

CHAMBERS – MINING LAW / THAILAND

General structure of mineral ownership and regulation

1. Who owns the mineral deposits in the subsoil?

The State.

2. Which legal rules regulate the mining industry?

The new Minerals Act B.E. 2560 (2017), came into effect 30 August 2017. It repealed 10 other laws:

- (1) Minerals Act, B.E. 2510 (1967);
- (2) Minerals Act (No. 2), B.E. 2516 (1973);
- (3) Minerals Act (No. 3), B.E. 2522 (1979);
- (4) Emergency Decree amending the Minerals Act, B.E. 2510 (1967), B.E. 2526 (1983);
- (5) Emergency Decree amending the Minerals Act, B.E. 2510 (1967) (No. 2), B.E. 2528 (1985);
- (6) Minerals Act (No. 4), B.E. 2534 (1991);
- (7) Minerals Act (No. 5), B.E. 2545 (2002);
- (8) Mineral Royalty Tariff Act, B.E. 2509 (1966);
- (9) Mineral Royalty Tariff Act (No. 2), B.E. 2520 (1977);
- (10) Mineral Royalty Tariff Act (No. 3), B.E. 2522 (1979).

As of 8 November 2017, 13 notifications have been issued under new Minerals Act, and there are 55 draft MRs, regulations, notifications and orders of MoI or DPIM posted on the DPIM's website, in Thai language.

There were also the following numbers of SEPLs, MLs and licenses issued under the former laws:

- 80 SEPLs
- 942 MLs
- 265 mineral dressing licenses.

Generally, the new Act aims to provide stricter environmental controls, decentralize administrative power, encourage the use of newer mining technologies, and provide those living in mining areas more protection.

Prior to the new Minerals Act coming into force, the mineral processing license of the Chatree gold mine was suspended, reportedly due to pollution incidents. The company's Australian shareholders brought a claim under the Australian- Thai FTA. The suspension was reported to have been lifted according to news reports on 18 August 2017.

3. Is there an independent regulation for mining different from existing regulation for oil and gas industry?

Yes. O&G is governed by the Petroleum Act and the Petroleum Income Tax Act. The Petroleum Act is governed by the Department of Mineral Fuels, Ministry of Energy. The Petroleum Income Tax is regulated by the Revenue Department, Ministry of Finance.

4. Which ministry, agencies or government bodies administer the mining industry?

The Department of Primary Industry and Mining (DPIM), Ministry of Industry (MoI), and Ministry of Natural Resources and Environment (MNRE) are the government agencies that administer the new Minerals Act (2017).

Required authorizations and permits

5. Which permits or authorizations are required to conduct prospecting?

An application for a prospecting license or an atchayabat is applied for and granted by the local official in that locality. The validity is one year from the date of issue. (Section 41) The area applied for under an application is not specified under the law.

General Prospecting License (GPL) (Minerals Act §28)

The GPL is a non-exclusive, non-renewable license that is issued for one year by the Local Mineral Resources Office (LMRO). The license allows the licensee to conduct surface and geophysical exploration of a specific area.

6. Which permits or authorizations are required to conduct exploration?

An application for an exclusive prospecting license or an exclusive atchayabat is applied for with the local mineral industries official in that locality, and issued by the Director-General with approval from the Board (formerly, granted by the Minister, or such person entrusted to do so by the Minister). The validity period is one to no more than two years. (Section 43) The area applied for under an application is not more than 2,500 rai (or 4,000,000 square meters) (Section 42).

An application for a special prospecting license or a special atchayabat is applied for with the local mineral industries official in that locality, and granted by the Director-General on approval by the Board. (Sections 46-47) The validity period is not more than five years. The area applied for under an application is 10,000 rai (or 16 million square meter) for an onshore exploration area and not more than 500,000 rai (or 800 million square meters) for an offshore exploration area.

Before any prospecting can be undertaken, a prospecting license must be obtained. There are three kinds of prospecting licenses that mining investors may apply for: the General Prospecting License (GPL), the Exclusive Prospecting License (EPL), and the Special Prospecting License (SPL).

