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MINERAL & MINING Regulatory Frameworks In Vietnam

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Firm Overview



Firm OVERVIEW - 1

- VCI Legal is listed among the top business law firms in Vietnam and has special expertise in:
 - i. **Corporate, Securities, M&A**
 - ii. **Banking and Finance, Insurance**
 - iii. **Real Estate, Construction**
 - iv. **Infrastructure & Energy**
 - v. **Taxation, and**
 - vi. **Intellectual Property Management**
- by The Legal 500 & Asia Laws, Asia Law & Practice and KPMG Tax Director Handbook
- Creator of “In-house Counsel Service” and various specialized legal services for business;
 - More info at <http://www.legal500.com>



Asia Law
& Practice

Key Practice Areas

Strategic practice groups built on top of “*In-house Counsel Service*” platform

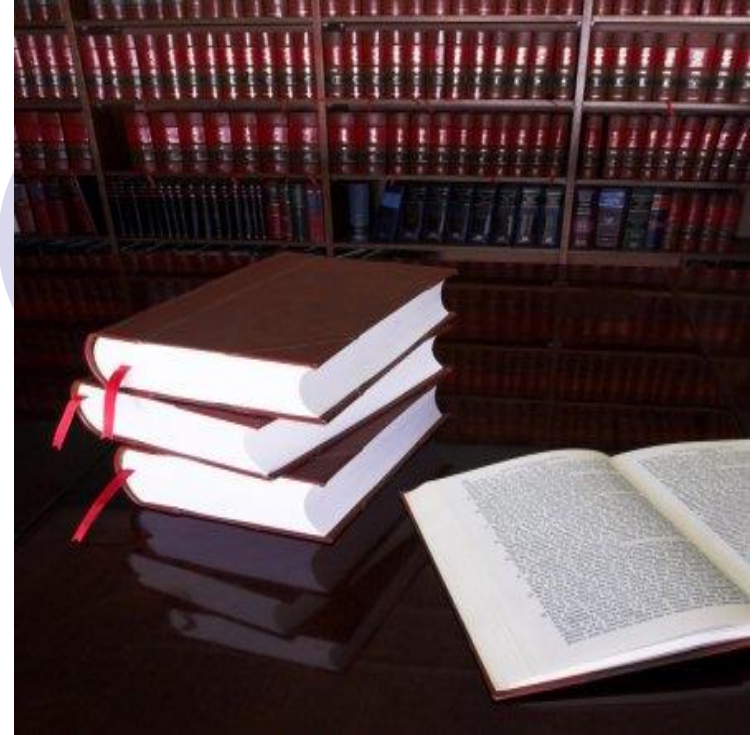
1. Corporate | M&A | Investment Structure
2. Securities, Banking and Finance
3. Real Estate | Construction |
4. Tax | Transfer Pricing | HR Management and Labor
5. Petroleum | Mining | Energy



Service Overview | 1

- PLUS all traditional legal services
 - Corporate, Securities, M&A;
 - Investment Structure, Securities, Cross-border transactions
 - Foreign Investment
 - Tax and Transfer Pricing, Finance and Banking
 - HR, Labor and Employment
 - Commercial Litigation, Tax Controversies, Alternative Dispute Resolution (arbitration)

Legal Background



Governing law

- New Mineral Law 60/2010/QH (“**Mineral Law**”) effective from 1 July 2011
 - Governs also mineral water and natural thermal water but excludes oil, gas and natural water

State Policies

- Some “important” minerals are subject to government monopoly (“important” is not defined)
- Basic surveys conducted by the State and via co-operations/investment projects
- Export policy fluctuates from time to time in response to local demand

