

# Laws Regulations and Procedures in Myanmar Mining Industry

Presented by  
U Sann Htun  
Managing Director(Retd)  
No.3 Mining Enterprise

# Myanmar Mining Industry (1 / 2)

- ▶ Myanmar Rubies and sapphires are famous in the world since old days. Artisanal extraction of lead, zinc and silver started four centuries ago at the Bawdwin Mines situated in Shan States. Tin and wolfram minerals were commercially producing since around 1920's.
- ▶ The mining industry was administered by Acts and Laws enacted by British colonial rulers. No significant reenactments except for provisions on change of government were done after Myanmar gained independence in 1948.
- ▶ Myanmar adopted the Socialist Economic system in 1962, under which all mining companies were nationalized and operated as State owned enterprises , leaving no room for private ownership in the legal infrastructure. Lack of sufficient operating funds for production had resulted in the decreased production and also discovery of new deposits were rather limited to the availability of foreign loans and assistances.

# Myanmar Mining Industry (2 / 2)

- ▶ In 1988, Myanmar adopted the market oriented economic system, promulgating Myanmar Foreign Investment Law 1988. Other relevant laws and regulations were followed in the economic endeavors opening doors for private ownership in production and services sectors including mining industry.
- ▶ Myanmar Mines Law was promulgated on 6 Sept 1994 and Rules followed on 30 Dec 1996. The law stipulates types of permits for various mining activities.
- ▶ Consequently, Myanmar Gemstone Law, Myanmar Pearl Law are also promulgated
- ▶ Private companies from local as well as foreign participated in the mining sector resulting in increase of revenue and job opportunities.

# Laws (1/2)

- ▶ Myanmar Mines Law, ( State Law and Order Restoration Council Law No.8/94) dated 6 September 1994
- ▶ Myanmar Mines Rules ( Notification No.125/96 dated 30 December 1996 of the Ministry of Mines)
- ▶ Myanmar Gemstone Law(State Law and Order Restoration Council Law No.8/95) dated 29 Sept 1995
- ▶ Myanmar Gemstone Rule ( Notification No.70/95 dated 30 December 1996 of the Ministry of Mines)

# Laws (2/2)

- ▶ Myanmar Pearl Law, ( State Law and Order Restoration Council Law No.7/95) dated 10 July 1995
- ▶ Myanmar Pearl Rules ( Notification No.48/2000 dated 15 June 2000 of the Ministry of Mines)
- ▶ Myanmar Salt Enterprise Law, ( State Law and Order Restoration Council Law No.6/92) dated 18 September 1992
- ▶ Myanmar Salt Enterprise Rules ( Notification No.40/98 dated 19 November 1998 of the Ministry of Mines)

# Objectives

## Myanmar Mines Law

- ▶ Objectives of Myanmar Mines Law
  - To implement the mineral resource policy of the Government
  - To fulfill the domestic requirement and to increase export by producing more mineral products
  - To promote development of local and foreign investment in respect of mineral resources
  - To supervise, scrutinize and approve applications submitted by person or organizations desirous of conducting mineral prospecting, exploration or production
  - To carry out the development of conservation, utilization and research works of mineral resources;
  - To protect the environment conservation works that may have detrimental effects due to mining operations

# Contact

- ▶ Investors wishing to do business in the production of metals, industrial minerals and stones may contact the Ministry of Mines as follows:–
  - The Director General
  - Department of Mines
  - Ministry of Mines
  - Office No.19
  - Naypyitaw
  - Tel: 95 67 409017
  - Email: : : deptmines@gmail.com

# Objectives

## Myanmar Gemstone Law

- ▶ Objectives of Myanmar Gemstone Law
  - To establish and develop a hundred percent gemstone and jewelry market within the country in respect of gemstone produced in Myanmar
  - To permit companies and cooperative societies to operate freely production and marketing of gemstone in accordance with the market oriented economic system
  - To open and maintain gem markets in order to sell gemstone and jewelries freely at all times
  - To eradicate illegal production of gemstone within the country and to prevent and suppress taking out unlawfully and sale of gemstone abroad.

