

International Comparative Legal Guides

Mining Law 2027

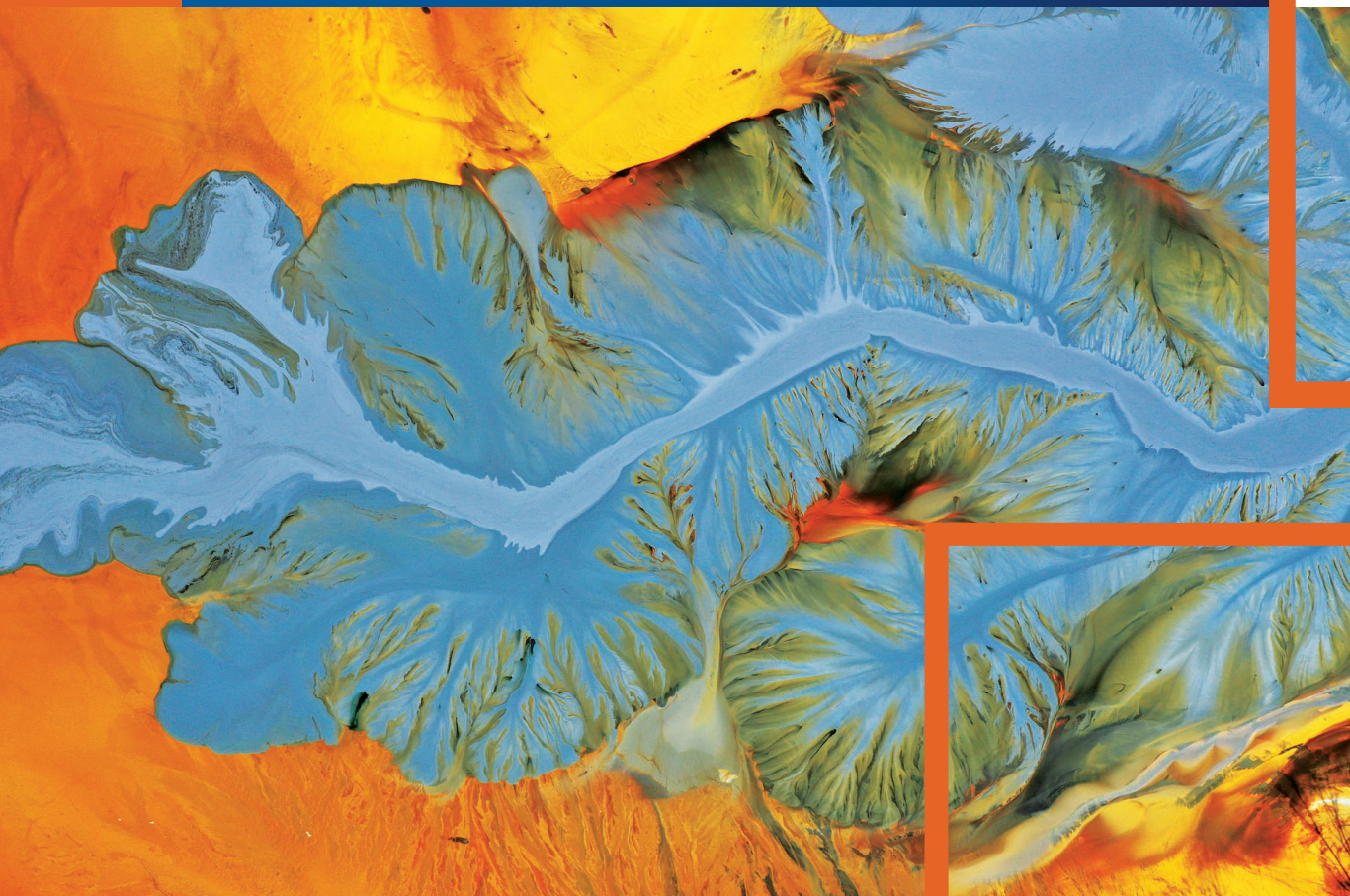
A practical cross-border resource to inform legal minds

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1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The basic statute regulating mining activities is the Mining Act (Act No. 289 of 1950, as amended) (the “Act”), the purpose of which is to provide the basis for a system of mining that can contribute to the improvement of public welfare through the development of mineral resources in a reasonable manner (Article 1 of the Act). As mineral resources are deemed critical materials for the national economy, the rights to prospect for and extract them should belong to the most appropriate persons eligible to do so, rather than the landowners. The Act grants mining rights to certain eligible persons (separate to the landowners) whereby holders of mining rights are granted the exclusive privilege of developing mineral resources whilst being obliged to immediately commence relevant mining activities and prevent associated pollution.

Furthermore, with respect to mining and exploration on or below the ocean floor, in the high seas not subject to the sovereignty of any country, the Act on Interim Measures for Deep Seabed Mining (Act No. 64 of 1982, as amended) (the “DSM Act”) will apply. The DSM Act requires persons who wish to engage in such deep seabed mining processes (including exploration) to obtain approval (*kyōka*) from the Ministry of Economy, Trade and Industry (the “METI”).