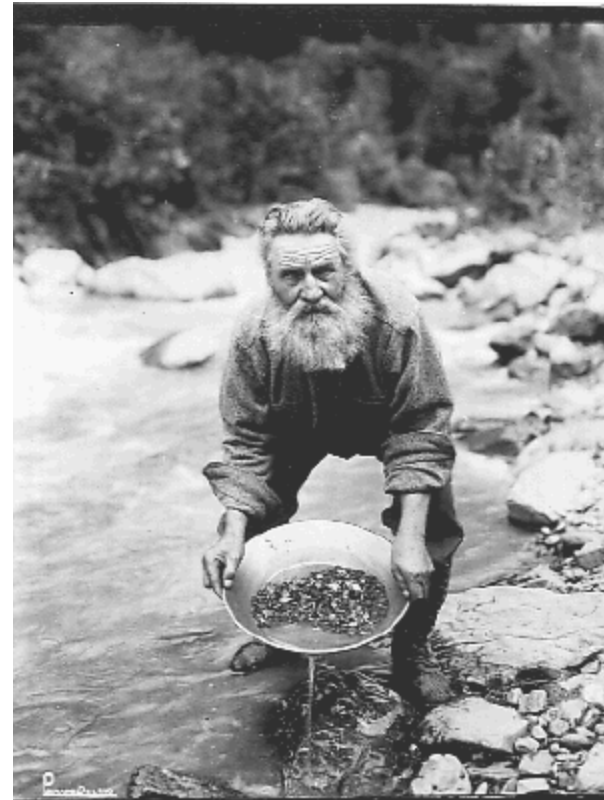
State Policies | 1

- Move toward sustainable development
- Shall be detailed by the Office of Government
- Support for inhabitants in areas where mining is done:
 - Public construction works
 - Balance the construction of mining infrastructure with environmental protection
 - Job creation & vocational training

Licensing Body

- Provincial People's Committees
 - Peat, minerals used as common building materials; and
 - Minerals with small reserves in numerous locations
- Ministry of Natural Resources and Environment (MoNRE)
 - All other cases

Prospecting



Prospecting: Eligibility

- Eligible organizations/individuals:
 - Local companies & co-operatives that are legally incorporated
 - Foreign enterprises with a rep office or branch in Vietnam
 - Households (minerals to be used as construction materials)

Prospecting: Practitioner

- Requirements:
 - Legally incorporated
 - Technical manager is a graduate of a prospecting training facility with five years experience
 - Adequate number of professional laborers
 - Sufficient professional equipment and machinery

Prospecting: Selection

- Investor Selection Methods
 - Auction
 - Appointment of investor for area where auction is not applicable.
 - Such appointments will be in accordance with the Prime Minister's detailed regulations (not yet released)

PROSPECTING LICENSE.

The Stratton Cripple Creek Mining and Development Company

PERMISSION IS HEREBY GIVEN to O. D. Fogleman to prospect this Company's Block No. 234 & 235 from the surface to a depth of 150 feet, by trenching and sampling

for 30 days from date hereof.

This Company agrees to give a lease to said party for said premises, if he asks for such, in writing on or before July 18 1908. Said lease shall be the form in general use by this Company (a copy of which may be seen at either its Colorado Springs or Cripple Creek office), to run for a period of 21 months from July 1st 1908, requiring 150 shifts of one man each month, a royalty of 25 per cent. flat, a bond by a Surety Company, approved by this Company, for \$_____ and reserving to this Company all ore of a value of \$10 per ton and under ^{up to 60 days notice} the right to cancel lease 6 months after date of property or control of Co. be sold Also sinking, if required by Company's Superintendent, not to exceed 15 feet each month.

All trenches and holes made hereunder shall be filled level with the surface at the expense of the said Fogleman

No ore is to be removed or shipped under this license without the consent of this Company in writing.

Dated this 18th day of June 1908

THE STRATTON C. M. & D. CO.

ATTEST:

Wm. Boyd Secretary.

I HEREBY ACCEPT THIS LICENSE subject to its conditions and to the form of lease therein referred to, and which I hereby acknowledge to have read and understand.

