

# Recent changes in the mining regulations of Vietnam

Following the new Law on Minerals of 2010, the Government recently issued Decree 15/2012/ND-CP dated 09 March 2012 providing guidelines for the implementation of the Law on Minerals (“**Decree 15**”). Decree 15, which will take effect from 25 April 2012, and other newly issued regulations and policies of the Government introduce various significant changes in the mining industry of Vietnam. These changes are expected to have substantial impacts on both licensed projects and prospective projects on mining activities in Vietnam.

## Resuming the licensing of mining projects in Vietnam

The licensing of mining projects was temporarily suspended by the Government from 30 August 2011. Following the new Mineral Strategy of Vietnam adopted in December 2011, the Prime Minister issued Directive 02 on 9 January 2012 to resume the issuance of exploration and mining licences.

### Licensing conditions

Directive 02 instructs the licensing process for certain minerals as follows:

- Coal: Exploration and mining licences will continue to be granted based on the relevant master plan;
- Bauxite ore: New bauxite mining projects and aluminium production projects will not be licensed until Tan Rai and Nhan Co projects come into operation with full assessment;
- Lead-zinc ore: Exploration and exploitation activities will only be allowed in new areas on the "deep processing" (as defined in Circular 08 of the Ministry of Industry and Trade dated 18 June 2008 on export of materials) basis;
- Chromite ore: Mining licences will continue to be granted based on the demand for related products which are processed from chromite in each locality;
- Manganese ore: Exploration and mining licences will be considered for projects in potential areas in Ha Giang, Tuyen Quang and Cao Bang provinces;
- Gold ore: Exploration and mining licences will only be considered for root gold deposits on the basis of deep processing, advanced technology and environmental protection;
- Copper ore: Exploration and mining licences will only be granted on the deep processing basis;
- Apatite ore: Exploration licences will be considered based on the relevant master plan;
- Rare earth ore: Exploration and mining licences will be granted subject to approval of the Prime Minister;
- Cement related minerals: Exploration and mining licences will continue to be granted for marble, clay and additives based on the relevant master plan; and

- Construction material related minerals: New licences and extension of existing licences will be granted for construction stone and sand based on the relevant master plan.

#### **Pending applications for exploration and mining licences as submitted before 1 July 2011**

- 1 July 2011 was the effective date of the new Law on Minerals. Under Decree 15, any such pending application which was put on hold will be considered for a licence if satisfying the relevant licensing conditions. However, Decree 15 states that the Prime Minister shall issue the specific transitional period and licensing conditions. Thus, it is uncertain if the Prime Minister may provide any licensing conditions in addition to those stated in Directive 02.
- Directive 02 already resumes the licensing for pending applications as submitted before 1 July 2011 based on the satisfaction of the following conditions:
  - The proposed project is in compliance with the relevant master plan or otherwise approved by the Prime Minister;
  - The proposed project has commitment to use exploited minerals or apply a deep processing method;
  - The proposed project satisfies the relevant legal requirements; and
  - The proposed project satisfies the relevant licensing conditions under Directive 02.

#### **No resumption of licensing for some minerals**

Under Directive 02, new licences will not be granted for the following minerals: placer titanium, placer gold, white marble and granite. With regard to bauxite ores, new licences will only be considered for projects in provinces in the North of Vietnam. Directive 02 is also silent on the extension of the existing licences for those minerals. It remains to be seen how the Prime Minister or the Ministry of Natural Resources and Environment (“**MONRE**”) will clarify further in this regard.

#### **Uncertainty for minerals which are not mentioned in Directive 02**

Directive 02 only mentions a number of important minerals as discussed above. It is unclear as to whether the licensing process for other minerals has been resumed automatically or will be subject to further instruction from the Prime Minister or MONRE.

## **More restrictions on export of minerals**

#### **Some minerals under export restrictions**

Directive 02 sets out some restrictions on export of minerals, particularly:

- Export of the following minerals is not allowed: iron ore, lead-zinc ore and concentrate, chromite ore and concentrate, manganese ore and concentrate, copper ore, apatite ore, massive white marble and massive granite.
- As from 1 July 2012, export of titanium ore which has not been deeply processed will not be allowed. Export of deeply processed titanium ore must be approved by the Prime Minister.
- Export of rare earths must be approved the Prime Minister.
- Export of coal must strictly conform to the strategic import plan approved by the Prime Minister.

