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# AMT/NEWSLETTER

## Energy

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### Recent Development of Rare Earth in the Territory of Japan

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#### Contents

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1. Introduction
2. Legal considerations related to rare earth developments within the territory of Japan
3. To conclude

## 1. Introduction

As you may know, rare earth is one of the fundamental materials which are essential for the production of high-technology products such as smartphones, EVs and other high-tech products. Recently, news reports have been making headlines that refer to the plan to develop rare earth in the Japan's surrounding waters.<sup>1</sup> Today, I would like to introduce the major legal points in respect of the development of rare earth within the territory of Japan.

To start the discussion, the current Basic Energy Plan (the seventh, which was formulated in February 2025) mentions rare earth as follows<sup>2</sup> :

*"Japan's territorial waters and Exclusive Economic Zone (EEZ) contain a variety of domestic marine mineral resources, such as seafloor hydrothermal deposits rich in gold, silver, and copper, cobalt rich manganese crusts, manganese nodules, and rare earth muds. While continuing to monitor the international situation, we will promote efforts to establish technologies such as exploration, ore recovery, ore processing, and smelting, as well as to conduct surveys on reserves and environmental impacts."*

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<sup>1</sup> <https://www.reuters.com/markets/asia/japan-begin-test-mining-rare-earth-mud-seabed-early-2026-2025-07-04/>

<sup>2</sup> [https://www.enecho.meti.go.jp/category/others/basic\\_plan/pdf/2025\\_strategic\\_energy\\_plan.pdf](https://www.enecho.meti.go.jp/category/others/basic_plan/pdf/2025_strategic_energy_plan.pdf)

With regard to rare earth, the media's attention recently has been attracted to the demonstration test project of technology for collecting rare earth mud of offshore Minami-torishima as conducted by the Japan Agency for Marine-Earth Science and Technology (JAMSTEC), which project is a part of the national policy. This demonstration test is noteworthy, given that it will be the world's first trial of demonstration of technology for collecting rare earth mud (i.e., clay-like sediment containing a high concentration of rare earths) from the very deep water. Here is a point to be mentioned from the legal perspective in respect of this demonstration test by JAMSTEC. There are some reports by the media to the effect that this demonstration test, scheduled to start in January next year, will involve some "test digging" operation. However, as of today, neither a prospecting right nor digging right under the Mining Act has been granted with respect to the target area of this demonstration test by JAMSTEC. Therefore, it shall be understood that this demonstration test will be in "exploration" phase as defined under the Mining Act, which will not contain any "drill and take" work. Please see below the outline of such "exploration" concept thereunder.

## 2. Legal considerations related to rare earth development projects within the territory of Japan

In this newsletter, I would like to outline the basic legal regime over the development of rare earths in the territory of Japan, mainly the sea areas, including the EEZ. As you may be aware, in 2022, the Mining Act of Japan was amended so that rare earth shall be subject to the regulations thereunder.<sup>3</sup> Furthermore, rare earth has been designated as "specified minerals" thereunder. For this reason, the development of rare earths within the territory of Japan (including the EEZ) is now subject to the regulations of the Mining Act, especially those related to "specified minerals" thereunder. I will first of all summarize the regulations as applicable to rare earth (as one of the "specified minerals"), as follows.

The basic concept is that the Mining Act distinguishes between "general" minerals and the other (non-general) minerals that are deemed especially important to the Japanese economy.

The latter type of minerals are called and defined under the Mining Act as "specified minerals" and are considered essential to the economy of Japan. The preservation issue of a preferred status to be given to a pending application differs depending on whether it targets "specified minerals" or not. With respect to minerals other than "specified minerals", a first-to-file principle applies, whereby the applicant who first-files the application for a mining right is given precedence over any other persons concerning the area subject to the application.

In contrast, as for "specified minerals", the first-to-file principle does not apply, and mining rights for "specified minerals" shall be granted only to the applicant (developer) with sufficient capacity to fully develop such "specified minerals". In other words, when it comes to "specified minerals", METI will select a suitable developer via a tender bid, and the first-to-file principle shall not apply. As noted above, rare earth falls under this category of "specified minerals". As such, METI will

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<sup>3</sup> Please see my newsletter as of January 2023: [https://www.amt-law.com/asset/pdf/bulletins12\\_pdf/230127.pdf](https://www.amt-law.com/asset/pdf/bulletins12_pdf/230127.pdf)

select a suitable developer via a tender bid, and the first-to-file principle mentioned above shall not apply to mining rights for rare earth.

- **Concept of “Exploration” under the Mining Act**

On a separate note, I will outline the activities called “exploration” before the acquisition of mining rights as below. Article 100-2 of the Mining Act provides that *“A person who intends to conduct the exploration of minerals must apply to METI for its permission, where: the term “exploration” shall mean any investigation acts of the geological structure, etc. as necessary for development of minerals by way of seismic exploration method or any other methods specified by the Ordinance of METI, provided that, in no event shall the “exploration” contain any **drill and take** work.”*

As you can see in this Article 100-2, the definition of “exploration” is limited to activities that do not involve “drill and take” of minerals. In other words, activities that involve “drill and take” of minerals are no longer “exploration”, instead they would amount to prospecting or digging activities, which require registration of mining rights.

