ro)

According to recent declarations on the part of the Romanian Government, “there is no argument for expropriation as it is a private investment. We don’t see the public interest in this project...”<sup>7</sup>

According to Gabriel Resources, as of 31 October 2007, the company owns or has ‘pre-sale’ options on approx. 73% of the homes in the industrial zone, protected area and the buffer zone. However the ‘pre-sale’ option agreements are time-limited, and are now out-of-date because of the suspension of the EIA procedure.

What is more, homes constitute a small fraction of the project’s overall foot print with roughly 80% of the surface are comprising of forests, meadows and agricultural lands. RMGC however needs to secure all properties under the project footprint in order to meet the conditions described in the EIA report and to secure a construction permit.

## **2. Resettlement Sites**

RMGC is envisaging two resettlement sites, one in Alba Iulia, and one situated near Rosia Montana (Piatra Alba). The licensing procedure for the resettlement site in Piatra Alba has at its base a cooperation contract signed in summer 2006 between the Rosia Montana town hall and RMGC. It sets out the terms and conditions for building the resettlement site. According to the project proposal all public utilities from Rosia Montana are to be relocated to Piatra Alba – town hall office, police office, schools, churches, cemeteries, etc. Alburnus Maior claims that this contract is illegal because the obligations entered into by the town hall exceed its legal competence. Under the terms of the contract the town hall commits itself to obtaining on RMGC’s behalf all the permits and approvals for the resettlement site and for the mining project itself! The town hall also makes a commitment to issue all the permits and approvals that will be required on its part! Last but not least, the contract has the legal nature of a public-private partnership contract, for which the town hall should have gone through an open bidding process, which was not the case.

Because of these numerous deficiencies Alburnus Maior filed a legal action to challenge the contract. This was introduced in September 2006 in the Alba-Iulia Tribunal’s administrative litigation section. On 29 May 2007, the Alba Iulia Tribunal accepted Alburnus Maior’s action and nullified the cooperation contract between RMGC and Rosia Montana’s town hall.

RMGC has appealed this judgment, and a final decision is pending. If the Tribunal’s original judgment, the nullification of the contract, is confirmed following the Appeal hearing, then all acts and permits issued on the basis of the contract would be null and void.

## **Update & Results on Gabriel’s Demolition Program**

On 9<sup>th</sup> October 2007, a Romanian NGO called Architecture-Restoration–Archaeology<sup>8</sup> (ARA) reported that it had recorded the demolition of 120 buildings at Rosia Montana. The demolition activities were, claims ARA, carried out by the Rosia Montana project owner in

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<sup>7</sup> Public declaration by Mr. Attila Korodi, Romania’s Minister for the Environment and Sustainable Development, 19 June 2007 ; can be accessed on <http://212.54.100.83/webcast/WebPlayer2.php?file=rtmp://perthro.tvr.ro/rec/DATA-2007-06-19-22-57.flv>

<sup>8</sup> ARA is a non-governmental organization active in the field of protection and enhancement of cultural heritage. Since 2000 its members have been actively involved in researching and protecting the historic site of Rosia Montana. For more information visit [www.simpara.ro](http://www.simpara.ro)

an irregular manner given that *all* demolished houses were included in protection areas of listed historic monuments. According to the relevant laws, the demolition of houses situated in such areas has to be approved by the Alba County Council, and must be accompanied by a mandatory *avis* from the Ministry for Culture and the Cults. However, not a single one of the 120 properties had such permits.

### **Update & Results on the Cyanide Bill**

The “Coalition for a Cyanide Free Romania”<sup>9</sup> is a civil society initiative formed in early summer 2007 to support a bill to ban cyanide in mining in Romania. It consists of sixteen environmental NGOs amongst which count some of Romania’s most renowned such as Greenpeace CEE, the Independent Centre for the Development of Environmental Resources, the Partnership Foundation, Terra Millennium III, Otus, Focus Eco Center, Sun Valley, Green Transylvania etc. The coalition’s goal is to secure passage of the bill submitted by Senators Peter Eckstein Kovacs (The Democratic Union of the Hungarians in Romania) and Gheorghe Funar (The Greater Romania Party).

Cyanide mining is one of the dirtiest industries in the world. The gold mining industry is the main sodium cyanide consumer worldwide, using 180 000 tonnes annually. When sodium cyanide and the heavy metal-laced waters stored in a tailings pond escape into the environment, they contaminate ground water sources and they kill fish and waterfowl. Cyanide also breaks down into compounds that are toxic to fish and it can bio-accumulate in plants and fish tissue. A spoon-full of a 2% cyanide solution can be fatal to humans. Seven years after the tragic cyanide spill at Baia Mare (Romania) there exists no effective and binding regulations to prevent another Baia Mare type accident, either at a European Union or Romanian level.

At the time of writing, an on-line petition in Romanian language on the coalition’s website<sup>10</sup>, has attracted 6,802 public votes, each of which has been confirmed by email. Only one vote is accepted from each Internet IP address. Of the votes received, 6,802 (97.8%) are in support of the bill to ban cyanide in mining in Romania, with only 151 (2.2%) against. This shows the overwhelming public support for the bill, which also has backing from several Romanian celebrities, politicians and MEP candidates. With the exception of the Democratic Party (PD) all the Romanian political parties represented in Parliament have made public declarations in support of the bill.<sup>11</sup> At the time of writing the bill is expected to be submitted for a vote in Parliament before Christmas.