1.2 Which Government body/ies administer the mining industry?

The Act and the DSM Act provide the Minister of the METI with the authority to conduct administrative functions such as granting mining rights or approving the disposal of the same, organising bidding procedures for choosing specific developers for Specified Minerals (as defined below), and generally supervising holders of mining rights. The Act provides for the delegation of such authority to each local bureau of the METI where applications regarding mining rights should be made.

1.3 Describe any other sources of law affecting the mining industry.

Generally, mining businesses are subject to the Mine Safety Act (Act No. 70 of 1949, as amended) (the “MS Act”), which serves to prevent both injuries to employees and mining pollution. In addition, with respect to metal mining businesses, the Act on Special Measures for Pollution Caused by the Metal

Mining Industry, etc. (Act No. 26 of 1973, as amended) applies to prevent pollution caused by metal mining businesses specifically. For the purposes of organising and allocating land use between mining and other industries, such as agriculture, forestry and the like, the Act on Adjustment Procedures for Utilization of Land for Mining and other industries (Act No. 292 of 1950, as amended) promulgates procedures for dealing with complaints from non-mining industries regarding approvals or other administrative decisions made under the Act.

Further, other general statutes, such as the Electricity Business Act (Act No. 170 of 1964, as amended), the Industrial Safety and Health Act (Act No. 57 of 1972, as amended), the Air Pollution Act (Act No. 97 of 1968, as amended), the Water Pollution Prevention Act (Act No. 138 of 1970, as amended), the Soil Contamination Countermeasures Act (Act No. 53 of 2002, as amended), and the Noise Regulations Act (Act No. 98 of 1968, as amended), etc., may apply to a mining business, depending on the situation.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

The most important political developments affecting the mining industry in the last decade were manifested in an amendment to the Act in 2011 (which went into effect in 2012) (the “Amendment Act”), which remains the only amendment in the Act’s 70-year history. The rapidly increasing demand for global energy in both emerging and developed economies had created unprecedented international competition for natural resources in the years leading up to the Amendment Act. Among other examples, as observed in China’s restriction on its rare earth exports since 2010, the so-called rise in “resource nationalism”, and the resulting difficulties in maintaining supplies of certain minerals, are matters of national concern in Japan. Moreover, innovation in mining techniques had enabled new types of mining to be undertaken deep underground or within the ocean floor. Accordingly, the Government and the METI amended the Act with the objective of maintaining domestic resources amid the fiercely competitive environment for resource development in and outside the country, and to ensure that resource development is conducted by the appropriate and qualified persons.

Further, more generally, the Government amended the Foreign Exchange and Foreign Trade Act (effective from June 2020) with the aim of promoting foreign direct investment (“FDI”) conducive to sound economic growth, as well as ensuring minimal review of FDI that could pose risks to national security. This was implemented by lowering the threshold

for the prior notification requirement in connection with the acquisition of equity interests in domestic listed companies engaging in certain regulated businesses, including mining businesses, on uranium, oil and natural gas from the previous 10% to 1%, while certain exceptions from the prior notification requirement were adopted subject to certain conditions.

Moreover, in light of the critical importance of legal protection for development of so-called “rare earths”, the Act was amended, with effect from 1 April 2023, to include “rare earth metal ore” in the category of minerals that require the approval of the METI for prospecting or digging. Specifically, rare earth metal ore is categorised as a Specified Mineral, for which mining rights are not subject to the “first-to-file” application system that applies to Non-Specified Minerals. Instead, mining rights for rare earth metal ore are granted to the most appropriate developer as determined by the METI (see question 3.4 below).

2.2 Are there any specific steps the mining industry is taking in light of these developments?

The Amendment Act enforced: (i) a specific requirement of technical capability and financial credibility for the granting of mining rights; (ii) a new public bidding procedure rather than a “first-to-file” policy with respect to specified minerals such as oil, natural gas, certain ocean floor minerals and asphalt (“Specified Minerals”); and (iii) a new approval system for exploration programmes using any seismic or other specified methods. The number of applications for granting mining rights reduced by approximately 20% during the years immediately following the entry into force of the Amendment Act, as compared to the period before the Amendment Act (according to the public material of the METI). This trend is generally believed to be a positive indication that only appropriate persons having sufficient technical and financial capability can apply for mining rights.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

The Act provides for “mining rights” (*kogyo-ken*), “mining lease rights” (*soko-ken*) and “exploration” (*tansa*), conducted by prescribed methods only. Conducting “reconnaissance” will not be subject to the regulations under the Act unless it also constitutes “exploration”, as described in question 3.2 below.

3.2 What rights are required to conduct exploration?

Initially, the Act did not specifically regulate “exploration” itself. However, given the disorderly exploration that took place, especially of the ocean floor by foreign entities equipped with innovative exploration techniques, the Amendment Act established a new exploration approval system whereby those who desire to undertake “exploration for minerals without digging”, by “continuously using seismic methods, electronic or magnetic methods, or intensive sampling methods within the exclusive economic zone (the “EEZ”), a sea area relating to a continental shelf or territorial waters or inland waters”, are required to apply for approval to do so in advance. However, even if exploration by certain methods is permitted, the Act does not recognise such status as a specific right, as it does for mining rights.