The tricky issue here is that there is no clear definition of the term “drill and take” under the Mining Act. As a result, it must be interpreted from the (general) meaning of “drill and take.” (“*Kussai*” in Japanese language) Generally “drill and take” is to mean any act of excavating the land for the purpose of extracting minerals underground, or the act of extracting minerals themselves from underground. Therefore, “exploration” as referred to in Article 100-2 of the Mining Act shall mean any activity that does not involve such activities (i.e., excavating the land). For further information, the “exploration” which requires the permission of METI is the “seismic exploration method”, the “electromagnetic method”, and the “intensive sampling exploration method”. That is to say, such permission by METI is not required for any “exploration” that does not involve such special methods.

- **Designation of “Specified Area” after Exploration of Rare Earths**

On the other hand, assuming that the deposit of the target mineral, i.e., rare earths, which fall under “specified minerals”, is discovered as a result of the “exploration” activity, then a mining right (i.e., prospecting right or digging right) shall be created, which will allow the operator to do “drill and take” of the mineral. According to the designation of rare earths as “specified minerals” under the Mining Act as mentioned above, the process for grant of mining rights shall be different from that for general minerals (non-specified minerals) as follows:

Firstly, METI will designate the specific areas where deposits of “specified minerals” actually exist or may exist as “specified areas”. If designated, a public announcement will be made of that effect. However, as of the date of this newsletter, we have not located any information to the effect that a “specified areas” have been designated for any rare earth development projects within the territory of Japan, including the EEZ. This means that the “public announcement” mentioned above in this paragraph has not yet been made. Therefore, I can say that as of the date hereof there is no existing mining right (i.e., prospecting right or digging right) for rare earth development projects in the territory of Japan.

- **Application Process for Mining Rights after Designation of “Specified Area”**

The next issue to be outlined is related to the phase where any “specified area” is already designated for rare earth development project, although there is no precedent of such “specified

area” for rare earth as of today. In this phase, the process for selecting a developer with suitable capabilities will be carried out for the purpose of grant of the mining rights as for the “specified area”.

The following is further detail with respect to such process for selecting a suitable developer for a “specified area” of rare earth development. The applicant for mining rights as for rare earth must apply to METI with the certain documents specified under the Mining Act. The documents to be submitted to METI for the purpose of application for mining right include a “business plan” to be prepared by the applicant.

This “business plan” must include the following matters:

1. plan for drill and take of “specified minerals” during the relevant period;
2. method of drill and take;
3. financial plan for drill and take;
4. regime for drill and take;
5. expected scope and type of mine pollution<sup>4</sup>;
6. track records of drill and take related to the target “specified mineral” or similar minerals;
7. evaluation of mineral deposits based on the track records of exploration and information obtained in the area in which the mining rights are to be established;
8. evaluation of mineral deposits based on the track records of prospecting and information obtained in the area in which the digging rights are to be established (only in case of application for digging right); and
9. distribution channels of the mineral (only in case of application for digging right) and other necessary matters.

For further information, if the “specified area” for the mining right is designated, the criteria for selecting the developer with suitable capability shall be as follows:

1. the applicant has sufficient financial capacity and technical expertise;
2. the applicant is of good standing, and is not disqualified due to any historical violations of Japanese law;
3. the subject area does not conflict with any other existing mining rights or CCS sites (if relevant);
4. the contemplated mining activity of the “specified mineral” anticipates a certain level of economic value, where the economic value will involve the value of the “specified mineral” and the estimated quantity of the deposit;
5. the contemplated mining activity of the “specified mineral” is not contrary to the general interests of the public, provided that METI will consider, among other things, whether the contemplated mining activity will result in any irreparable harm to the environment, public health, or public facilities, including cultural assets, public parks,

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<sup>4</sup> According to Form 13-2 of the Ordinance for Enforcement of the Mining Act that provides the standard form of this “business plan” applicable to “specified minerals”, the “expected scope and type of mine pollution” shall mean the following matters: (1) damage to be caused by drilling of mines; (2) discharge of water from mines or waste water; (3) deposit of waste stones or slag; (4) discharge of mine smoke; and (5) other causes.

- or hot springs; and
6. the contemplated mining activity of the “specified mineral” is consistent with the economic and public interests of Japan. In this regard, METI will consider whether the contemplated mining activity is likely to have a negative impact on the economy or social well-being of Japan. For instance, if the contemplated mining activity gives rise to a pricing manipulation of the “specified mineral” as a commodity, or it harms the relevant supply chains around the “specified mineral” within Japan, then this criterion would not be satisfied.

### 3. To conclude

I have summarized the major legal issues as related to the development of rare earths in the Japanese territory (including the EEZ) under the Mining Act. The trends in the acquisition of rare earths and its development projects in Japan for that purpose will continue to draw the public attention, especially in light of the recent political and social situations surrounding Japan. I will continue to check these movements ongoingly.

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