Separately, the new Mineral Strategy does not allow the export of ores and processed products of “metallic minerals.” As Directive 02 is silent on this, it remains to be clarified if Directive 02 would effectively remove the restriction on metallic minerals of the Mineral Strategy.

### Export of other minerals

Export of other minerals which fall outside Directive 02 such as solid minerals and construction material related minerals is still allowed and regulated separately.

Under Circular 08, solid minerals can be exported if meeting the processing requirements and quality standards. It is noted that export of nickel concentrate exploited from the mines in Son La and Thanh Hoa provinces will be allowed only until the end of 2013.

Under Circular 18, the following minerals are prohibited from export: limestones and additives for cement production; clays; feldspar; construction sand; pebbles gravel and grits; construction stone in the mines in south eastern and south western provinces. Following Circular 18, the Prime Minister has prohibited the export of saline sand since 30 June 2010.<sup>1</sup> Other minerals for production of construction materials can be exported if they satisfy the relevant conditions relating to quality standards and processing requirements under Circular 18.

### New requirement for public auction for mining concession rights

Under the Law on Minerals, public auction will be required for mining concession rights with respect to all mining areas, except for those which are delineated as being not subject to auction of mineral mining rights below:

- Areas containing the minerals which are fundamental to the nation's energy security, including coal, uranium and thorium;
- Areas containing limestone and clay stone used as materials for cement production, or minerals being cement additives which have been determined as the sources of materials for cement factory projects; areas containing minerals which have been determined as the sources of materials servicing mineral deep-processing factory projects approved or consented in principle by the Prime Minister;
- Areas which are located within the national border belt; areas being strategic to the national defence and security;
- Areas for development of investment projects for construction of works as specified in Article 65.1(b) of the Law on Minerals.
- Areas containing construction material related minerals which are determined to be exploited for supplying materials for the maintenance and repair of technical infrastructure works;
- Areas where exploration and exploitation of minerals are restricted according to Article 26.2(a) of the Law on Minerals; or
- Areas which have been granted with exploration and exploitation licences before 1 July 2011; and
- Other exceptional cases as determined by the Prime Minister.

Based on the above criteria, MONRE will submit its proposal to the Prime Minister for approval of the areas not subject to public auction with respect to the minerals falling under the authority of MONRE. Provincial People's Committee ("PC") will determine the areas delineated as being not subject to public auction with respect to the minerals falling under the authority of PC.<sup>2</sup>

Projects which do not fall within any category stated above will be subject to public auction for the mining concession rights. However, investors may still be able to pursue and seek exemption of the public auction from the Prime Minister on a case-by-case basis mentioned in the last item above.

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<sup>1</sup> Official Letter 5220 of the Prime Minister dated 22 July 2010.

<sup>2</sup> Articles 78.3 and 78.4 of the Law on Minerals.

## Selection of investors for exploration licences in areas not subject to public auction

In the event that two or more applicants apply for the exploration licence in an area not subject to public auction, the one which satisfies the following conditions to the best extent will be selected:<sup>3</sup>

- Having the highest equity ratio against the total investment capital;
- Having contributed capital for implementation of the relevant basic mineral geological survey; and
- Having committed to exploit and use the mineral to serve domestic production demand in accordance with the relevant master plan.

Selection will also be made on the first come basis. However, the licensing authorities would have discretion to determine the priority and level of satisfaction among the mentioned conditions.

## Delineation of areas containing scattered and small scale minerals

Under the Law on Minerals, PC will issue exploration and mining licences for the areas which are delineated as containing scattered and small scale minerals. Decree 15 specifies a number of criteria for delineation of areas containing scattered and small scale minerals, including a list of minerals together with the reserve threshold of each kind. For example, a nickel mine of estimated reserve of less than 500 tons or a gold mine of less than 0.5 ton will be considered as an area containing scattered and small scale minerals.

## Conditions for extension of exploration licences

Application for extension of an existing exploration licence must meet the following conditions:

- having not completed all the works under the exploration licence, or there is any change in the geological structure or exploration method as compared to those in the approved exploration proposal;
- having submitted the application for the extension at least 45 days prior to the expiry date of the exploration licence; and
- having fulfilled all obligations applicable under the Law on Minerals.