Exclusive Prospecting License (EPL) (Minerals Act §§29-32)

The EPL contains basically the same conditions as a GPL, with the exception that an EPL gives an investor an exclusive right to explore for specific minerals in the area covered by the EPL, which is non-transferable. The duration of an EPL is one year, and is not renewable. However, there is a practice of allowing the holder of an EPL to file a new EPL application upon expiry of the first EPL. The maximum area of an EPL is 2,500 rai. The boundaries of an area under an EPL must coincide with those of grid blocks. Investors must comply with a number of conditions: exploration must begin 60 days after an EPL is issued; the first exploration report [and a comprehensive report] must be filed with the LMRO 180 days after issuance of the EPL; and the final exploration report must be filed 30 days before the expiration date of the EPL.

In 1989, the MOI issued a notice limiting the area under EPL application in a province to 1,250 rai. An applicant for an EPL must submit a work plan and a description of exploration methods, and both must be endorsed by a qualified geologist or mining engineer recognized by the DMR.

The maximum area that may be granted for offshore exploration under MOI's new policy is 20,000 rai. For an offshore area larger than 20,000 rai, it is possible to submit an SPL application, but the applicant must offer special benefits to the government.

Special Prospecting License (SPL) (Minerals Act §§33-41)

In order to promote exploration of large areas on an exclusive basis, the Minerals Act No. 2, B.E. 2516 provides for the issue of SPLs (Minerals Act §33). A SPL has a duration of three years and is renewable for another 2 years. The maximum area that may be granted under a SPL is 10,000 rai. An application for a SPL must include a work plan, an estimate of expenses for each year of the whole project, as well as an offer of special benefits to the government.

The prospector must commence exploration within 90 days of the issuance of the SPL. A progress report to the DMR must be submitted within 120 days of receiving the license (Minerals Act §40). The SPL is suitable for large projects entailing high-value mineral or substantial investment capital, and also when the applicant requires more time or a larger area for exploration. The prospector may relinquish an area he no longer wishes to hold. (Minerals Act §37).

7. Which permits or authorizations are required to conduct mining?

Upon discovery of a mineral deposit, a prospector must apply for a mining lease. An applicant for ML must obtain consent for the use of the land from the land-owner and/or relevant government agencies. Permission to mine land within forest reserves must be obtained from the Royal Forestry Department. An Environmental Impact Assessment (EIA) must be conducted and submitted to the DMR along with the application for a mining lease.

The maximum area of a mining lease is 300 rai onshore, and 50,000 rai offshore. An applicant may apply for more than one mining lease in an onshore area. The maximum duration of a ML is 25 years. A ML may not be transferred or sub-leased without the approval of the Ministry of Industry. Pending approval of a ML application, the applicant may apply for a non-transferable temporary ML that is valid for one year.

Applications for a prathanabat are submitted to the local mineral industries officer. The Act further requires that applicants submit plans for restoration, development, utilization and monitoring impacts from mining activities on the environment and health of people in and around the mining area after closure of the mine and (Section 54) requires applicants to bear the cost of organizing referendums for those individuals in the area of the proposed mining activities, if such individuals do not approve of such mining activities. (Section 56)

Under Section 53 of the Act the Minister may issue notifications to classify mining activities into three categories, as follows:

- (1) Category 1 mining, i.e. mining in the area of no more than 100 rai, the prathanabat of which shall be issued by the local mineral industries official on approval of the Provincial Mineral Committee in the province where the mining is operated;
- (2) Category 2 mining, i.e. mining in the area of no more than 625 rai, the prathanabat of which shall be issued by the Director-General on approval of the Mineral Committee;
- (3) Category 3 mining, i.e. mining other than the category 1 mining or category 2 mining, offshore mining and underground mining, the prathanabat of which shall be issued by the Director-General on approval of the Mineral Committee.

Section 53 of the Act further states that any mining activity that requires preparation of an EIA shall be automatically classified as a Category 2 or 3 mining activity.

