

MEETING MINUTES ON AMENDED MINERAL LAW DRAFT

Time: 9:00 am-11:30 am on Tuesday, April 6, 2010

Venue: Office of the National Assembly, 37 Hung Vuong, Hanoi

Participants: See Appendix 1, Participant List

AGENDA

- Opening and Introduction
- Comments from VBF Mining Working Group and mining enterprises
- Response and conclusion

I. OPENING

Mr. Le Quoc Dzung, Vice Chairman of the National Assembly's Economic Committee

The NA's Economic Committee appreciates the consultation of representatives from enterprises operating in exploration, mining, and mineral processing in Vietnam and expects many useful comments on the draft law.

Today's meeting participants from the NA and government included standing members of the Economic Committee, leaders and experts from the Department of Economics (NA Office), and representatives from the government's drafting team of the amended mineral law.

Amended Mineral Law Issuance Schedule

The amended mineral law (Draft) is expected to be submitted to the National Assembly in May, 2010 for initial review and in October, 2010 for final appraisal. Then it will be adopted.

Rationale for Amending the Mineral Law

The Mineral Law was enacted in 1996, amended in 2005, and applicable for 13 years. This time, the amendment will address inappropriate regulations and respond to changes in the mining industry. Comments from foreign invested enterprises operating in the mineral sector in Vietnam will be considered and reflected in the new mineral law.

II. COMMENTS FROM BUSINESSES

Mr. Rob Guest, Head of the VBF Mining Working Group

Introduction of MNG

- The group consists of private companies focusing on metal mining, mainly gold, silver, and base metals (copper, nickel, zinc, chrome, etc.)
- Most of companies in the group use exploration and mining technology from Western countries which have a long history of mining (Canada, Australia, America, New Zealand, Europe).
- Vietnam is considered a country in the early exploration period.

Foreign investments in the mining sector

After the government raised taxes and issued policy changes for the management of mineral resources, foreign direct investment in the mining sector declined from \$98 million in 2008 to \$29 million in 2009.

State management on mineral resources

- It is a positive development that the draft law now centralizes the state management of mineral resources in one lead agency, the Ministry of Natural Resources and Environment (MONRE). However, there is still much overlap with the jurisdiction of the provinces which needs to be clearly defined to avoid complications in future implementation.
- The preparation of the Mineral Master Plan is still inflexible and as a result, it will greatly limit the ability to discover new mines.
- There are few definitions provided in the draft. Many basic concepts need to be clearly defined (resources, reserves, feasibility studies). If the basic definitions are not provided by the law, they should be provided in the documents implementing the law such as decrees and circulars.

Mineral exploration

- Concept of “geological baseline study” has not been fully explained.
- Permitted exploration area is too small and impractical.
- Work program regulations are rigid and overly detailed. The excessive content required causes barriers to the implementation process.
- Basis of valuation of the exploration program is outdated.
- The time frame of four years for exploration and a possible two-year extension is too short and should be revised in the new law.

Bidding of exploration and mining rights

- The metallic mineral database is not as easy to identify as in the oil exploration industry; therefore bidding on exploration and mining rights is not a suitable model.
- The tender process has many ambiguous points which make it difficult to attract the interest of the international mining industry. Furthermore, the lead agency should be defined and the qualifications, evaluation criteria, and the role of provinces in the auction process well specified.
- Bidding is suitable only for large projects which have sufficient and internationally recognized data.

Feasibility study, construction, and mining

- The Draft does not specify **when** the feasibility study phase should take place.

- Classification of economic reserves is not in line with best practices in successful mining countries.

Mining phase (operation and production)

- The Draft imposes limits on the mining area without recognizing possible expansion / growth in mining scale.
- The measures taken are also inflexible in responding to mining practices (for example, changing geological and economic conditions).

Mineral policies and master plans

- The mineral master plans (minerals policies) are drafted by the Ministry of Industry and Trade but are implemented by MONRE. This may create difficulty and inconsistency in implementation process.
- The time frames for development and deep processing are unrealistic.
- The application of the export restriction / ban and high taxes have a negative impact on the mineral industry as well as foreign investment flow into the mining sector.

Stability of policies / legal environment

The government should ensure the stability of policies and legal environment for the industry. Operating mines are not protected against the changing policies and legal environment which seriously impact the operation of mineral enterprises.

Dispute resolution and compensation

- There is currently no mechanism for dispute resolution and compensation for operating mines.
- Investor's rights on compensation are not recognized, in case of mining right or income loss.