# Foreign investment in Gemstone sector

- ▶ Section 2 (h) of the Myanmar Gemstone Law, implies that only companies formed solely with Myanmar citizens under the Special Companies Act 1950 are entitled to apply for gemstone mining and production.
- ▶ According to Notification No. 1 /2013 dated 31 January 2013 of MIC, manufacturing of jewelry with the endorsement of the Ministry of Mines may be permitted to the foreign investors by joint-venture basis under specially prescribed terms and conditions

# Foreign Investment in jewelry manufacturing

- ▶ Foreign Companies interested to do business in the jewelry manufacturing on joint venture basis with government may contact to :-
  - The Managing Director
  - Myanma Gems Enterprise
  - Ministry of Mines
  - (Myanma Gems Emporium Compound)
  - Yazahatani Road,
  - Naypyitaw
  - Tel      95 67 414319
  - email

# Objectives

## Myanmar Pearl Law

- ▶ Objectives of Myanmar Pearl Law
  - To implement the policy of the government relating to pearl production and marketing
  - To encourage and supervise the development of pearl production
  - To protect and conserve the water area of oyster fishing grounds from destruction and oysters from extinction
  - To conduct scientific research works relating to pearl production

# Pearl Production

- ▶ According to Notification No. 1 /2013 dated 31 January 2013 of MIC, production of pearl with the endorsement of the Ministry of Mines may be permitted to the foreign investors by joint-venture basis under specially prescribed terms and conditions

# Foreign Investment in pearl production

- ▶ Foreign Companies interested in the pearl production business may contact :-
  - The Managing Director
  - Myanma Pearl Enterprise
  - Ministry of Mines
  - (Myanma Gems Emporium Compound)
  - Yazahtani Road,
  - Naypyitaw
  - Tel      95 67 414087
  - email

# Types of Permits

- ▶ There are 6 types of Permits issued under Myanmar Mines Law.

Prospecting Permit

Exploration Permit

Small Scale Production Permit

Large Scale Production Permit

Integrated Permit

# List of Activities

- ▶ For doing foreign Direct Investment in Myanmar Mining Industry, MIC issues notification on list of activities
  - Activities prohibited
  - Activities only in JV with citizens
  - Activities permitted only with recommendation of relevant Ministry or only with other conditions
  - Activities which need Environment Impact assess

# Prohibited Activities

- ▶ Prospecting, exploration and mining of jade, gemstones
- ▶ production of minerals medium scale and small scale

# Activities only in JV with Citizens

- ▶ Prospecting ,exploration and production of Industrial minerals and metallic minerals
- ▶ Large scale production of minerals

# Activities permitted only with recommendation of relevant Ministry

- ▶ Works for mineral prospecting, exploration and feasibility study
- ▶ Large scale production of minerals
- ▶ Production and marketing of Rare Earths, strategic minerals ,Radioactive minerals
- ▶ manufacturing and marketing of gems jewelry and finished products [statue,
- ▶ Pearl culturing and production
- ▶ Exporting mineral of raw material after production of coal and granite stone

# Activities permitted only with other conditions

- ▶ Exploration and production of coal  
( to comply joint venture with the State)

# Activities which need Environment Impact Assessment

- ▶ Exploration and Production of minerals
- ▶ Manufacturing of iron ,steel and minerals
- ▶ Manufacturing of cement

# Company Formation

- ▶ Thai investor shall have to apply company registration at the time when Project proposal is submitted to MIC

# Documents needed

- ▶ **Application must be attached complete with:-**
  - 1. Company Profile**
  - 2. Company's financial credibility**
  - 3. Documents to be Notarized**
  - 4. Myanmar Embassy endorsement for Company's status and standing**
  - 5. Board of Director Resolution**

# Guidelines for doing Business

(1 / 3)

- ▶ Letter of expression of interest to the Ministry of Mines
  - Mention type of business, area of interest
- ▶ Discussion on principle
  - Basic terms and conditions, preferences and limitations
- ▶ Technical Discussion
  - Data availability (literature), field trip, field data collection, essentials for proposal
- ▶ Negotiation on Draft Contract
  - Detail terms and conditions

# Guidelines for doing Business

(2/3)

- ▶ Initialing the draft contract and forwarding the draft to Attorney General's Office for legal endorsement
- ▶ Acquisition of Departmental endorsement from various Government Departments including but not limited to:
  - Ministry of Finance and Revenue
  - Ministry of Forestry
  - Ministry of Agriculture and Irrigation
  - Other relevant ministries depending on nature of involvement with the proposed project-