I also acknowledge that I know this license to be VOID AND OF NO EFFECT on and after July 18 1908

Dated this _____ day of _____ 190_____

(SEAL)

Prospecting Licensing

Licensing: Eligibility

- Selected investor or auction winning investor
- Prospecting practitioner or contract with a practitioner
- Approved feasibility study (FS)
- Sufficient financing: investor must fund 50%, remainder can be loans

License: Introduction

- Each prospecting entity may hold a maximum of 5 separate licenses at any one time (excluding expired ones)
- Maximum prospecting area collectively granted per mineral: twice the standard area for 1 license
- Licenses are exclusive: only granted for one applicant on one area – no 3rd party with prospecting or exploitation rights

Licensing Term

- Maximum 48 months with extension up to another 48 months for
 - implementation of prospecting FS,
 - preparing and obtaining an approval of mineral reserves; and
 - formulation exploitation FS
- Minimum of 30% of total prospecting area must be returned before the extension begins

Licensing: Withdrawal

- License may be withdrawn if:
 - No operations for six months after being granted
 - Obligations breached and not remedied within ninety days of a written notice from competent body
 - Prospecting area designated as prohibited/ temporarily prohibited area for mineral activities

*As per slide 30 and 31

Licensing: Invalidation

- License will become invalid if:
 - Withdrawn
 - Expired
 - Relinquished
 - Licensee's business is terminated

Standard Area Granted Per License

- METAL (except bauxite), PRECIOUS STONES, SEMI-PRECIOUS STONES: Max. 50 km²
- COAL, BAUXITE, NON METAL MINERALS (except common building materials) in mainland or areas without water surface: Max. 100 km²
- OTHER MINERALS (except common building materials) in continental shelf: Max. 200 km²
- COMMON BUILDING MATERIALS in mainland: Max. 2 km²; areas with water surface: Max. 1km²
- Mineral water and natural hot springs: Max. 2 km²

License Holder Privileges

- Access the government 's mineral database
- Conduct licensed prospecting activities
- Take mineral specimens from prospecting area for analysis and experiments under approved FS
- Priority to be granted an exploitation license for the prospecting area
- Transfer prospecting rights

Licensee's Main Obligations

- Apply for approval for changes in prospecting method or the volume to be explored (> 10% cost increase)
- Notify the local people's committee of the prospecting plan before execution
- Provide frequent reports and remove all assets and property from the prospecting area;
- Rectify any damage to the land/environment; and
- Hand over mineral specimens, data and information to MONRE within 6 months of the license's expiry

Transferring Prospecting Rights

- Transferee meets the license conditions (slide 20)
- Transferor has paid 50% of the estimated cost of the project
- The transfer is approved by the competent body

Approval of Mineral Reserves

- To be granted by MONRE or the provincial People's Committee.
- Guidelines on the evaluation and approval of mineral reserves will be issued in the future.
- Lead time for licenser: 6 months

Licensing: Priority

- The holder of a prospecting license will be given priority over other applicants for an exploitation license if the application is made within six months after the prospecting permit expires.
- If no priority is given then the cost and expenses of the prospecting shall be reimbursed by the new exploitation license holder.

Prospecting License Application



Main Contents of Application

- Map of area
- Undertaking to protect environment
- Feasibility Study:
 - Prospecting method
 - Scale, quantity and kind of mineral specimen to be analyzed
 - Environmental protection, labor safety and sanitation plans
 - Details of method to calculate reserves
 - Project execution and progress plans
 - Cost estimate (using standardized unit price)
 - Time estimation for:
 - FS implementation,
 - submission for approval of reserves and