Fiscal Environment

- Recently, taxes in the mining sector have been raised to very high levels. Corporate income tax was reduced to 25 percent for other sectors but not the mining industry.
- Mining is a long-term and high-risk sector and therefore is in critical need of stability in terms of financial and legal conditions.
- Royalties in Vietnam are the highest in the world (5–30 percent). Also using a wide royalty bracket is difficult for the implementation process.
- The charges and fees to be incorporated into the new law should be reconsidered: for example, the introduction of resource compensation fees should be reviewed as they are already included in royalty.
- Export restrictions are made without considering the fact that no domestic market is available for mineral products.

- According to the World Bank's calculation method, the current tax rate for the mining sector in Vietnam is very high and has already severely undermined the global competitiveness of Vietnam.

Mr. Bill Howell, Mining Director of Triple Plate Junction Company

As already mentioned by Rob Guest, the time frame for exploration proposed in the draft is too short especially when compared with neighboring countries: the Sepon and Phubia mines in Laos and Chati goldmine in Thailand required 5–8 years to find the reserves. Subsequently, they needed another 6–10 years for feasibility studies and mine development. The average time for more than 10 mines discovered in Southeast Asia for mine exploration and development is about 13–15 years. Many similar mines can be found in Vietnam if a suitable time frame is permitted.

Mr. Nguyen Xuan Tuong, General Director of Phuoc Son Gold Comany

- Wordings used in the draft need to be clarified. For example, processing for minerals of "high socioeconomic value" should be replaced by "economic value". The sentence "organizations and individuals have the responsibility to protect untapped mineral resources" needs to specify the parties implied: all individuals and organizations or only those that take part in mineral activities?
- The concepts "exclusive right" and "first to refusal right" should be clearly defined.
- The draft stipulates that large reserves are not allowed to be divided into small mines, which renders a four-year exploration and a two-year expansion impossible for large-scale mining. The exploration period depends on the scale of the mine. A maximum period of eight years for exploration would be more realistic.
- Mineral exploration proposal: exploration costs are funded by companies so the state should only stipulate the minimum level but not the maximum. Investors have the right to choose the most effective exploration methods.
- The stipulation that companies must demonstrate financial capacity equal to 50 percent of estimated exploration costs is not necessary. What is the purpose of this regulation?
- The resource compensation fee is unreasonable as it is already included in royalties.
- Under the draft law, mining is not treated as equal to other sectors although it also contributes greatly to economic and social development. Specifically, the current level of royalties is too high when compared to countries in this region and the rest of the world. High royalties do not actually increase revenue to the state but create losses because investors will then focus on mining high reserves.

Mr. Nguyen Ngoc Quynh, General Director of Bong Mieu Gold Company:

- The draft law provides that "provinces can issue exploration and mining licenses for dispersed small-scale reserves". However, if exploration has not been carried out, it is difficult to determine this.

- Stipulated unit prices cannot be applied to the entire exploration period. Regulations on approving exploration proposals are too rigid and cause enterprises to lose momentum / motivation in the exploration.
- Regarding the matter of “issuing mining licenses to the remaining reserves for other entities other than the exploring company”, does this mean that the government will allocate assigned and explored reserves of one exploring company to another?
- Mining area and boundaries granted in the license should be clearly defined.

Mr. Le Van De, Representative of Takara Ltd.

- The draft includes two phases of reconnaissance and exploration in one exploration which means that the time frame of 4 + 2 years is inadequate. Currently, the government requires exploration proposals established in great detail. This should be reviewed as the purpose of this phase is only to search and discover resources. The feasibility study and others such as the environmental impact assessment are conducted in the feasibility phase based on resources found which, according to international practice, is not included in the exploration phase.
- In the period after the exploration permit expires and before the mining license is granted, the government should clearly stipulate the rights and responsibilities of companies for the explored area.

Mr. Steven Dudka, Chief Representative of Archipelago Company

When drafting the amended Mineral Law, the government should answer the question about the law's objective. If the goal is to develop the mining industry and discover new mines, the new law should encourage this. Investors expect to receive incentives, not punishment for their investment. High taxes and insecure tenure are not incentives but restrictions to investors. The Canadian mining industry has contributed significantly to socioeconomic development in remote areas with more disadvantageous conditions than any remote regions in Vietnam. A practical program that the Canadian government has implemented gives tax incentives to companies and investors.

Mr. Terry Bates, CEO of Meritus Minerals Company

Developing deep processing is the desire of many countries. Mining accompanied by deep processing activities is a complex combination that requires huge amounts of capital, advanced technology, large mining reserves, and concentrated refinery production. Currently, the export tax applied on concentrates is very high and the justification for this is to encourage deep processing. Small-and-mid-scale mining cannot provide enough ore concentrates for a smelting factory. Deep processing requires the appropriate conditions which include sufficient inputs for smelting and proven large reserves. Deep processing can be encouraged by providing preferential tax policies and favorable conditions, instead of imposing high tax rates.