The maximum validity period for a prathanabat has been increased from 25 to 30 years. (Section 58) If the rights under the prathanabat are terminated for any reason listed under the Act (in Section 62), minerals remain in the mining area, and the prathanabat holder or successor do not apply for a permit to take possession of said minerals within 90 days from the termination date, the rights to such minerals shall devolve to the state. (Section 63) The Director-General or local mining officials may propose investigations to the Mineral Committee or Provincial Mineral Committee where complaints are lodged, or where the prathanabat holder's mining activities have impacted the environment or people's health and no settlement can be reached. If such investigation finds that there has been an impact on the environment, the Mineral Committee or Provincial Mineral Committee may order the prathanabat holder to remedy such impact(s) within a prescribed period of time. (Section 69)

Assignment of a prathanabat requires the permission of the prathanabat issuer (see General Mining Provisions above), under Section 72, with the application for transfer to be submitted to the local mineral industries official.

8. Which Environmental authorizations / permissions are required to conduct exploration and mining?

An Environmental Impact Assessment (EIA) must be conducted and submitted to the DMR along with the application for a mining lease.

Duties and rights derived from a mining title or concession

9. What rights does a mining lease grant to its holder?

Under Section 97 of the Act, minerals or by products derived from mining may be purchased, sold, possessed, stored or transported. The Director-General may grant an approval to possess minerals derived other than through mining activities or mineral planning, on a special case basis. The Director-General may also issue notifications determining certain mineral controls

with regard to purchasing, selling, possession, storage or transportation. (Section 98) Minerals that fall under a notification based on Section 98 will require a license issued by the Director-General, which will be valid for no more than 5 years. (Sections 99 and 102)

The Director-General may also prohibit the importation or exportation of certain minerals into or out of Thailand, as well as issue permits or licenses for the importation of such prohibited minerals, and issue rules and procedures on transportation of minerals within Thailand. (Sections 104 and 105)

Mineral Dressing and Metallurgical licenses are to be issued by the Director-General and are valid for no more than five years. (Section 106)

Renewal of licenses for purchasing, possession, storage, mineral dressing, and metallurgical processing must be filed prior to the expiration of the previous license. Transfer of mineral dressing and metallurgical processing licenses may only occur after permission is granted from the Director-General. (Sections 115 and 116)

10. Which duties does a title holder acquire?

The owner of a mining lease, mineral dressing license and metallurgical license are subject to all obligations under the Minerals Act, environmental laws, townships planning regulations, etc.

11. Which rights does a title holder acquire towards the land?

Land ownership is not included in rights under a mining lease.

12. Which duties does a title holder acquire towards the landowners?

An applicant for ML must obtain consent for the use of the land from the land-owner and/or relevant government agencies. Permission to mine land within forest reserves must be obtained from the Royal Forestry Department.

13. Which duties does a title holder have at the end of the title? (Closure of the mine)

The Act requires that applicants submit plans for restoration, development, utilization and monitoring impacts from mining activities on the environment and health of people in and around the mining area after closure of the mine and (Section 54) requires applicants to bear the cost of organizing referendums for those individuals in the area of the proposed mining activities, if such individuals do not approve of such mining activities. (Section 56)

Environmental

14. Which are the principal environmental laws that affect the mining industry?

Laws regulating the environment are contained in various laws governing specific activities. The National Environment Protection and Promotion Act BE 2535 (1992) (“NEPPA”) prescribes the types of activities that require the filing of Environmental Impact Assessments (EIAs”).

The Minister of Natural Resources and Environment (“MONRE”) is charged with administering NEPPA and issues regulations to implement the national environmental policy, and govern EIAs. There is a pollution control committee under MONRE which fixed pollution control standards. Owners or possessors of sources of pollution have a duty to

collect statistics and data, and provide monthly reports. Business enterprises have a general duty of care that their activities do not endanger life, health or property, and are liable to pay compensation to injured persons (Section 96 of NEPPA). Directors and persons in charge of operations may be held jointly liable.

Section 67 of the new Minerals Act gives the Minister power to issue notifications requiring mining in any area to have a control and monitoring committee for the impact of mining.