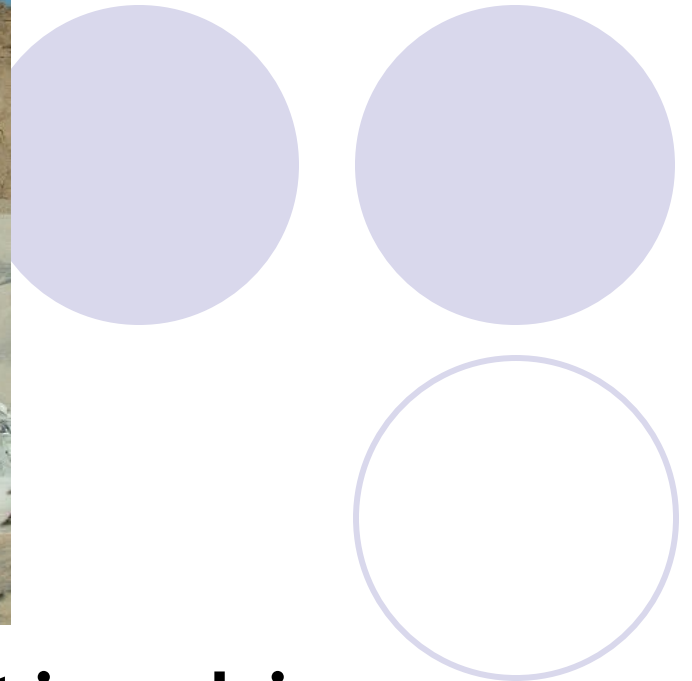
Extension Application: Contents

LOCAL INSIGHTS MEET INTERNATIONAL EXPERTISE

- Request for extension
- Report on result of prospecting to date
- Extension plan
- Map of area for prospecting (excluding 30% area to be returned)

Licensing Time

- License issuance: 90 days from receipt of valid application
- License extension or return: 45 days from receipt of valid application
- Consultation time does not add to leadtime



Mining and Exploitation Licenses

Eligibility

- Local organizations/individuals or foreign invested enterprises licensed to operate in Vietnam*:
 - Eligible for prospecting; and
 - Registered for mineral exploitation;

*not a Rep. office/branch of foreign company, which can only prospect

Conditions

- The exploitation project in the prospected area must comply with the applicable master plan
- The project must include
 - plans for the use of professional personnel;
 - sufficiently advanced exploitation equipment, technology and methods.
- Investment projects for exploitation of toxic minerals must be approved by the Prime Minister

Conditions -2

- The investor must
 - Submit an environmental impact assessment report; or
 - make a written undertaking to protect the environment
- Investor must be able to fund at least 30% of the costs; loans may be used for the rest.

Licensee Privileges - 1

- Access relevant government databases
- Prospecting in the licensed area in order to seek the competent authority's permission to upgrade the exploitation scale/amount
- Store, transport, consume, export exploited minerals
- Extend or return all or part of the area under the license

Licensee Privileges -2

- Transfer exploitation right
- Lease land for project use
- Return all or part of the area under the license
- Transfer the exploitation right
- Lease land for the project

Approval of Mineral Reserves Procedure

Application:

- Request
- Copy of FS of prospecting project
- Prospecting license
- Acceptance minutes of volume and quality of prospecting engineering work
- Report on result of prospecting together with appendices, drawings, relevant printed materials and digitalized copies

Leadtime: 6 months from valid application



Mining and Exploitation License Applications

Transfer License Conditions

- Mine has been constructed and is in operation
- Transferee must satisfy the license conditions (slides 36 and 37)
- Approval by licensing body

Transfer Application

- Transfer agreement and list of value of the assets to be transferred
- Map of current exploitation situation
- Report on results of exploitation and completed obligations to date
- Transferee's investment certificate or business registration certificate

License Withdrawal-1

- A mining license may be withdrawn if:
 - Construction Delayed: Mine not ready within twelve months from issuance date (except in case of force majeure)
 - Production Delayed: Not commenced within twelve months from the production date stated in FS (except force majeure)

License Withdrawal-2

- License holder's obligations breached and not remedied within 90 days of receipt of notification from the competent body
- Exploiting location designated a prohibited or suspended area for mining operations

Commencement

- License holder obligations breached and not remedied within 90 days of receipt of notification from the competent body
- Exploiting location designated a prohibited or suspended area for mining operations

Import-Export & Operation

TAXATION



Import Duties

- Mining is a conditional sector & not eligible for import duty incentives

But

- *“high-tech or new technology which has not be used in Vietnam before”*
- is encouraged and exempt from import duty

Export Duties

- Export Duty
 - **17%** for:
 - Silica sand, natural (also coloured; without metal) sands: HS 25051000
 - Silica sand, washed and classified: HS 25051000
 - Cristobalite sand: HS 25051000
 - **10%** for:
 - Silica flour: HS 25061000
 - Cristobalite flour: HS 25061000

Client Questions - 1

Q: “*National Trade:*

Mine to deliver raw sand to Plant at 8 USD/ton. What taxes will be levied on this trade? What is the income tax rate of Mine? Are there any other material taxes for Mine?”