During the period of applying for the extension, the applicant is entitled to continue its exploration work until the authority rejects its proposal for the extension.<sup>4</sup>

## Conditions for extension of mining licences

Application for extension of an existing mining licence must meet the following conditions:

- having not fully exploited the reserve in the mining site under the mining licence;
- having submitted the application for the extension at least 45 days prior to the expiry date of the mining licence;
- having fulfilled all obligations applicable under the Law on Minerals and related regulations; and
- the proposed mining plan being consistent with the relevant mineral master plan at that time.

During the period of applying for the extension, the applicant is entitled to continue its exploration work until the authority rejects its proposal for the extension.<sup>5</sup>

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<sup>3</sup> Article 13.1 of Decree 15.

<sup>4</sup> Article 17.2 of Decree 15.

<sup>5</sup> Article 17.2 of Decree 15.

Accordingly, if the project has fully exploited the reserve under the existing mining licence, the investor is supposed to apply for a new one, rather than an extension of the existing licence. In addition, if the project needs an increase in the exploitation capacity, the investor is required to submit a revised feasibility study and environmental impact assessment report for approval by the licensing authorities.<sup>6</sup>

It appears that no public auction is required for extending the existing licence or granting a new licence for the existing mining project upon expiry. To be prudent, this point should be clarified further in practice.

## Increase in taxes and financial obligations on mining activities

### New fee for granting mining rights

- The Law on Minerals imposes a new statutory fee, namely “fee for granting mining rights”. The fee for granting mining rights is separate from, and in addition to, the mining royalty. In particular, for mining licences issued as from 1 July 2011, the investors must pay the fee for granting mining rights for the reserve specified in the mining licences. With respect to the mining licences issued before 1 July 2011, the investors must also pay the fee for granting mining licences for the unexploited reserve.
- The Law on Minerals generally provides that the fee for granting the mining rights will be determined based on the price, reserve, quality and type of the relevant mineral and the mining conditions. The Law on Minerals states that the Government will provide detailed regulations on the calculation method and rates of the fee for granting mining rights.
- However, Decree 15 just simply states that the formula for calculation and the payment method the fee for granting mining rights shall be provided by the MONRE and the Ministry of Finance (“**MOF**”). Thus, both existing and new projects need to wait for the guidance from the MONRE and the MOF on the fee for granting mining rights.
- Under the latest draft before the adoption of Decree 15, the fee for granting mining rights is proposed to be determined based on the following formula:

$$T = Q \times G \times K1 \times K2 \times R$$

In which:

T – Fee for granting the mining rights, in VND;

G – Unit price of mineral used for paying royalty, in VND/ (ton, m3, kg...);

Q – Reserve volume appraised by competent state authorities, in ton, m3...;

K1 – Mining condition co-efficient. K1 shall not be lower than 0.9 for open-surface (opencast) mining, and shall not be lower than 0.6 for underground (pit) mining;

K2 – Area condition coefficient. K2 = 0,5 in an extremely difficult socioeconomic condition area; K2 = 0,7 in difficult socioeconomic condition area; and K2 = 1,0 in other areas;

R – Coefficient in percentage of mineral reserves, which would range from 2 to 5 depending on specific types of minerals.

The latest draft also proposed that a mining company can select one of the following options for payment of the fee: (i) payment upfront before receiving the mining licence, (ii) payment for each period of five years, or (iii) payment on an annual basis. Increase in corporate income tax rate for certain precious minerals

- With the effect of the Law on Corporate Income Tax of 2008 from 01 January 2009, the rate of corporate income tax (“**CIT**”) is reduced from 28% to 25% for all businesses, except for those engaged in prospecting, exploring and exploiting oil, gas, platinum, gold, silver, tin, wolfram, antimony, precious stones and rare earths which are subject to an increase from 28% to a range of 32% - 50% (depending on each particular mineral). The Prime Minister will decide the

<sup>6</sup> Article 25.2 of Decree 15.

specific CIT rates within the range from 32% to 50% based on the proposal from the MOF taking into consideration the location, mining conditions and reserve/deposit of the relevant mine.<sup>7</sup>

- Nevertheless, the CIT rate of 50% has been fixed for prospecting, exploring and exploiting platinum, gold, silver, tin, wolfram, antimony, precious stones and rare earths with effect from the fiscal year of 2012.<sup>8</sup> In the case where 70% or more of the mine's area is located in a location having extremely difficult social-economic conditions, the CIT rate shall be reduced to 40%.
- Mineral exploitation projects are no longer entitled to CIT incentives with an exception for those projects licensed before 1 January 2009. Those projects will continue enjoying the incentives under the investment certificates for the remaining investment term.

