

Comments on Proposed New Mineral Law – Draft 5

*Steven Dudka
Archipelago Resources Plc.*

I would like to express my thanks for the opportunity to review the 5th draft of the new Mineral Law and to make comments.

I am sure that several other contributors will address a number of the same issues as we all strive to create a favorable framework for the development of the mining industry in Vietnam.

I would like to present some of my concerns and offer some suggestions for consideration.

Chapter 1, Article 5 clause 5

Division of a potentially large scale mine into multiple areas for smaller scale development is not allowed.

I would like to state that this is viewed as a necessary and wise change back to a policy which has been implemented in the past. The degeneration of effective management of licensing and oversight of mineral activities under provincial authorities has been clearly visible in recent years. The inadequately funded, poor skill and low capacity level of provincial departments has resulted in reckless mining and serious environmental destruction in some provinces.

Due to division of large deposits into small scale mining parcels for exploitation by small inexperienced local enterprises the quality of mineral deposits that could have been effectively mined at large scale, with increased recovery of mineral resources, have been degraded and may now be uneconomic to recover lower grade zones.

Chapter III, Article 17, Clause 2

Entities or individuals funding geological baseline studies for mineral resources shall be given priority when participating in auctions of the exploring – mining rights of the new minerals found in the surveyed areas.

The meaning of “given priority” in this clause is unclear and will not provide confidence for private sector investors to undertake funding of “geological baseline studies”. This is one of the highest risk activities undertaken during the overall process of discovery of new mineral deposits. My understanding of the current draft (No.5) is that there is no security of tenure for any discovery made during these activities. What does “priority” really mean? Is this a first right of refusal as in Article 41, clause 1d)? What is the incentive for any investor to invest in baseline studies?

Also, no size limit is stated for the area to be approved for “Baseline Studies”.

Chapter IV, Article 19, Clause 1

Areas of mineral exploring and mining include:

- 1. Areas subject to auction of mineral exploring – mining rights, and areas subject to auction of mining rights;***

In general I do not believe that auctioning of rights is the best way to advance development of the mineral mining industry in Vietnam. Some members of the National Assembly have expressed concerns over this idea and how it can be effectively implemented. It is my opinion that auctioning off of exploration and mining rights will lead to misreporting and misrepresentation of the true size, grade and nature of mineral deposits. Those people or groups preparing reports detailing these aspects of a new discovery proposed for auctioning will have strong reason to understate the actual situation and geological merits of the discovery and then find ways to ensure they are the winners of any auction. Understating the size and grade of newly discovered mineral deposits will add support to the auction winner's application for incentives related to taxes and fees and guarantee the ability to underreport mineral product production thus reducing financial benefits to the Government.

If auctioning is adopted, in order to attract serious investors and increase investor confidence to participate in the bidding, the fiscal terms of the project must be clearly defined prior to commencement of bidding and such terms must be fixed and secured for the term of the mining project.

Chapter IV, Article 20, Clause 1

Areas of restricted mineral-related activities include areas where mineral-related activities are limited in order to protect environment, natural landscape, historical and cultural sites, national defense and security facilities, specialized forests and infrastructures.

To encourage private sector investment these areas should be clearly and completely shown on maps that are available for potential investors to view at offices of Provincial authorities, when investors secure permissions to undertake field surveys as allowed under Article 36, and prior to preparing applications for mineral exploration. This will save time and money for both investors and Government.

Chapter VII, Article 38, Clause 1 e)

Exploration cost estimates are calculated based on unit prices set by relevant state authorities

The intent of this clause is well understood for State-funded projects but in many ways it is impractical to enforce State-regulated pricing on non-state / private sector (Vietnamese and foreign) investors who are answerable to boards of directors, banks, investors and stock exchanges. It is my belief that a non-State entity recognized by Vietnamese authorities as qualified to undertake mineral exploration activities should also be qualified to make decisions about changes to exploration programs based on results and

exploration expenditures required to achieve successful results leading to mineral production.

The fees charged by highly skilled overseas contractors and foreign experts do not conform to prices set by State authorities.

Chapter VII, Article 40, Clause 2 b)

Mineral exploration licenses shall be issued for areas on which no entities or individuals are conducting legitimate mineral exploration or mining activities; and which are not part of banned, temporarily banned areas for mineral-related activities or areas where geological baseline studies for mineral resources are taking place for the particular type of mineral being applied for exploration, except for the cases specified in point dd, paragraph 1 of this Article.

The context of the wording “areas where geological baseline studies for mineral resources are taking place for the particular type of mineral being applied for exploration” is unclear. Does this mean that if an approved entity is undertaking “geological baseline studies” that no individual or entity can apply for an exploration license within the boundaries of the approved geological baseline study area?

Chapter VII, Article 41, Clause 2 a)

to pay licensing fee, exclusive exploring right fee, performance bond, compensation fee for national mineral resources data and information and other financial liabilities as specified by the law;

The indicated “fee for national mineral resources data and information” is of concern. This fee needs to be clarified. This seems unreasonable to pay for historical “baseline data” or other data at the exploration stage of project development.

Chapter VII, Article 43, Clause 2

In case the entity or individual specified in paragraph 1 of this Article has applied for a mining license or been granted a mining license, however, the reserve applied for or allowed for mining under the license is smaller than the previously approved reserve, the licensing authority reserves the right to grant a mining license to another entity or individual for the remaining deposit; providing that the entity or individual so licensed compensate the respective exploration expenses to the entities or individuals that conducted the exploration.

This clause is in conflict with the ideas presented in Article 5, Clause 5 regarding not splitting large mineral deposits into small pieces.

Also the possibility that the Government could decide not to issue a mining license covering all of the approved mineral reserves in a deposit to a suitable company reduces security of tenure and confidence for investors. The wording in this clause is very poor

and will certainly cause significant concern for potential investors. Who might be permitted to mine these extra reserves in question?

In Regards to Timing of Review and Granting of Licenses

Licensing authorities must be required to issue decisions regarding licenses within a strict timeframe. Timeframes stated in relevant mineral legislation are reasonable but authorities do not work within these time limits. For example, when a company applies to extend the term of its exploration license it should not take half of the requested term of the extension to have an approval granted for such extension. To the best of my knowledge, since enactment of the Mineral Law in 1996, not one exploration license has been granted within the indicated legal time frame for review of the application dossier. Clearly the Government authorities are not required to complete their work tasks within the legislated time, but investors are forced to complete exploration and feasibility works in unreasonably short periods (by International standards) and if they do not then their license will likely be revoked or threatened to be revoked.