

Amended Myanmar Mines Law: Streamlined Framework for Foreign Investment

On 24 December 2015, Myanmar parliament enacted the long awaited amendments to the two-decade old Myanmar Mines Law addressing the concerns of potential foreign investors and setting out a licensing framework with decentralized decision making. The changes are material and provide for an improved platform for foreign investors to explore new opportunities in relation to mining or joint-ventures with existing local permit holders.

Minerals covered

The amended Myanmar Mines Law contemplates three categories of minerals: (i) metallic mineral; (ii) industrial mineral; and, (iii) stone.

The amendments remove all references to gemstones, effectively eliminating it from the purview of the Myanmar Mines Law. Gemstones are covered by the Myanmar Gemstone Law, which was enacted in 1995 and last amended just recently in 2016. Notwithstanding anything contained in the amended Myanmar Gemstone Law, the notification by the Myanmar Investment Commission (“**MIC Notification 49/2014**”) prohibits foreign investment in prospecting, exploring, and/or producing gemstones.

Activities requiring permits from the Ministry of Mines

The amendments added two new activities (i) conducting feasibility study and (ii) sale and purchase of minerals. Foreign investors intending to engage in any or a combination of the following activities are required to apply for a permit from the Ministry of Mines (the “**Ministry**”) regardless of the type of mineral involved.

- (i) Prospecting
- (ii) Exploration
- (iii) Conducting feasibility study
- (iv) Large-scale production
- (v) Sale and purchase of minerals
- (vi) Mineral processing

Under this law, a permit is issued separately for each activity or as an integrated permit, for the purposes of mineral prospecting, exploration, feasibility study, production, processing, or sale and purchase. The law neither states whether a permit can be applied upfront for all stages of mining from prospecting to production, nor does it set out minimum conditions for the application of the permit. However, the Ministry is granted with the authority to prescribe such minimum conditions, in terms of duration of the project, size of the project area, investment amount, machineries, and technology, for each level of production, as well as to formulate and enforce rules, regulations, directives and other by-laws pursuant to the law with the approval of the Union Government.

It remains to be seen whether the Ministry would be willing to issue a permit upfront for all stages of mining from prospecting to production, or would as a matter of practice prescribe and commit specific thresholds or milestones which would support the issue of a permit for production activities following the exploration or feasibility stages.

The approval of the Union Government is necessary for the granting of permits for prospecting, exploration, conducting feasibility studies, large-scale production, processing, sales and purchase of minerals to a foreign investor. This is secured by the investor seeking an investment permit from the Myanmar Investment Commission under the Foreign Investment Law. Such application should be made after the investor has negotiated and finalized drafts of any agreements which it proposes to enter into with the Ministry of Mines in connection with its proposed mining project. If such application is successful, it will result in the issuance of an investment permit in favor of the investor followed concurrently or shortly thereafter by the relevant permits from the Ministry.

In the event that an investor intends to engage in mineral processing whereby minerals to be processed will be purchased from another source instead of producing them, a permit for sale and purchase of minerals will also have to be applied for in addition to the permit for mineral processing.

Size of production and term of permit

The amended Myanmar Mines Law contemplates four levels of production namely large-scale, medium-scale, small-scale, and subsistence production. The distinction is based on the size of the mineral deposit, amount of investment needed, and level of technical know-how and methods involved. The Ministry is authorized to prescribe specific thresholds for distinguishing the four levels of production in accordance with the law.

The Myanmar Mines Law does not expressly prohibit foreign investment in medium-scale and small-scale production of minerals. Nonetheless, the MIC Notification 49/2014 prohibits foreign participation in both medium-scale and small-scale production of minerals, which appears to imply that foreign investors may invest only in large-scale production.

The definition of large-scale production largely remains unchanged - commercial production requiring substantial investment and high level of technical know-how and methods. The permit duration is stated in the definition as ranging from above 15 up to 50 years.

Participation by the Ministry in mineral production

The amended law stipulates that the Ministry participates in mineral production by way of a production sharing arrangement (an arrangement whereby profits are shared in accordance with the contribution made to the project) or a benefit sharing arrangement, with the investors. Whilst such is already the case in practice as contemplated under the Myanmar Mines Rules of 1996, this requirement for mandatory participation by the Ministry is now addressed in the law and relates only to mineral production. Additionally, the relevant provision under the amended law also takes into account the costs incurred for environmental impact assessment under the sharing arrangement with the Ministry, and allows such costs to be borne as part of the joint operation costs.

Joint-venturing with existing permit holders

Medium-scale or small-scale production permits, mineral processing permits, sale and purchase permits with investments from Myanmar citizens can convert into large-scale production permit with foreign investment depending on the amount and quality of the mineral deposit for any of the three classifications of mineral. An application has to be made to the Ministry. As above, the Ministry is required to seek the approval from the Union Government before granting the new permit with foreign investment.

Continuity

The amended law prescribes that the relevant authority shall grant the production permit to investors when they have conducted prospecting, exploration, and feasibility studies on the same plot and apply for a production permit and comply with the prescribed requirements.

Restricted minerals

The amended law envisages restricting certain minerals by the Ministry via the issuance of notifications. The restricted minerals are not stated in the law; the nature of the restriction is also not specified. Investment safeguards are conferred upon the investor under the Foreign Investment Law pursuant to the issue of the relevant investment permit from the Myanmar Investment Commission.

Royalty

The royalty for metallic minerals range from 3% to 5% and for industrial minerals and stones is 2%. The royalty will be calculated based on the international price and the amount of refined mineral.

The royalty can be changed only by way of amending the law. Notably, however, the Ministry is granted with the authority to prescribe the royalty to be paid for minerals obtained from mineral prospecting or exploration, exempt any royalty in whole or in part for the purpose of promoting production of certain minerals, exempt payment of royalty on mineral samples obtained by the government department or organization for the purpose of assay analysis or examinations, defer payment of royalty due for such a period it may determine, and to assess provisional royalty during the period where it is impracticable to assess the exact amount of royalty due for whatever reason.

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