

Vietnam's New Law on Geology and Mineral Resources

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Vietnam has an abundance of mineral resources including aluminum, wolfram, coal, titanium, rare earth elements, apatite, copper, zinc, lead, iron, molipden, gold, serpentine, kaoline, falspat, graphite, quartzite, and more. To date, about 4,000 quarries have been licensed. The new “gold rush” for valuable mineral resources has begun. Both foreign and domestic investors have serious plans to explore this market.

Mineral resources are important public assets and are administered by the State. Administration and exploitation are regulated by the Mineral Law. The National Assembly has recently replaced the existing law with “*The Law on Geology and Minerals*” (the “**New Law**”). It will become effective on July 1, 2025. The New Law is aimed to promote development of the mining industry in a sustainable and efficient manner. The New Law now deals with both mineral resources and geological matters. This Article will discuss notable points and changes incorporated into the New Law.

A glance at the New Law. The Mineral Law was issued in 2010. Since then, several laws have been issued or amended (the Land Law, the Construction Law, the Planning Law, the Investment Law, the Law on Environmental Protection, the Law on Management and Usage of Public Assets, and others). The New Law aims to be consistent with changes in these other laws.

The New Law contains 12 Chapters and 111 Articles. It deals with: general policies; strategy and planning as they relate to geology and mineral resources; geological baseline surveys; geological surveys on mineral resources; mining areas; the usage of land, water surface, ocean areas and infrastructure for mineral operations; mineral operations; and recovery of mineral resources. The New Law also involves mineral processing; environmental protection and closure of mines; management over exploration and exploitation of sands and gravel from lakebeds, riverbeds and sea areas; gathering and treatment of geological and mineral data and information; royalties and auction of concessions; the State’s administration; and transitional regulations. The New Law provides only general regulations. As is normal, details will be elaborated upon in implementing regulations.

For ease of understanding, our discussion and summary of the New Law are presented in the form of questions and answers. Our answers to certain questions will need to be revisited once implementing regulations of the New Law are issued.

What is the scope of the New Law?

The old Mineral Law covers only mineral-related matters. The New Law has been broadly expanded. The New Law deals with both mineral resources and geology. Note that the exploration and exploitation of petroleum resources and natural water (other than mineral water and hot spring water) are not governed by the New Law. They are covered in different laws.

Is there a concept of “private ownership” over land and mines in Vietnam?

Land and mineral resources cannot be owned either by individuals or by entities, whether they are Vietnamese or foreign. The Constitution provides that land and mineral resources are public assets that are owned by the entire people, and which the State administers. In its exercise of the people’s ownership rights, the State can (i) lease a piece of land to individuals or entities to use in accordance with the Land Law, and (ii) grant a concession to explore/exploit minerals under the New Law.

Is there a concept of “mineral resources” in the law? What is it?

“Mineral resources”, as defined in the New Law, means a concentration of naturally occurring solid, liquid, or gaseous materials which exist underground or on the surface, including minerals in mine waste dumps. Under the New Law, mineral resources are classified and divided into four groups¹:

- Group I includes metallic mineral resources, energy-based mineral resources, industrial minerals, precious stones and semi-precious stones, The New Law contains only the concept of “mineral resources”. Rare earths are not specifically identified. Based on the definition in the New Law, “rare earths” can be “mineral resources”. Under the New Law, mineral resources are classified and divided into four groups. Rare earths as metallic mineral resources and minerals are included in Group I;
- Group II includes mineral resources which are used in the construction industry to produce cement, construction glass, ceramics, floor tiles, stones for handicraft, industrial limes, fire-proof materials;
- Group III includes “brown” coal, natural mineral water, natural hot water and mineral resources which are used to produce ordinary construction materials--other than construction materials in Groups II and IV; and
- Group IV includes mineral resources used only for land grading, foundations for construction work, irrigation work, including clay, soil, soil with stone, sand (other than sand explored from lakebeds, riverbeds and sea areas).

¹ Article 6 of the New Law.

The regulatory requirements and licensing procedures for each Group are different. For example, a mining project that exploits mineral resources in Groups I and II must be included in the national master plan, which is subject to the Prime Minister's approval, whereas a mining project that exploits mineral resources in Group IV need not be included in the national master plan.