Section 68 sets forth detailed obligations of holders of prathanabats to avoid pollution and hazard to persons, animals, plants, property or the environment. There is an obligation to restore mining areas according to the plan of restoration in the EIA during the time of mining and after closure of mines. There is an obligation to place security for restoration of mining areas and remedy persons affected by mining, and in case of category 2 and 3 mining provide insurance against liabilities in sums determined by the Mineral Committee.

15. Which ministry, agencies or government bodies have environmental competence in mining issues?

The Department of Primary Industry and Mining (DPIM), Ministry of Industry (MoI), and Ministry of Natural Resources and Environment (MNRE) are the government agencies that administer the new Minerals Act (2017), including provisions re EIAs and impacts on the environment.

Section 67 provides that the Minister has the power to require mining in any area have a control and monitoring committee for the impact of mining, which shall consist of representatives of interested parties, representatives of the prathanabat holder, representatives of Department of Primary Industries and Mines, and qualified persons in the fields of the environment and health, to examine, control and monitor the impact from mining, in which case the prathanabat holder shall bear expenses for the operation of the committee.

Section 68 provides for EIA reports to be approved in some cases by the specialist committee under NEPPA.

16. What environmental obligations do the title holders have?

An Environmental Impact Assessment (EIA) must be conducted and submitted to the DMR along with the application for a mining lease.

Applications for underground mining will now require that the applicant provide a restoration plan, and place security for restoration of the mining area, and remedies for persons affected by the mining. (Sections 81(8) and 81(9)) Prathanabat holders for underground mining who do not provide the requisite security or insurance for any damages determined to have been caused by such mining activities within 15 days of notice of the same; the prathanabat issuer has the power to issue an order to revoke the prathanabat. (Section 90)

Miscellaneous

17. Are there special rules or taxes for foreign people or companies?

The BOI used the following criteria in considering projects with foreign ownership. For mineral exploration and mining, Thai nationals must hold cumulative shares totaling not less than 51% of the registered capital. However, for projects with investment capital (excluding the cost of land and working capital) over 1,000 million Baht, foreign investors may initially

hold a majority or all of the shares, but Thai nationals must acquire shares totaling not less than 51% of the registered capital within five years of starting operations.

Promotional privileges were available for exploration and mining companies. Benefits included tax exemptions on import of machinery and equipment, income tax holidays, and waivers of normal immigration and work permit regulations. (See Promotion of Investment, Chapter 12.)

The BOI publishes conditions of promotion, which formerly were:

- 2.1 Mineral ore prospecting.
No conditions.
- 2.2 Smelting.
Projects must be located in Zone 2 or 3.
- 2.3 Mining or ore dressing, excluding tin.
ML from the DMR must be acquired before receiving promotion certificate.

The BOI has substantially restricted promotion for mining, to potash mining and ore dressing.

All mining activities except exploration falls under Category C2(8) of the Alien Business Operations Act. An alien business license is required in order for a majority alien owned business to engage in mining activities. Various other conditions may be applicable.

Under a cabinet resolution in 1966, alien companies may not explore or mine north of the 11th parallel, that is, areas north of the Chumphon Province.

Foreign holders of ML's engaging in offshore mining up to a depth of 200 feet may apply for a new mining lease upon expiration of the old lease (maximum duration 25 years), provided 60% of the equity in the venture is held by Thai nationals. Companies with foreign shareholders may apply for a ML to exploit a new offshore deposit provided 51% of the equity is held by Thai nationals, and the equity held by Thai nationals is increased to 60% within 2 years.

18. Are there restricted or excluded zones for mining activities?

The Board is in charge of preparation of a minerals administrative master plan, which will include resource surveys, restrictions on certain minerals and areas, and guidelines for mineral administration that results in appropriate benefits to the economic, social, environmental and health balance. A master plan is to be prepared in five-year intervals, and submitted to the Council of Ministers for consideration and approval.

Permission to mine land within forest reserves must be obtained from the Royal Forestry Department.

