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Amendment to Mining Act in 2023 to Target Rare-earth Minerals

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1. Introduction

In Japan, a new ‘cross-sectoral’ act entitled the “Act to amend a part of the Energy Saving Law, etc. with a view to establishing a stable energy supply-demand structure” (the “**Cross-sectoral Act**”) was enacted on May 20, 2022.

The Mining Act of Japan has been amended by the Cross-sectoral Act so that it will newly include rare-earth minerals in the scope of minerals subject to the Mining Act, with its effect being from April 1, 2023. Accordingly, anybody who intends to mine rare-earth minerals within the exclusive economic zone of Japan must obtain a mining right under the Mining Act as approved by the Ministry of Economy, Trade and Industry of Japan (METI) on and after April 1, 2023.

This newsletter summarizes the abovementioned amendment to the Mining Act (the “**Amendment**”) and some of its practical aspects.

2. Background of Amendment

As outlined above, the Cross-sectoral Act has amended various Japanese statutes, including the Mining

Act. This Cross-sectoral Act is scheduled to take effect on April 1, 2023, with certain exceptions thereunder¹. Accordingly, the Amendment, amendment to the Mining Act, will take effect on April 1, 2023.

To roughly summarize the background of the Amendment, the public announcement of the Cross-sectoral Act issued by the government as of March 2022 refers to the overall slogan of “carbon-neutral in 2050,” a goal which Japanese society is currently aiming towards, and states that the Cross-sectoral Act was enacted with the aim of achieving such goal. In addition, when it comes to the Amendment, the keyword “economic security” is often used to explain the reason for adding rare-earth minerals to the scope of minerals under the Mining Act.

In the context of “economic security”, the Foreign Exchange Control Act of Japan was amended in 2021 so that foreign investment into certain types of rare-earth related businesses in Japan shall be subject to governmental scrutiny thereunder. The addition of rare-earth minerals to the scope of the Mining Act can also be explained from the viewpoint of such context, i.e., “economic security”, by looking at the relevant records as published by the government which discussed the Amendment.

3. Details of Amendment

As noted above, the main purpose of the Amendment is to add rare-earth minerals to the scope of minerals under the Mining Act. In other words, before the Amendment, rare-earth minerals were not subject to regulation under the Mining Act. The minerals subject to the Mining Act must not be developed or dug out without obtaining permission from METI, i.e., without a mining right (a prospecting right (“*Shi-kutsu-ken*”) or a digging right (“*Sai-kutsu-ken*”)).

The current minerals subject to the Mining Act (i.e., before the Amendment comes into effect) are as follows:

gold ore, silver ore, copper ore, lead ore, bismuth ore, tin ore, antimony ore, mercury ore, zinc ore, iron ore, iron sulfide ore, chrome iron ore, manganese ore, tungsten ore, molybdenum ore, arsenic ore, nickel ore, cobalt ore, uranium ore, thorium ore, phosphate ore, graphite, coal, lignite, oil, asphalt, combustible natural gas, sulfur, gypsum, barites, alunite, fluorine, asbestos, limestone, dolomite, silica, feldspar, agalmatolite, talc, fireclay (limited to those that have fire resistance of Seger cone number 31 or higher), and placer (alluvial gold, iron sand, stream tin and other metallic ores that constitute alluvial deposits).

After the Amendment, with its effect on and after April 1, 2023, rare-earth minerals will be subject to the Mining Act. Therefore, nobody will not be allowed to develop or dig out rare-earth minerals without obtaining a mining right.

¹ The “certain exceptions” include, among others, the amendment to the “Act on Japan Organization for Metals and Energy Security (“JOGMEC”)", which has already taken effect as of November 14, 2022.

Notably, under the Amendment, there is no definition of the term “rare-earth minerals”, but it is generally regarded as including the following seventeen (17) elements, which are generally used for motor vehicles and electronics:

cerium; dysprosium; erbium; europium; gadolinium; holmium; lanthanum; lutetium; neodymium; praseodymium; promethium; samarium; scandium; terbium; thulium; ytterbium; and yttrium.

4. Possibility of Designation as ‘Specified Mineral’

Furthermore, there is some discussion by the Japanese government regarding the designation of rare-earth minerals as ‘specified minerals’ under the Mining Act.

As a starting point, the Mining Act distinguishes between general minerals and those that are determined by METI to be especially important to the Japanese economy. The latter type of minerals are called ‘specified minerals’.

In general, the “first-to-file” approach applies under the Mining Act, whereby the one who first files the application for a mining right has precedence over any others within the area subject to his/her application for a mining right. However, in 2012, the ‘special minerals’ system was newly introduced, whereby this “first-to-file” principle was partially replaced with a permit system, such that mining rights for ‘specified minerals’ shall be granted only to entities with sufficient capacity to fully exploit such opportunities. In short, in respect of ‘specified minerals’, METI selects a suitable developer via a tender bid hosted by METI for a specific project and area, and the “first-to-file” principle shall not apply to such ‘specified minerals’.

Currently, the following minerals are designated as ‘specified minerals’ under the Mining Act:

- (i) oil and combustible natural gas;
- (ii) hydrothermal deposits located on or under the seabed of gold ore, silver ore, copper ore, lead ore, bismuth ore, tin ore, antimony ore, mercury ore, zinc ore, iron ore, iron sulfide ore, manganese ore, tungsten ore, molybdenum ore, nickel ore, cobalt ore, uranium ore, thorium ore and barites;
- (iii) sedimentary deposits located on or under the seabed of copper ore, lead ore, zinc ore, iron ore, manganese ore, tungsten ore, molybdenum ore, nickel ore and cobalt ore; and
- (iv) asphalt.

The reasoning for the government’s discussion to designate rare-earth minerals as ‘specified minerals’ is based on the fact that rare-earth minerals are important for Japan’s national economy, and it is expected that the demand for rare-earth minerals will significantly increase in the near future. In addition, this reasoning is based on the fact that the rare-earth mineral deposits as identified by the governmental survey are generally located beneath the sea, and thus, high-end technology is required to develop the

rare-earth minerals located there. As such, the government is of the view that a developer of rare-earth minerals should be selected via a tender bid so that mining rights for rare-earth minerals shall be granted only to the developer with sufficient capacity to fully exploit such opportunities.

In summary, the Amendment will take effect from April 1, 2023. Furthermore, it is now under discussion whether rare-earth minerals should be designated as 'specified minerals' as well, and if so designated, the "first-to-file" approach will not apply to rare-earth minerals. Accordingly, those who are interested in this topic should keep an eye on the governmental discussions regarding whether rare-earth minerals will be designated as 'specified minerals'.

5. Final Remarks

The policies in Japan regarding economic security and the procurement of natural resources are getting more restrictive recently. This is partly caused by the structural changes in existing supply chains due to the Ukraine invasion and partly caused by the nationalism movement of some countries. At the same time as the Cross-sectoral Act, in May 2022, the "Act to Promote Economic Security" was also established in Japan. Such kind of movements to newly enact or amend the relevant laws of Japan must be watched out from the perspective of economic security in due course.

END

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