What is the right to conduct a geological survey on mineral resources?

The New Law provides that geological surveys on mineral resources will be conducted by the State in accordance with an approved plan. The Ministry of Natural Resources and Environment (“MONRE”) is responsible to submit a program to conduct geological surveys of mineral resources. The Prime Minister approves programs. The private sector can participate in these programs if approved by the Prime Minister.

What is the right to conduct exploration activities?

The State conducts exploration of strategic and critical mineral resources. That includes mineral resources with high economic value and a large demand. The State may allow the exploration of strategic and critical mineral resources under inter-governmental agreements between Vietnam and other countries.

As discussed, a private company may participate in a geological survey on mineral resources. However, the company must bear the surveying cost. In return, the company will receive certain privileges. For example, it will have priority to receive a concession to explore mineral resources within the surveyed area. The priority period is 36 months from the date on which the result of the survey is recognized. Of course, the company must obtain a mineral exploration license.

To conduct mineral exploration, a foreign company must have a representative office or a branch in Vietnam. It must also meet conditions in the New Law. The New Law (*Article 38*) provides general conditions for an entity to receive a mineral exploration license: (i) incorporated in its home country; (ii) have technical personnel with university geology (or equivalent) degrees and have appropriate experience and have a deep knowledge of technical regulations and standards used in exploration; (iii) it must have appropriate technical workers in the relevant fields. The Government will issue guidance on particular conditions necessary to receive a mineral exploration license.

What is the regulatory process for an investor to obtain a concession to exploit minerals?

A concession to exploit minerals is subject to public auction. Periodically, the State will identify mining projects that are subject to public auction. For security and defense purposes, certain mining projects--those situated within boundary belts or restricted areas, or which are “reserved” for an investor conducting a geological survey on mineral resources or which are

located in certain areas having strategic and critical mineral resources--are not subject to public auction. In such circumstances, the State will select among mining companies that are qualified to implement these projects.

The State may allow the exploitation of strategic and critical mineral resources by certain foreign mining companies under inter-government agreements with Vietnam.

Note that the number of mineral exploitation licenses for EACH type of mineral resource issued to ONE entity is limited to five licenses. The Prime Minister may nevertheless approve and issue additional licenses (in excess of five licenses).

What is the maximum term of a mining license?

- The term of a mineral exploration license may not exceed 48 months. The term may be extended, but the extended time may not exceed 24 months.
- The term of a mineral exploitation license must not exceed 30 years. The term may be extended, but the extended time may not exceed 20 years.
- The term of a license to exploit residual minerals must not exceed 10 years. The term may be extended, but the extended time may not exceed 5 years.
- The term of a license to exploit sand and gravel from lakebeds, riverbeds and sea areas must not exceed 10 years. The term may be extended, but the extended time may not exceed 10 years.

Can an investor assign its concession to explore/exploit minerals?

- An investor licensed to explore minerals may assign its right to explore, provided that the investor has already implemented at least 50% of the projected exploration cost. An assignment is subject to approval by the competent state authority.
- An investor licensed to exploit minerals may assign the right to exploit, provided that the investor has completed construction work and puts its mine into operation. The assignment must be approved by competent state authorities.

What are the regulatory authorities for the mining industry? And what are their responsibilities and jurisdiction?

The Government and MONRE are authorized to oversee the mining activities at the highest level. The Government is responsible to issue implementing regulations under the New Law. The Prime Minister is authorized to approve (i) a 10-year strategy for geology, mineral

resources and the development of the mining industry and (ii) the planning for mineral resources in Groups I and II.

Among other rights and responsibilities assigned, MONRE is authorized to grant exploration and exploitation licenses for minerals in Groups I and II. MONRE is also responsible for (i) submitting a list of mineral areas (minerals in Groups I and II) which are not subject to auction, to the Prime Minister for his approval; and (ii) issuing implementing regulations under the New Law.

People's Committees are authorized to oversee mining activities at the local level. Provincial People's Committees are authorized to: (i) issue exploration and exploitation licenses for minerals in Group III and exploitation licenses for minerals in Group IV; (ii) evaluate and approve the plan and report on the assessment of potential minerals in Group III and Group IV; (iii) issue a list of mineral areas (minerals in Group III and IV) which are not subject to auction.

What are the financial obligations of a mining company?