A: There is no specific trade tax which will be levied at the time of delivery. Instead the Company will have to pay corporate income tax on its annual income/profit.

Client Questions - 2

Q: “*What are the income taxes for Plant?*”

A: The Company (i.e. the Plant) will have to pay corporate income tax (CIT) on its annual profits.

Standard CIT tax rate: 25%

CIT incentives: various incentives are available for projects which are highly encouraged, involve high level technology or are located in certain geographical areas. Further details can be provided once the project scope, location, etc. has been confirmed.

Client Questions - 3

Q: *Are there any other material taxes for Plant?"*

A: The Company/Plant must pay:

- CIT
- VAT on goods and services
- Export and Import Duties
- Natural Resource Tax
 - 10%: sand (general)
 - 11%: sand used for glass making
- Employees must pay Personal Income Tax

Client Questions - 4

Q: “*Plant sells the following products to Japan, Korea, Taiwan, China, India:*

Washed but wet sand, Washed and dried sand, Washed, dried, low iron sand, Silica flour in various grades, Cristobalite

What are the sales and excise taxes levied on these products?”

A: Sales tax does not apply in Vietnam, however VAT may be applicable.

Export duties are detailed in slide 49. The % rate is based on CPC/HS codes. To date the codes for “*Washed but wet sand, Washed, dried, low iron sand*” have not been provided. We believe that the standard rate of 17% will apply.

Policy Guidance



Decree 160/2009/ND-CP

- Decree 160 was passed in 2009 to provide guidance on the implementation of the previous Mineral Law
- It is not clear that Decree 160 will still be valid after the New Mineral Law comes into effect on 1 July 2011
- However the contents of Decree 160 still provide useful insight into State mineral policy.

Exporting

- The Ministry of Trade and Industry is responsible for issuing the list, conditions and criteria for which minerals may and may not be exported.*

*Article 4.2

Prohibited Areas

- People's Committees at the central, city and provincial level must co-ordinate with the relevant ministries to delineate the regions where mining activities are prohibited or temporarily prohibited*
- This delineation shall be based upon written opinions from relevant ministries.*

*Article 6.1(g)

*Article 20.2

Mineral Reserves – 1*

- National mineral reserves shall be approved by the Prime Minister and set out in the Government's Minerals Master Plan
- National mineral reserves are:
 - Areas where minerals have been investigated, assessed and approved as mineral reserves which need to be reserved in the interests of sustainable socio-economic development; and
 - Areas which indicate prospects of mineral resources but which have not yet been assessed or approved

*Article 23

Mineral Reserves – 2*

- MONRE shall co-ordinate with other relevant ministries to identify national mineral reserves and submit the same to the Prime Minister for his approval
- Prospecting, exploration and mining in national mineral reserves areas shall only be conducted with the Prime Minister's consent

*Article 23

Tendering

- People's Committees at the central, city and provincial level will delineate, approve and announce which areas will be subject to tendering for mineral exploration and mining.*
- The PCs will also supervise the tendering process.*
- The MONRE shall co-ordinate with the other relevant ministries to create principles and methods to value mineral reserves. This evaluation shall serve as the basis for tendering for mineral mining.*

*Article 6.1 (g)

*Article 6.1 (g)

*Article 23

Exploration Fees*

- Fees for exclusive exploration rights shall be calculated as follows:
 - First year: VND 50,000/hectare/year;
 - Second year: VND 80,000/hectare/year;
 - Third and fourth year: VND 100,000/hectare/year."

* Article 29.2

INDOCHINA TEAM INTRODUCTION

Legal, Tax, Finance and M&A



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CommonwealthBank



エヌ・アイ・エフ SMBCベンチャーズ

NIF SMBC Ventures



PABC Bank
Pan Asia Banking Corporation Plc



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Healthcare & Nutrition Products



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MORE QUESTIONS?

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- *Vice Chairman* VAFI (Vietnam Association of Financial Investor)
- former *Board Member* for the EUROCHAM Vietnam
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