19. Which rights do indigenous or ethnic communities have?

There is no concept of indigenous or ethnic communities under Thai law.

20. Can the State terminate a mining title unilaterally? Under what causes?

The Director-General may dismiss an application for an exclusive atchayabat or special atchayabat under certain defined circumstances. (Section 124) The Director-General or local

mineral industries official may dismiss applications for a prathanabat. (Section 125) The grantor of a license for an exclusive atchayabat, special atchayabat, prathanabat, or other licenses under the Act may cancel such license if the grantee does not retrieve the license from the issuer within 30 days from the date of receipt of notice. (Section 126) The Minister may, with approval of the Council of Ministers, recall or amend a prathanabat or atchayabat for purposes of public utility, national defense or other public interests. This includes a reduction of mining areas, and validity periods for licenses. Those affected by such amendment or recall are entitled to indemnification for damages. (Section 127)

Violations of the Act or notifications issued under it require the violator to cease the violation and/or rectify any damages caused within a prescribed period. Failure to do so can result in an order to stop operations until such violation is remedied, or damages are rectified. Continued violation can result in the revocation of the atchayabat or prathanabat, as the case may be. (Section 128 and 129)

21. What taxes or royalties must a title holder pay?

Mineral Royalties, under the Act, are listed as follows:

Under Section 131, a prathanabat holder, a licensee for mining on minor scale, a person who notifies mineral panning, a mineral-dressing license holder, a metallurgical-processing license holder or a mineral possession license holder shall pay mineral royalty with respect to the minerals as follows:

- (1) Mineral specified in the prathanabat including other minerals derived as by-products of mining;
- (2) Minerals derived as by-products of mineral dressing or lags containing other minerals in excess of the amount specified by the Director-General where the mineral royalty with respect to such minerals has not been paid;
- (3) Minerals derived from mining on minor scale or mineral panning;
- (4) Minerals permitted for possession under Section 97, paragraph two, where the mineral royalty with respect to such mineral has not been paid;
- (5) Minerals in case of purchase of minerals devolved on the state where the mineral royalty with respect to such minerals has not been paid.

Rates are capped at no more than 30% of the market price of the mineral. Royalty tariffs are to be established under ministerial regulations. (Sections 131-132) Applicants for licenses provided under the Act are required to pay a fee when submitting the application, which is refundable if the application is rejected. Fees for mineral prospecting under an exclusive atchayabat or special atchayabat will be established at a progressive rate under notifications from the Minister. Pratanabat holders shall pay a special contribution of no more than ten percent of the mineral royalty of the minerals produced under that license. (Sections 134-136)

Holders of ML's had to pay royalties on minerals extracted according to the former Mineral Royalty Rates Act, B.E. 2509 (1966). Royalties were paid based on the value of the minerals extracted, except for gem mining whereby royalty is based on the size and value of the land covered in the mining lease.

Mining lease holders are also subject to normal corporate and personal income taxes. A standard deduction of 80% is allowed for personal income tax.

The Minister, on the recommendation of the Mineral Committee, may reduce fees and issue qualifications for eligibility for such reductions under defined circumstances, including “reasonable grounds.” (Section 137)

SUMMARY OF OLD MINERAL ACT AND MINERAL ROYALTY RATES ACT

We have retained the description of old Minerals Act and Mineral Royalty Rates Act because there are many outstanding mineral rights outstanding, to which the old laws, MRs and notifications will apply except as expressly superseded.

1. EXPLORATION

Before any prospecting can be undertaken, a prospecting license must be obtained. There are three kinds of prospecting licenses that mining investors may apply for: the General Prospecting License (GPL), the Exclusive Prospecting License (EPL), and the Special Prospecting License (SPL).

1.1 General Prospecting License (GPL) (Minerals Act §28)

The GPL is a non-exclusive, non-renewable license that is issued for one year by the Local Mineral Resources Office (LMRO). The license allows the licensee to conduct surface and geophysical exploration of a specific area.