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<sup>9</sup> See [www.faracianura.ro](http://www.faracianura.ro) and [www.bancyanide.ro](http://www.bancyanide.ro)

<sup>10</sup> Ibid.

<sup>11</sup> See [www.bancyanide.ro](http://www.bancyanide.ro)

## Analysis and Discussion

### **Overview**

Since the project's inception in 1997, Gabriel Resources has published numerous reports, both quarterly and annual, announcing the "significant progress achieved" in terms of environmental permitting, village relocation, the archaeological discharge program, feasibility, resource estimates etc. The company has also claimed widespread support from Romanian authorities and villagers. It was originally claimed that the first "gold pour" would take place in 2004. Next it was claimed that it would take place in 2006. Then it was said that it would occur in 2009. Now it will apparently materialize in 2011... .

To date Gabriel Resources appear to have spent more than \$200 million of investors' money without any tangible results. Each enthusiastic new management team introduced by Gabriel Resources has failed in their attempts to move the project towards the first "gold pour." Given the huge range of problems that dog the project this situation is unlikely to change, and it is no surprise that Gabriel Resources' share price is plummeting again, from more than Can \$4.00 in August 2007 down to Can \$1.51 in November 2007.

### **Key Issues**

1. According to the Gabriel Resources *Third Quarter Report* "it is becoming increasingly likely that a change in [the Romanian] government will be required to restart the permitting process." The company is also "focused on doing everything within its power to re-start the permitting process." Taking these two statements together it would appear that Gabriel Resources is now pursuing the objective of "regime change" in terms of the governance of Romania, something that is not being well received by the Romanian public or media, given that Romania is an independent democracy. In reality the re-start of the EIA procedure will depend on the decisions made by Romania's courts, and the company's clumsy attempts to meddle in the political system are simply a testament to the fact that it is unable to advance its cause through the correct legal channels. The company's decision to start making race-based allegations about Hungarian interests in Transylvania simply confirms this point.

2. Another manifestation of this are Gabriel Resources' allegations of corruption amongst the current government. According to the company, the current government "has seen several resignations as ministers were charged with corruption, while other officials from the governing party have open files with Romania's anti-fraud investigators."

It is worth noting that claims concerning corruption enjoy a long-standing tradition in Romania, particularly amongst political rivals. What the company fails to mention is that its founder, Frank Vasile Timis, and three ex-Directors of Minvest Deva, are being investigated by the Romanian Anti-Corruption Department for abuses of the public interest when the association between Minvest and Gabriel Resources was first established. Criminal proceedings have been initiated in the case of the three ex-Directors of Minvest. In September 2007, Romania's General Prosecutor asked for all past decisions not to start criminal proceeding against Frank Vasile Timis to be re-considered.<sup>12</sup>

3. According to Gabriel Resources, "there are a number of other permits and approvals required, such as the zonal Urbanistic plans for the industrial and protected areas, the

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<sup>12</sup> [http://www.gardianul.ro/2007/09/14/dezvaluiri-c11/autorizarea\\_proiectului\\_rosia\\_montana\\_a\\_fost\\_blocata-s101028.html](http://www.gardianul.ro/2007/09/14/dezvaluiri-c11/autorizarea_proiectului_rosia_montana_a_fost_blocata-s101028.html)

forestry and land use change permits ...The processes of each of these permits is underway and in parallel with the EIA review process and are expected to be completed within approximately 60 days of EIA approval.” It is strange that the company does not mention the SEA Directive, ESPOO Convention, the legal fines, or the other issues set out in the first section of this report. In the light of these many legal hurdles the suggestion that these processes can be completed within 60 days seems about as realistic as the dates that have been proposed for the first “gold pour.”

4. According to Gabriel Resources, “since the Commission for Environment’s rejection of the proposed bill [banning cyanide], it has become evident that the bill does not have parliamentary support.” It is perhaps worth noting that the Legal Commission of the Parliament has endorsed the bill, that it enjoys great public support, and that all parties other than the Democratic Party (PD) have publicly supported the bill.

5. RMGC’s demolition of 120 buildings at Rosia Montana, all of them included in protection areas of listed historic monuments, shows once more the flagrant disregard for the law on the part of those promoting the Rosia Montana project. RMGC and Gabriel Resources claim over and over that they comply with all the relevant laws and international guidelines such as the Equator Principles<sup>13</sup>, but this is patently not true.

At a time when Gabriel Resources is trying to secure financial support for project financing from international financial institutions (IFI), these institutions should carefully consider whether they would want to be associated with Gabriel Resources and their actions. With regards to cultural patrimony alone, the Equator Principles state the importance of a proposal’s compliance with the relevant legal norms of the host country.

Any investor conducting risk assessment with due diligence needs to take account of the many legal judgments and other hurdles that have accumulated over many years and which continue to de-rail the Rosia Montana proposal. Alburnus Maior and its partner NGOs will continue to file legal challenges in order to ensure that the law is properly upheld and enforced. Any investor hoping that risks attached to the project will conveniently vanish should an Environmental Agreement be granted has deliberately chosen not to understand the issues at play.

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**For more information, and to hear the true story of the Rosia Montana proposal, contact [alburnusmaior@ngo.ro](mailto:alburnusmaior@ngo.ro) or tel: +40 (0)740 342 104.**

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<sup>13</sup> [www.equator-principles.com](http://www.equator-principles.com)