

July 30, 2009

# Drafting of a New Mineral Law for Vietnam

Discussion on suitability of a  
Contract of Work and Auction/Bidding  
Structures for Viet Nam

*Commentary by the VBF Mining Working Group  
Hilton Hotel*

# Investors *key concerns* with current law

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- Security of tenure – no automatic right to proceed from exploration to mining
- Lack of fiscal stability in taxation of minerals
- Unrealistic time frames for each phase of operation
- Area limitations too small to justify use of latest technology
- Poor inter-ministry understanding of the mining law and inconsistent interpretation by provincial and local government bodies
- Lack of lead agency with the authority to effect timely and definitive resolution of disputes
- Processing of applications & renewals is time consuming and inconsistent with international practice

# Contract of Work – Key Features\_1

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1. Long term contract between Investor & Government (Prime Minister signs) – has virtually the same status as a law
2. Provides clear security of tenure from exploration through development, operation & closure
3. Provides security of investment through immunity from changes in laws after signing
4. ‘One stop shop’ – which embraces all relevant ministries and once granted eliminates need to apply for further licenses. Progression between phases is by election of investor (within time constraints)
5. Sets out realistic timetable for progression from exploration to development & production
6. Sets fee structure, minimum work expenditures and relinquishing requirements in line with timetable
7. Work programs are determined by the investor and do not require prior approval
8. Fixes fiscal regime for life-of-mine

# Contract of Work – Key Features\_2

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9. Guarantees receipt of timely approvals for construction/processing/export/import
10. Details investors social and environment responsibilities
11. Establishes clear lines for revenue sharing between investor, national government, province, community and any other stakeholders
12. Provides undertaking on employment and training of nationals and non-nationals
13. Provides clarity on mechanism for expansion
14. Tried & tested over time (Indonesia) – broadly accepted by most stakeholders, especially where mining sector is in early stage of development
15. Offers consistent treatment countrywide and eliminates/minimises differences in interpretation between provinces
16. Administered by a lead agency with clear lines of authority
17. Recognizes international law and international standards

# CoW in the Viet Nam context

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## Impact on investors perception of VN:

1. Addresses security of tenure concerns
2. Addresses stability of key fiscal conditions & provides security of investment for life of project/contract
3. Allows opportunity for negotiating special conditions for specific projects without need for amendment to existing 'general' legislation
4. Provides consistency of application countrywide
5. Provides greater transparency for all stakeholders

## Implications to VN Govt:

1. Major shift from current system & will need to appoint & empower key agencies and strengthen central administration capabilities
2. Will eliminate favoritism and reduce opportunity for manipulation
3. Will facilitate amendment & modification over time
4. May incur resistance from provincial authorities – particularly where vested interests are in jeopardy
5. Will need cross-ministry (including MOF, MPI & MOIT) support

# Contract of Work - Timings

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The CoW sets out a realistic timetable and length of time for each phase based on practical knowledge of the international mining industry from prospecting through to production:

Preliminary/General Survey (Prospecting) Period	1yr + 1yr
Exploration Period	3yr + 1yr + 1yr
<b><u>Total time for continuous prospecting/exploration</u></b>	<b><u>7 yr</u></b>

Feasibility Study	1yr + 1yr
<b><u>Total time to decision to mine and start of construction</u></b>	<b><u>9 yr</u></b>

Construction Period (may be extended on application)	3yr
<b><u>Total time to commencement of production</u></b>	<b><u>+12 yr</u></b>

# Core provisions for a 'Standard' CoW

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## Typical 'Standard' (fixed) provisions

- Permitting timeline, fees, relinquishment etc
- Key fiscal & taxation terms
- Protection against material changes in law
- Sharing of project revenue/benefits
- Social & environment obligations
- Protection and rights of minorities
- Reporting requirements
- Fee structures and penalties
- Transferability & grandfathering
- Environment & social undertakings & obligations
- Dispute resolution provision

## Typical negotiable considerations

- Special incentives for project scale, complexity etc.
- Incentives for deep processing & technology transfer
- Provision of infrastructure by investor/government
- Provision of community services (medical, education etc.)

# Bidding/Auction

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Although different in purpose both **Bidding** (to carry out exploration on behalf of the government) and **Auctions** (of certain mineral assets) by the State precipitate similar concerns & characteristics:

- Is there enough info available to attract the ‘right’ kind of companies?
- What are the pre-qualification criteria for would-be bidders?
- What is the basis for determining winning bid – technical, financial?
- Which ministry or authority would be the lead agency?
- Would successful bidders have to negotiate/apply for a mining license or some other operating contract (eg a CoW)
- Opportunity for bribery/corruption is significant
- What role will provincial or local authorities play & what happens if they disagree with the selection of the winner?

# Other considerations

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- Mineral agreement structure should incorporate different options to address special requirements of:
  - Industrial minerals (quarrying etc)
  - Large scale (>\$500M) projects
  - Small scale artisanal mining
- Need to provide a level playing field – ie foreign & local investment treated the same
- Viet Nam's skills shortage and track record in project development
- Address the detail through issuance of “Implementing Rules and Regulations” rather than in amendments to the Law
- Effective, consistent & transparent implementation is essential – violations (especially environmental) should be made public and penalties must be enforced
- Institutional capacity need strengthening

# Conclusions

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## **Bidding**

- Introduction of a widespread bidding process will not address prevailing investor concerns and consequently is unlikely to attract major investment interest. However it could be considered for in the case of any specific 'advanced' or world class projects (eg coal, bauxite, mineral sands)

## **Contract of Work**

- Introduction of a CoW structure for medium and large scale projects would be a positive development. However it will have to be accompanied by appropriate amendments to the existing law, identification of a lead agency and strengthening of the central administration capacity

# Recommendations

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1. Regardless of the introduction of any new structures (bidding, auctions or CoW) the core weaknesses and inconsistencies in the current law should still be addressed.
2. The basic permitting and licensing structure should be retained *but amended in accordance with previous MWG submissions*
3. A 'lead agency' must be appointed and given the responsibility & authority to manage the development of the nations mineral resources
4. VN govt must utilize the experience of independent & suitably qualified 3<sup>rd</sup> parties consultants as offered by the World Bank

# Thank You

*The VBF Mining Working Group  
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