# Guidelines for doing Business

(3 / 3)

- ▶ Final negotiation with the relevant enterprise under the Ministry of Mines on economic, social and other benefits that will be realized by both sides
- ▶ Submission to the Myanmar Investment Commission
- ▶ Follow-up to the remarks and comments made by MIC
- ▶ Final Approval by MIC
- ▶ Issue of MIC Permit/ Ministry's Permit

# Key Parameters

- ▶ The Proposal must mention;–
  - That the Investor agrees to carry on the Project on Production Sharing Contract Basis
  - Initialed Draft PSC
  - the lump sum amount of Signature Bonus
  - Company's undertaking to place certain amount of Performance Bank Guarantee [PBG Terms to be negotiated]
  - Detailed cash flow Internal Rate of Return and economic justification based on projections
  - Agreed Split Ratio of Production Sharing
  - Initial Environmental Examination and undertaking of ESIA, EMP and CSR

# Prospecting Permit

- ▶ Not exclusive
- ▶ Maximum area  
that can be permitted 4200..sq.Km
- ▶ Term ...one....year
- ▶ Dead Rent per sq.km per yr .....ks

# Exploration Permit

- ▶ Exclusive Right
- ▶ Compulsory Relinquishment of minimum of 50% for successive years
- ▶ Maximum area that can be permitted  
3150.....sq.Km
- ▶ Maximum Term that can be initially permitted  
3( three)....years  
(option to extend additionally per Ministry's endorsement)
- ▶ Dead Rent per sq.km per yr .....ks
- ▶ Minimum Expenditure Commitment- to be proposed by the Company

# Small Scale Production Permit

- ▶ Exclusive right
- ▶ Need no complex technology
- ▶ Maximum Investment Capital– Ks 10 million
- ▶ Maximum Area 50 acres
- ▶ Maximum Term that can be permitted–5 yrs
- ▶ To place Performance Bank Guarantee
- ▶ Signature Bonus

# Large Scale Production Permit

- ▶ Exclusive right
- ▶ MIC Approval, no nationalization
- ▶ Exemptions and Reliefs as per FIL(2013)
- ▶ Need complex technology
- ▶ Maximum Investment Capital– no limit
- ▶ Maximum Area –Project dependent
- ▶ Maximum Term that can be permitted–25 yrs
- ▶ To place Performance Bank Guarantee
- ▶ Signature Bonus
- ▶ Employment Plan for locals
- ▶ Environmental undertakings

# Integrated Permit

- ▶ Combination of
  - Exploration Permit
  - Large Scale Production Permit
- ▶ Dependent on Security of Deposit size/grade and economic viability

# TAXES

- ▶ Dead Rent– based on area
- ▶ Royalty– based on Sale of Production
- ▶ Production Sharing – negotiable
- ▶ Corporate Tax– relief and exemptions enjoyable according to FIL
- ▶ Commercial Tax– relief and exemptions enjoyable according to FIL

# Permits issued at Present

- ▶ Current Law in practice since 1996
- ▶ 3 Large scale production permits by foreign investors in copper, nickel and tin mine projects.
- ▶ Over .....large scale production permits in gold, antimony, coal, tin, tin/wolfram mixed, lead/zinc and lime stone by local investors
- ▶ Over.... Small scale production permits in various localities in Myanmar.

# Areas of cooperation

- ▶ Exploration and exploitation of Rare Earth Elements
- ▶ Production of refined metals from low grade non-ferrous metals
- ▶ Research and Development on Clean Coal Technology
- ▶ Use of low ranking coal in Coal Fired power plants
- ▶ Manufacturing of jewelry with modern design

# Review on Law

- ▶ No serious legal issues till date since its enactment in 1994
- ▶ To respond changing situations with respect to scale of production, type of activities
- ▶ To conform with new Foreign Investment law 2013
- ▶ To give higher priority to environmental issues

# Review on Law

- ▶ Amendments has been put up to Hluttaw
- ▶ Review process on its way
- ▶ Stake holders' comments considered
- ▶ Possibility of redrafting reflecting other emerging Democracies

Thank You for Your Attention

Contact  
Mr. San Tun