III. RESPONSE FROM THE DRAFTING TEAM AND CONCLUSION

Mr. Pham Ngoc Son, Director of MONRE Legal Dept

- The businesses' opinions are all derived from industry practices. The government's objective in promulgating the new law is to strengthen state management and encourage investment, but not to the same extent as the 1996 Mineral Law. Only investors who actually have the capacity to exploit mineral resources are desirable. The difficulty in enacting the new law is to encourage both large- and medium-scale enterprises. The drafting team will note all the comments for further review and analysis before incorporating them into the new law at the end of this year.
- To address the comment that the exploration area is too small, the draft law inherits guidelines from the 1996 Mineral Law, but has made an adjustment by slightly increasing the exploration area. Special projects requiring a large area will be decided by the Prime Minister.
- The exploration period up to 6 years may be enough for small mines but is not enough for large mines. The drafting team recognizes this and will study the possibility of increasing the maximum exploration duration or renewing exploration licenses.
- Regarding the regulation that "remaining reserves can be licensed to other entities", the new law's policy is that large-scale reserves are prohibited from splitting into small-scale mines for investment. However, an exploration company may find large reserves beyond their mining capacity. In this case, the remaining reserves can be allocated to other investors and the new investors will have to reimburse exploration costs to the first company. This is to prevent speculation in mining reserves.

Fiscal issues

- The condition of financial capacity aims to prevent unqualified organizations from mining speculation. Capable enterprises will have no difficulty in meeting this requirement.
- Other assets are renewable but as minerals are not, the resources compensation fee will be collected and used for local development where mines are located.
- Auction and bidding will occur for exploration and mining rights, not for mineral resources. The goal is to select investors with sufficient capacity and accountability in case there are many investors that want to explore and extract the same mine.
- The purpose of exploration cost estimates based on unit prices and stipulated by the government is to assist state management and exploration cost calculations in resource transfers.
- Exploration proposals should be verified on methods used to prevent overlooking any mineral resources in the proposed exploration area.

Conclusion by Mr. Le Quoc Dzung, Vice Chairman of the National Assembly's Economic Committee

- The meeting participants' comments on practical issues and specific provisions of the draft law are highly appreciated. The Draft Law Version 5 has already addressed some issues raised by the industry representatives today. The Economic Committee will

continue to review comments on duration, area, and licensing procedures for exploration and mining.

- MONRE will establish a separate strategic master plan to develop the mineral industry, independent from the mineral processing master plan established by the Ministry of Industry and Trade and Ministry of Construction. MONRE is the licensing agency in exploration and mining apart from general construction material mining and peat mining, which are managed by the provinces.
- The Draft Law Version 5 has been compiled in great detail and the drafting process was conducted in the spirit of transparency.
- The drafting team will review all the comments from businesses and further inputs are most welcome.

Appendix 1, Participant List

No	Name	Position	
(1)	<i>Standing members of the Economic Committee</i>		
1.	Mr. Le Quoc Dzung	Vice Chairman	
2.	Mr. Nguyen Van Phuc	Vice Chairman	
3.	Mr. Vu Viet Ngoan	Vice Chairman	
(2)	<i>Economic Department – Office of the National Assembly</i>		
1.	Mr. Dang The Vinh	Director of the Economic Department	
2.	Mr. Nguyen Kim Tu	Deputy Director of the Economic Department	
3.	Mr. Nguyen Dinh Viet	Assistant to Economic Committee Chairman	
4.	Mr. Nguyen Minh Hong	Senior expert	
5.	Mr. Le Van Binh	Expert	
6.	Mr. Tran Vu Thanh	Expert	
6.	Ms. Nguyen Thi Hong Hue	Expert	
(3)	<i>Representatives from Drafting Team</i>		
1	Mr. Pham Ngoc Son	Director of Legal Dept., MONRE	
2	Mr. Lai Hong Thanh	Deputy head of Office, MONRE	
(4)	<i>VBF Mining Working Group</i>		
1.	Rob Guest	CEO	Nickel Ban Phuc
2.	Tran Ngoc Anh	Deputy Director	Nickel Ban Phuc
3.	Bill Howell	Mining Director	Triple Plate Junction
4.	Le Van De	Representative	Takara
5.	Steve Dudka	Chief Representative	Archipelago
6.	Nguyen Xuan Tuong	General Director	Phuoc Son Gold
7.	Nguyen Ngoc Quynh	General Director	Bong Mieu Gold
8.	Terry Bates	CEO	Meritus Minerals
9.	Tran Quynh Hoa	Business Development	Austrade

10.	Fraser Matt	Trade Counselor	Canadian Embassy
11.	Pham Lien Anh	Coordinator	VBF Secretariat