

**THE IMPORTANCE OF INTERNATIONAL INVESTMENT AND HIGH TECHNOLOGY
IN EXPLORATION, MINING AND PROCESSING OF VIETNAM'S MINERALS FOR
NATIONAL INDUSTRIALIZATION, MODERNIZATION AND INFRASTRUCTURE
DEVELOPMENT AS PART OF VIETNAM'S GLOBAL INTEGRATION**

*Prepared by
Mr. Bill Howell
VBF Mining Working Group*

The Directive

The Prime Minister's Directive No.2/CT-TTg of January 2012 recognized that Vietnam's mineral wealth is an important element for national industrialization and modernization and that the country's minerals need "to be mined and processed by advanced and environmentally friendly technology".

Progress

The Mining Working Group agrees with this assessment and is pleased to report that since the last Vietnam Business Forum in December 2014 there has been some progress towards understanding and achieving the stated objectives:

- In January 2015, Natural Resources and Environment Minister Nguyen Minh Quang, together with key department heads of the General Department of Geology and Minerals of Vietnam (GDGMV) and an official from the Prime Minister's Office visited Australia at the invitation of the Australian Government. The delegation visited Australia's largest deep, underground copper-gold mine and met with Federal and State Ministers and officials to learn more about modern technologies used in the Australian and world mining industry, and to discuss the important interactions between government, private companies, mining laws, environmental protection, safety and community participation that are all a part of sustainable, efficient mining.
- In February 2015, Decree No.15/2015/ND-CP governing private public partnership investment projects (the PPP Decree) was issued to promote more foreign investment in infrastructure development in Vietnam. Although not specifically directed at the mining industry, it is recognized world-wide that large, modern mining operations are always accompanied by significant infrastructure development, particularly in the more remote and mountainous regions where major mineral deposits tend to be found and which are invariably the areas with the lowest socio-economic conditions. Whilst mining is not listed in the Decree as eligible projects for PPP, infrastructure development associated with mining could be considered for PPP project status in conjunction with mining investment on a case-by-case basis under the provisions of the Decree that include "other sectors decided by the Prime Minister".
- In March 2015, at the end of a visit by Prime Minister Dung to Australia, a joint official declaration by Australia and Vietnam specifically cited natural resources and the environment as key areas for cooperation between the two countries, and encouraged a greater role for the private sector in specific areas, including mining. The Australian and Vietnamese Prime Ministers also committed to back businesses investing in Vietnam, particularly in the sectors of agriculture, animal husbandry, mining and education-training.

The Problem and Challenge

The commitment to back investment in mining by modern, high technology which can be a key contributor to Vietnam's economic growth is welcomed by the Mining Working Group. Unfortunately, major foreign and strong local investment is unlikely to be forthcoming while

Vietnam maintains one of the most investor-unfriendly mining legislations in the world, including the highest royalty rates and other taxes and fees which make even advanced and high technology mining not economically viable. Stumbling blocks that need to be resolved or clarified since the promulgation of the new Law on Minerals No.60/2010/QH12 are:

- **Resolution No. 712/2013/UBTV-QH13 of the Standing Committee of the National Assembly promulgating the royalty tariff on minerals** raised the royalty rates of a number of minerals by 1-5%. The new royalty rates apply to minerals such as wolfram (tungsten) 18%, antimony 18%, titanium 16%, copper 13%, iron 12%, manganese 11%, and nickel, cobalt, molybdenum, mercury, magnesium, vanadium and other metallic minerals at 10%. Minerals for which the royalty rates were not increased, but were already in the range of 10-15% are platinum, gold, silver, alumina and bauxite, tin, lead and zinc. These are the highest royalty rates in the world and are the single greatest disincentive for potential major investors wishing to come to Vietnam with advanced, high technology exploration and mining methods. For example, the royalty rate on gold averages 1-5% world-wide on the sales value of the metal produced compared with 15% applied in Vietnam. However, it is reported that a new decree issued in February 2015 appears to provide a more reasonable method of calculating the royalty rate for gold producers in Vietnam by allowing much of the cost of production to be deducted before the 15% royalty on gold is applied. Depending on the calculation method used, which is not yet clear, this is a positive move in the right direction.
- **Decree No.203/2013/ND-CP setting the method of calculating charges for the grant of mineral exploitation rights** has set the “mining rights fee” at between 1-5% (with most metal minerals set at 2%). The fee is calculated as a percentage of the “value of the original ore (interpreted by some as crude ore) of the mineral zone licensed for exploitation and defined by geological reserves and/or mining reserves, price to calculate royalty, a co-efficient of mineral recovery involving the method of exploitation, and a co-efficient for economic-social conditions”. In modern mining operations, many factors such as change in the geometry and grade of the ore-body as mining progresses, ground conditions, and market price fluctuations of products are encountered that can change mine output parameters. The mining rights fee set by factors that exist before mining has commenced is impractical and will further deter major foreign companies from investing in Vietnam’s mining industry. Also, many experts view the mining rights fee as an additional royalty serving the same purpose.
- **Circular No.158/2011/TT-BTC guiding implementation of Decree No.74/2011/ND-CP on an environmental protection charge for mineral exploitation** imposes the fee on the basis of “the quantity of crude metal mineral ores”, either as units of tones or cubic meters mined. This implies that the fee is the same for valuable minerals as it is for waste rock. If correct, it means that a modern, efficient, high-tonnage, low-grade mining operation is hugely penalized, compared with small-scale and illegal mining that can selectively target high-grade material in smaller rock tonnages, thereby leaving behind and wasting much of Vietnam’s mineral wealth. This is contrary to the Government’s policy to eradicate wasteful, small-scale mining - it is more likely to encourage such practices. Modern sustainable mining world-wide already incurs high costs in environmental monitoring, transportation of solid and liquid wastes, recycling of water and chemicals, and restoration of the environment through rehabilitation after mining has finished. An environmental protection fee is a sound principle but should be based solely on the levels of pollution caused by the mining operation.

- **Decree No.122/2011/ND-CP amending some articles of Decree No.124/2008/ND-CP implementing the Law on Corporate Income Tax No.14/2008/QH12 of 2008** reduced CIT for all companies to 25%, except for mining of precious and rare natural resources including platinum, gold, silver, tin, tungsten, antimony, gems and rare earths which are fixed at 50%, except where more than 70% of the mine area is located in difficult socio-economic areas, in which case the CIT rate shall be reduced to 40%. The CIT rate for these minerals had previously been in a range of 32-50%. Decree 122 also re-confirmed that mineral exploitation operations are not entitled to other CIT incentives. These CIT rates for mining projects, when combined with the royalty rates, mining rights fees and environmental protection fees described in this position paper, make investment in Vietnam's mining industry by major companies and funds almost economically impossible.

Conclusion and Recommendations

Although minerals are a non-renewable resource, most of the country's mineral wealth has yet to be discovered. Very little of Vietnam has been explored using advanced, internationally accepted technology, which will almost certainly lead to the discovery of new, major deeper ore bodies than have been found so far at or near surface. As a result, very little mining is being carried out using advanced and high technology methods.

As long as Vietnam's royalties, fees and taxes are significantly higher than world averages, international best-practice methods and investment in Vietnam's mining industry will continue to be discouraged and will go to countries with preferable investment conditions. This in turn will encourage the continuation of inefficient and wasteful mining practices and degradation of Vietnam's existing known mineral resources and its environment, and also encourage increased illegal mining and export of minerals on which little or no tax is paid.

To achieve the objectives of the Prime Minister's Directive No.2/2012/CT-TTg, we respectfully urge the Government to improve investment confidence in Vietnam's minerals industry by:

- Re-examining existing legislation and Introducing more investor-friendly, competitive mining legislation which includes an equitable tax system that is fair to both the Government and the investor, and legislation that provides for consistent policies for long-term commitment; and
- Establishing a task-force to investigate the incorporation of the best elements of other successful mining legislation around the world where a balance has been achieved between attracting modern, high technology in exploration, mining and processing of mineral resources while at the same time returning equitable revenue to the host nation whose resources are extracted.

These steps will help to:

- encourage exploration to increase Vietnam's mineral inventory by new, deeper discoveries using modern technological methods;
- allow sustainable mining and processing of the country's mineral wealth by advanced high technology practices in an environmentally responsible, efficient and safe way;
- increase revenue to government and communities;
- accelerate development of infrastructure and service industries in the more remote and often mountainous parts of Vietnam with poor socio-economic conditions, where mineral deposits tend to be found.