Mining companies are responsible for satisfying the following financial obligations to the State budget: (i) taxes, fees and charges in accordance with regulations; (ii) reimbursement of costs funded by the State to explore and to assess potential resources; (iii) royalties to receive a concession to exploit minerals.²

The New Law does not provide detailed regulations on the determination of taxes and fees because these obligations are set out in tax laws and related regulations. Typically, a mining company is subject to the following taxes: (i) natural resources tax (at rates ranging from 1% to 35%); (ii) corporate income tax; (iii) land use tax imposed on non-agricultural land; (iv) export duties (in case of export). Royalties must be paid on an annual basis regardless of whether the mining companies have commenced commercial operations. A natural resources tax must be paid regardless of whether mineral resources are being processed or remain in inventory.

There is another financial obligation. The mining company is required to make an annual deposit with the Vietnam Environmental Protection Fund in order to secure post-mining restoration. The deposits will be refunded to the mining company after it has completed required post-mining restoration. The amount of the deposits is determined and based on the estimated cost to restore the project. These costs are approved by the mining licensing authorities before a quarry can begin to operate.

Interestingly, mining carries no entitlement to tax concession. Indeed, taxes may exceed those on normal commercial or industrial activities.

Provincial People's Councils are authorized to issue regulations on financial contributions applicable to mining companies. The contribution will be used to improve, maintain and construct infrastructure and works for environmental protection at the mining site³. The

² Article 95 of the New Law.

³ Article 8 of the New Law.

Government (not Provincial People's Councils) is responsible to provide detailed regulations on contribution amounts, procedures and usage of this fund.

Are there restrictions or limits on mining operation?

To ensure national defense and security, to prevent and mitigate impact on the environment and on cultural and historical places, to protect the forest, and for important existing or planned infrastructure work, state authorities may impose limitations on the exploration and exploitation of mineral resources. Limitations may include one or all of the following:

- a) Entities and persons allowed to explore and exploit the mineral resources;
- b) Exploitable capacity;
- c) Term within which exploitation of mineral resources is allowed;
- d) Area and depths allowed to be mined; and
- e) Methodology to explore and exploit mineral resources.

Provincial People's Committees, upon consultation with MONRE are responsible to specify restricted and temporarily restricted mining zones and to obtain the Prime Minister's approval.

Are there limits on the land area of an exploration project?

Subject to the type of minerals, the size of permitted exploration areas may vary. An exploration area may NOT exceed: (i) 100 square kilometers (km²) for coal, bauxite; (ii) 50 km² for precious stones, semi-precious stones, metallic minerals (other than bauxite); (iii) 10 km² for non-metallic minerals on land, except for mineral resources in Group III; and (iii) 200 km² for minerals in sea areas, except for mineral resources in Group III. The Prime Minister has jurisdiction to extend exploration area (in special cases where a larger area is required); (iv) two km² on land, 30 km² in sea areas for mineral resources in Group III, except for natural mineral water and natural hot water.

There are two exceptions: (i) the exploration area for natural mineral water and natural hot water is determined per each project; (ii) the exploration area of an exploration project--which explores strategic and critical minerals, and which is implemented under an inter-government agreement--will be determined under that inter-governmental agreement.

What are the general requirements on the closure of a quarry?

When a quarry is closed, mining companies are required to: (i) submit a closure plan for approval by the licensing authorities; (ii) remove all assets from the site within six months of the expiry of the license; and (iii) rehabilitate the environment and the land. Thereupon, the annual deposits made to the Environmental Protection Fund will be returned.

What happens to a mining project that was licensed before the effective date of the New Law?

The New Law contains a transitional provision that allows entities and individuals already licensed to continue until expiration of their mining operation license. In case of renewal or amendment or transfer of the mining operation license, or in case of closure of a quarry, mining companies must comply with the New Law.

The existing Mineral Law remains in effect until 1 July 2025. Several implementing regulations of the existing Mineral Law have been issued (ie, the Government has issued 12 decrees and four decisions; the ministries have issued 60 circulars). These implementing regulations will be amended or replaced by new regulations once the New Law becomes effective. It can be expected that issuance of new implementing regulations will be prolonged, and that implementation of the New Law may be delayed. Provisions in the new implementing regulations must be consistent with the underlying law.