1.2 Exclusive Prospecting License (EPL) (Minerals Act §§29-32)

The EPL contains basically the same conditions as a GPL, with the exception that an EPL gives an investor an exclusive right to explore for specific minerals in the area covered by the EPL, which is non-transferable. The duration of an EPL is one year, and is not renewable. However, there is a practice of allowing the holder of an EPL to file a new EPL application upon expiry of the first EPL. The maximum area of an EPL is 2,500 rai. The boundaries of an area under an EPL must coincide with those of grid blocks. Investors must comply with a number of conditions: exploration must begin 60 days after an EPL is issued; the first exploration report [and a comprehensive report] must be filed with the LMRO 180 days after issuance of the EPL; and the final exploration report must be filed 30 days before the expiration date of the EPL.

In 1989, the MOI issued a notice limiting the area under EPL application in a province to 1,250 rai. An applicant for an EPL must submit a work plan and a description of exploration methods, and both must be endorsed by a qualified geologist or mining engineer recognized by the DMR.

The maximum area that may be granted for offshore exploration under MOI’s new policy is 20,000 rai. For an offshore area larger than 20,000 rai, it is possible to submit an SPL application, but the applicant must offer special benefits to the government.

1.3. Special Prospecting License (SPL) (Minerals Act §§33-41)

In order to promote exploration of large areas on an exclusive basis, the Minerals Act No. 2, B.E. 2516 provides for the issue of SPLs (Minerals Act §33). A SPL has a duration of three years and is renewable for another 2 years. The maximum area that may be granted under a SPL is 10,000 rai. An application for a SPL must include a work plan, an estimate of expenses for each year of the whole project, as well as an offer of special benefits to the government.

The prospector must commence exploration within 90 days of the issuance of the SPL. A progress report to the DMR must be submitted within 120 days of receiving the license (Minerals Act §40). The SPL is suitable for large projects entailing high-value mineral or substantial investment capital, and also when the applicant requires more time or a larger area for exploration. The prospector may relinquish an area he no longer wishes to hold. (Minerals Act §37).

2. PRODUCTION

2.1 Mining Lease (ML) (Minerals Act §§43-88)

Upon discovery of a mineral deposit, a prospector must apply for a mining lease. An applicant for ML must obtain consent for the use of the land from the land-owner and/or relevant government agencies. Permission to mine land within forest reserves must be obtained from the Royal Forestry Department. An Environmental Impact Assessment (EIA) must be conducted and submitted to the DMR along with the application for a mining lease.

The maximum area of a mining lease is 300 rai onshore, and 50,000 rai offshore. An applicant may apply for more than one mining lease in an onshore area. The maximum duration of a ML is 25 years. A ML may not be transferred or sub-leased without the approval of the Ministry of Industry. Pending approval of a ML application, the applicant may apply for a non-transferable temporary ML that is valid for one year.

2.2 Transportation (Minerals Act §§108-113)

Mineral royalty must be paid prior to transporting minerals from a ML. For most minerals, an ore transport license must accompany the transporting vehicle to the destination stated in the license. However, minerals such as fluorite, barite, gypsum, coal and gemstones require no transporting license after royalties are paid. Normally, once royalties are paid, minerals may be sold by permission of the LMRO. For selected minerals such as tin ore above 50 grams, gold ore of any amount, copper, zinc and iron ore above 2 kilograms, the mining operator must obtain special permission for the sale.

2.3 Royalties and Taxes

Holders of ML's must pay royalties on minerals extracted according to the Mineral Royalty Rates Act, B.E. 2509 (1966). Royalties are paid based on the value of the minerals extracted, except for gem mining whereby royalty is based on the size and value of the land covered in the mining lease.

Mining lease holders are also subject to normal corporate and personal income taxes. A standard deduction of 80% is allowed for personal income tax.

3. POSSESSION OF MINERALS (OLD MINERALS ACT §§106-107)

There are provisions that govern the possession of minerals. Possession of minerals of any type in excess of 2 kilograms requires a license from the DMR. Possession of a large quantity of minerals may be permitted for analysis purposes, but the quantity is not to exceed the stated limit in the GPL. Current practice is to allow 10 kilograms for each type of minerals.