Mining Law Amendment in Myanmar

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Ministry Reorg

- Reorganization of Ministries under the new government.
- Ministry of Mines and Ministry of Environmental Conservation and Forestry are being merged to form a new ministry named “Ministry of Natural Resources and Environmental Conservation”
- Matters relating to mining industry not likely to change.
Myanmar Mines Law 1994

- Promulgated in 6 September 1994
- Rules stipulated in 30 December 1996
- Adoption of Market Oriented Economy
- Myanmar Gemstone Law also promulgated in 1995 followed by Rules in 1995
Rationale for amendment

- **Minerals** - Gemstones administered under different law.
- **Types of Permits** - Corresponding to type of business activity
- **Regional Authorities** - Authority delegation for some types of permits
The Law Amending Myanmar Mines Law

- The law amending the Myanmar Mines Law was promulgated on 24 December 2015.
- The Regulation for implementation of the law still in process.
- Amendments to be in force after the stipulation of Regulations accordingly.
Amendment with regard to Definitions :-

(1) **Definition of “Gemstones”** is deleted in the Amendment in order not to repeat with Myanmar Gemstones Law/

(2) **Definition of “Permit”** covers newly prescribed types of permits for “Feasibility Study”, “Mineral Processing”, and “Marketing” which will be permitted on their own nature of activity
• (3) **New category** of production permit for “Medium Scale Production “prescribed.

• (4) **More precise language** used for terms such as “permit” “exploration”, “feasibility study”, 

5/15/2016
Types of Permits

• **Type of Permit** corresponding to
  Size of Mine,
  – Nature of business activity

• **Opportunities for Foreign Investment**
  -Types of Activities
## Types of Permits (1/5)

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Section 11 of Amended MML prescribes that the classification of size of mine as to large or medium or small shall be defined by the Ministry depending on:

- Life of Mine project
- Area covered by the mine Project
- Amount of Capital invested
- Machinery and Equipment used
Types of Permits (3/5)

Large Scale Production permit

- Significantly economic Deposit, Heavy Investment, Complex Technology, 15-50 years of mine life

Medium Scale Production Permit

- Economic deposit, medium investment, not so complex technology, up to 15 years of mine life
Types of Permits (4/5)

Small Scale Production Permit
Low investment, up to 10 years of mine life

Subsistence Permit
Mostly hand tools, limited horse-power permitted for only one year
Types of Permits (4/5)

- **Mineral Processing Permit**
  
  Doing processing techniques to upgrade the quality or value of the mineral from low condition to higher condition

- **Mineral Marketing**
  
  Selling, purchasing, transport and storage of produced minerals
Regional Committees  (1/2)

- Drafting of Regulations still in process
- Regional Committees shall be established with the approval of the Union Government for scrutinizing and issuing permits for small scale, subsistence, mineral processing and marketing of metallic minerals, industrial minerals and rocks in the respective regions/states.
- Amendments to be in force after stipulation of Regulations

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Regional Committees (2/2)

- Persons desirous of applying Small scale mineral production, Subsistence production, processing and marketing of metallic minerals industrial minerals and rocks shall submit their application to “Regional Committees for scrutinizing and issuing Mineral Permits” in accordance with the Regulations.
- Medium and Large scale permits only by Union Ministry.
Types of Investments

Ministry with the approval of the Government can issue Large Scale Production Permits for Foreign Investment

Medium Scale and small scale reserved for local investment

Local invested Medium Scale and Small Scale projects which are economically viable to be promoted to large mines can invite foreign investors to get Large Scale Production Permits with the approval of the Ministry.
Mineral Production Contracts in current practice in Myanmar

- A number of mineral agreements have been signed between respective enterprises/departments under the Ministry of Mines and foreign companies after Market Oriented economic system was adopted in Myanmar in 1988.
• Essential terms according to Laws include;- Dead Rent, Royalty, Taxes and Dues

Terms to be proposed by the Company and be negotiated between parties include;- Signature bonus, Performance bank guarantee

The terms of PBG must be in strict compliance with those of the main Agreement.
• Along with the standard clauses for legal matters, detail technical terms and condition of work program for Prospecting, Exploration, Feasibility Study, Development stages are mentioned.

• Rights and obligations of both parties regarding, reporting material importation, immigration, mandatory appointment of Myanmar nationals, and.. the company’s representatives to abide the laws of Myanmar, are stipulated.

• The department/ enterprise are mainly responsible for acquiring all essential governmental approvals for efficient execution of works,
• Assistance by respective government enterprise for doing air-borne geophysical, geochemical methods as and when needed, draw back of equipments such as drilling rigs, use of telecommunication equipment, etc are common terms generally included in exploration agreements.

• Banking and currency rights, use of expatriates, use of sub-contractors, Protection of environment, etc are significant terms in the agreements.
• Settlement of disputes initially by amicable solutions and to be carried on only after no settlement resulted. Myanmar is now referring internationally accepted regulations such as UNCITRAL Rules.

• Generally accepted accounting principles are to be applied in all financial matters.

• The essential maps, time schedules, and other relevant appendices such as production split ratios etc are attached as the integral part of the Agreement.
Contents of Agreements (5/5.)

• The split ratio to be shared between parties in the production sharing contracts are negotiable and to be agreed between parties.

• The determination of the split ratio always based on win-win situation.
Taxes and Duties

• **Dead Rent** - to be paid at a specified rate on the land surface area occupied

• **Royalty** - to be paid on the proceeds of sale of mineral produced

• **Production Sharing Ratio** - to be paid depending on the terms and condition of the Production Sharing Contract.

• **Corporate income Tax** – to be paid on the taxable income in accordance with the Tax Law
Mining operations enlisted to be qualified for prescribed threshold amount of revenue will be subjected to EITI standards whereas other small mines are considered under different norms.
Environmental Obligation

- All types of mining activities will be subjected to respective categories of environmental impact assessment procedures.
Environmental Obligation

• Obligation for reservation of Funds for environment management expenses and mine closure expenses will be observed
• The Environmental Conservation Law was promulgated on 30 March 2012 providing terms for sustainable development in the mining sector.

• The Foreign Investment Law was promulgated on 2 November 2012 providing conducive terms for foreign investors.

• Yangon Stock Exchange kicked off on 25 March 2016 paving the way for capital market.
Way Forward (2/2)

- Myanmar is on the way to become a member of EITI countries providing assurance for investors in terms of transparency and accountability promoting the share holder confidence.
- Opportunities on down stream products and Research and Development in the mineral industry
- Geographically in a strategic location for marketing of mineral based commodities.
With the wealth of mineral resources yet to be exploited across the country, Myanmar mineral industry will find its way for larger share in national GDP
Thanks for your Kind Attention

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