#### **Increase in environmental protection charges for mineral exploitation**

New rates of the environmental protection charges for mineral exploitation have been introduced with increase and effect from 1 January 2012. Below are the rates for certain important minerals:

Minerals	Old Rate (VND per ton)	New Rate (VND per ton)
Iron	40,000	40,000 – 60,000
Manganese	30,000	30,000 – 50,000
Titanium	50,000	50,000 – 70,000
Gold	10,000	180,000 – 270,000
Rare earth	10,000	40,000 – 60,000
Platinum	10,000	180,000 – 270,000
Silver	10,000	180,000 – 270,000
Tin	180,000	180,000 – 270,000
Wolfram and antimony	10,000	30,000 – 50,000
Lead and zinc	180,000	180,000 – 270,000
Aluminium	10,000	30,000 – 50,000

<sup>7</sup> Decree 124 dated 11 December 2008 on CIT ("Decree 124").

<sup>8</sup> Decree 122 dated 27 December 2011 amending Decree 124 ("Decree 122").

Minerals	Old Rate (VND per ton)	New Rate (VND per ton)
Bauxite	30,000	30,000 – 50,000
Copper	35,000	35,000 – 60,000
Nickel	10,000	35,000 – 60,000
Chromite	40,000	40,000 – 60,000
Cobalt	10,000	180,000 – 270,000
Wall-covering and flooring stones, fine-art stones (granite, gabbro, ashlar, etc)	50,000	50,000 – 70,000
Block stone	10,000	60,000 – 90,000
Ores of gems	50,000	50,000 – 70,000
Stone for production of common construction materials	1,000	500 – 3,000
Stone of other types (for production of cement, industrial minerals, etc.)	2,000	1,000 – 3,000
Feldspar	20,000	50,000 – 70,000
Gravel, pebbles, grit	4,000	4,000 – 6,000
Sand	2,000; 3,000 and 5,000	2,000 – 4,000; 3,000 – 5,000 and 5,000 – 7,000
Soil and clay	1,000; 1,500; 2,000 and 5,000	1,000 – 2,000; 1,500 – 2,000; 2,000 – 3,000; 5,000 – 7,000
Fireclay	10,000	20,000 – 30,000
Coal	2,000; 4,000 and 6,000	6,000 – 10,000

Minerals	Old Rate (VND per ton)	New Rate (VND per ton)
Apatite	3,000	3,000 – 5,000

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<sup>1</sup> The Law on Minerals No. 60/2010/QH12 dated 17 November 2010, which took effect and replaced the old Law on Minerals of 1996 (as amended in 2005) from 1 July 2011.

<sup>2</sup> Decision 2427/QĐ-TTg dated 22 December 2011 of the Prime Minister approving the Mineral Strategy to 2020 with vision to 2030 ("Decision 2427")

<sup>3</sup> Official Letter 6033a/VPCP-KTN dated 30 August 2011 on enhancing the management of mineral activities ("Official Letter 6033a").

<sup>4</sup> Circular 08/2008/TT-BTC dated 18 June 2008 of the Ministry of Industry and Trade providing guidelines for the exportation of minerals ("Circular 08")

<sup>5</sup> Circular 18/TT-BXD of the Ministry of Construction dated 30 June 2009 on export of minerals for production of construction materials ("Circular 18").

<sup>6</sup> "Solid minerals" is defined in Circular 08 to include metallic minerals, non-metallic minerals and industrial minerals and exclude coal, minerals for production of construction materials, minerals for production of cement, oil and gas, hydrate, mineral water and thermal water.

<sup>7</sup> In case the mining right is granted by auction, this fee shall be called as "Price of winning auction for mineral exploitation".

<sup>8</sup> In case the mining right is granted by auctioning, R shall be "Successful bid", which is the value of the percentage of mineral reserves located in the area auctioned for mining rights (according to the fourth Draft of Decree on Auction of Mining Right).

<sup>9</sup> Decree 63/2008/ND-CP of the Government dated 13 May 2008 on environmental protection charges for mineral exploitation, as amended in Decree 82/2009/ND-CP dated 12 October 2009 (collectively "Decree 63").

<sup>10</sup> Decree 74/2011/ND-CP of the Government dated 25 August 2011 on environmental protection charges for mineral exploitation ("Decree 74").

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