

Vietnam's Long-Term Strategy for Exploitation of Mineral Resources

Background

Vietnam has recently issued several key pieces of legislation necessary to implement the 2010 Mineral Law.

On 22 December 2011, Vietnamese Prime Minister (“PM”) signed Decision No. 2427/QĐ-TTg (“**Decision 2427**”) approving the national mineral resources strategy to 2020 with a vision to 2030.

The same day, the Government also issued Resolution No. 103/NQ-CP (“**Resolution 103**”) on its action plan for implementing the Politburo’s Resolution No. 02-NQ/TW (“**Resolution 02**”), dated 25 April 2011, on strategic orientations for mineral resources and mineral exploitation to 2020 with a vision to 2030.

Most recently, on 9 January 2012, the PM released Directive 02/CT-TTg (“**Directive 02**”) on strengthening State management of exploration, exploitation, processing, usage and export of minerals.

This article describes the main points of Decision 2427, Resolution 103 and Directive 02, and the impact of the developing mineral strategy on exploration and exploitation activities in Vietnam.

Decision 2427 Approves Mineral Strategy

Article 9 of the Mineral Law required the government to prepare a twenty-year strategy for mineral resources, covering:

- Viewpoint on directions for and goals of basic geological surveys of mineral resources; on protection of untapped minerals; and on exploration, mining, processing and use of minerals in an appropriate and cost-saving manner.
- Orientation on basic geological surveys of mineral resources; on protection of untapped minerals;

on exploration and mining of each category of minerals; and on appropriate and cost-effective processing and use of minerals after they have been mined.

- Tasks and solutions for basic geological surveys of mineral resources; for protection of untapped minerals; for exploration and mining of each category of minerals; for appropriate and cost-effective processing and use of minerals after they have been mined; and for preservation of reserves of national mineral resources.

VIEWPOINT

The mineral strategy approved in Decision 2427 stipulates that

- As non-renewable natural resources, minerals must be managed, protected, exploited and used rationally, economically and efficiently to meet the requirements of industrialisation and modernisation of the country.
- Survey and evaluation of mineral resources must be implemented in advance to permit efficient planning for exploration, exploitation, processing, and use of mineral resources and national reserves.
- Exploration and mining must be associated with the potential for processing and use of each type of mineral, in light of the needs of all economic sectors.
- For large-scale deposits of minerals, only processed products with high economic value may be exported.
- International cooperation must be utilised to access current scientific knowledge and environmentally-friendly technologies in surveying, exploring for, mining, and processing of minerals.

ORIENTATION

Decision 2427 focuses on

- carrying out basic geological surveys for minerals;
- exploring, exploiting and processing groups of minerals such as: coal, uranium, metals, non-metals, construction materials, natural thermal water, mineral water, oil and gas; and
- implementing international cooperation.

TASKS AND SOLUTIONS

Decision 2427 describes a path forward in several specific areas of regulation:

With respect to management and planning,

- perfecting the system of legal documents governing minerals; improving management capacity from the central to local levels of government; ensuring close coordination between central and local governments to speed up inspection and examination of mineral activities; responding to violations of mineral regulations, and restructuring the mining and mineral processing industry;
- setting up plans on mineral management according to the provisions of the Mineral Law and the orientation of the Strategy delineating the areas of national mineral reserves.

With respect to science and technology,

- training a contingent of highly qualified professionals;
- carrying out a step-by-step application of advanced techniques, modern equipment in surveying, exploring, mining and processing of minerals;
- improving capacity of pit mining technology;
- developing technical standards for mining and processing equipment and technology to protect the environment and preserve natural resources.

With respect to finance,

- prioritising the annual allocation of sufficient funds from the State budget for basic geological surveys of mineral resources in accordance with approved plans;
- increasing investment in scientific research and application of new technologies in geological surveys, exploration, mining and processing of minerals;

- adjusting the financial policies governing the export of minerals in the orientation of only exporting high value processed products from large-scale deposits of minerals;
- setting up a mechanism of incentives in accordance with specific occupations to ensure stable development of human resources for survey, exploration, mining and processing of minerals.

With respect to environmental protection,

- inspecting and supervising the implementation of environmental protection legislation;
- strictly handling violations according to law.

Resolution 103 Sets Out an Action Plan

Among other things, the action plan sets out the tasks of dissemination of mining legislation and completion of the legal system on mining.

Of note, the action plan requires the following draft decrees to be completed within 2012:

- Decree detailing the implementation of the Mining Law. This has been completed. On 9 March 2012, the Vietnamese Government issued Decree No. 15/2012/ND-CP (“Decree 15”) detailing the implementation of a number of articles in the Mineral Law.
- Decree stipulating auctions of mineral exploitation rights. This has been completed. On 26 March 2012, the Vietnamese Government issued Decree No. 22/2012/ND-CP (“Decree 22”). Decree 22 provides detailed regulations on Article 79.2 of the Mineral Law with respect to the principles, conditions and procedures for auctioning mineral mining rights.
- Decree on mineral resources strategy up to 2020 with a vision to 2030.
- Decree stipulating administrative sanctions in the mining sector.

Directive 02 Gives Specific Instructions

Among other things, Directive 02 contains the following specific instructions:

- Export of raw, unprocessed minerals is banned.
- Exploitation of coal and minerals used to manufacture cement is allowed, subject to approved master plans.
- No more licences will be granted for the

exploration or exploitation of bauxite and production of alumina until the Tan Rai and Nhan Co mines for production of alumina in Lam Dong and Dak Nong have become operational and have achieved high socio-economic value. No new exploration licences will be issued in the Northern provinces.

- The exploration and exploitation of gold must use in-depth processing and modern techniques which cause no harm to the environment. New licenses for exploitation of placer gold are prohibited.
- Beginning 1 July 2012, the export of unprocessed titanium ore will be banned;
- All mining projects must be appraised by the Appraisal Council of the Ministry of Industry and Trade, the Ministry of Construction, and the relevant provincial or municipal People's Committee. Only those projects which employ advanced and environmentally friendly techniques will be approved.

Conclusion

While these legal instruments demonstrate the efforts of the Vietnamese Government to draft stricter provisions on exploiting and preserving mineral resources, they imply that investors in the mining sector will face greater regulatory obstacles.

Contact Us

For inquiries related to this Legal Update, please contact the following persons or your usual contacts with our firm.

Kevin Hawkins

Partner

T: + 84 8 3822 8860 x116

E: kevin.hawkins@mayerbrownjism.com

Orsolya Szotyory-Grove

Associate

T: + 84 83 822 8860 x117

E: orsolya.szotyory-grove@mayerbrownjism.com

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore
EUROPE: Brussels, Düsseldorf, Frankfurt, London, Paris
TAUIL& CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro
ALLIANCE LAW FIRM: Spain (Ramón & Cajal)

Please visit www.mayerbrownjism.com for comprehensive contact information for all Mayer Brown offices.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications Disclaimer.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe – Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2012. The Mayer Brown Practices. All rights reserved.