3.3 What rights are required to conduct mining?

To conduct mining, mining rights are required. The Act defines mining rights as “prospecting rights” (*shikutsu-ken*) and “digging rights” (*saikutsu-ken*). Prospecting rights are the rights to dig a mining area as a trial to determine the existence, quality and possibility of digging minerals, whereas digging rights are the rights to dig a mining area on a commercial basis.

On the other hand, to conduct mining in a mining area where others hold mining rights, mining lease rights are required.

Both mining rights and mining lease rights are deemed “property rights” under the Act, and are subject to the approval of the METI as stated below.

3.4 Are different procedures applicable to different minerals and on different types of land?

As stated in question 2.2 above, the Amendment Act provides for distinct procedures for Specified Minerals and Non-Specified Minerals.

With respect to Non-Specified Minerals, those who wish to conduct mining are required to apply to the METI for approval, which is granted on a “first-to-file” basis to applicants who meet the eligibility requirements, including having sufficient financial resources and technical capability. Applicants who are granted approval for the creation of mining rights are required to: (i) register the rights at the mining registry for those rights to become effective; (ii) file an operational plan with the METI for its authorisation prior to commencing mining activities; and (iii) commence mining activities within six months after the registration.

On the other hand, Specified Minerals (which are defined as “oil, combustible natural gases and other materials important for the national economy”) are defined in three categories: (i) hydrothermal polymetallic ores, on or below the ocean floor (gold, copper, lead, bismuth, tin, antimony, zinc, iron, iron sulphide, manganese, tungsten, molybdenum, nickel, cobalt, uranium, thorium and barite); (ii) sedimentary deposit ores, on or below the ocean floor (copper, lead, zinc, iron, manganese, tungsten, molybdenum, nickel and cobalt); and (iii) asphalt and rare earth metal ore. As these minerals are deemed particularly important for the national economy, a stable supply is critically required. Thus, the Amendment Act introduced a new application procedure, whereby the METI designates “Specified Areas” where Specified Minerals can be found, solicits applications for mining rights for the Specified Minerals, and grants such rights to the applicant deemed to be the most appropriate by the METI (by assessing whether the criteria for approval have been met). Once applicants are granted mining rights under the foregoing process, the process that applies to Non-Specified Minerals for registration, operational plan-filing and the commencement of mining activities will apply to Specified Minerals. Under the Act, the procedures described above apply regardless of the type of land involved.

3.5 Are different procedures applicable to natural oil and gas?

As detailed in question 3.4 above, oil and combustible natural gases are Specified Minerals, and are therefore subject to a distinct procedure for the granting of mining rights.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

The Act provides that no legal person other than individuals of Japanese nationality or corporations incorporated under Japanese law may hold mining rights.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Other than the regulation stated in question 4.1 above, there are no further provisions concerning the nationality of a shareholder. Thus, a foreign entity is generally able to set up a wholly owned or jointly owned subsidiary with other entities under Japanese law to hold the requisite mining rights, and in practice we have seen a number of foreign mining companies do so successfully. It should be noted, however, that where the owned entity engages in mining businesses that extract “uranium or other nuclear material, oil or natural gas”, acquisition of shares in such entity is, in principle, subject to prior notification to the Minister of Finance and the METI via the Bank of Japan, pursuant to the Foreign Exchange and Foreign Trade Act, although certain exemptions apply.

4.3 Are there any change of control restrictions applicable?

No. As stated in question 4.2 above, there are no restrictions on ultimate shareholders, provided that the holder of the mining right is a corporation incorporated under Japanese law, unless the relevant entity engages in mining businesses in the uranium, oil or natural gas industry.

4.4 Are there requirements for ownership by indigenous persons or entities?

No, this is not applicable.

4.5 Does the State have free carry rights or options to acquire shareholdings?

No, this is not applicable.

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

No, this is not applicable.

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

For the purpose of national security, the Foreign Exchange and Foreign Trade Control Act (Act No. 228 of 1949, as amended) and the Export Trade Control Order (Cabinet No. 378 of 1949)

have required potential exporters to seek and receive the approval (*kyoka*) or the authorisation (*shonin*) of the METI for the export of stipulated goods, materials and products, including minerals listed in the separate tables of that Order. Accordingly, those who intend to export minerals should confirm whether those minerals are listed.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Mining rights may not be transferred without the approval of the METI. The same approval requirements as for the grant of mining rights, including the financial and technical capability of the transferee, will apply to transferees. Further, a transfer of mining rights will not become effective until the registration of transfer is completed.

As stated in question 3.2 above, certain types of exploration are subject to the approval of the METI. However, the Act does not recognise approved exploration to be akin to a grant of property rights and, therefore, there is no system of transfer or registration of that approved exploration status.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

It is possible that digging rights (*saikutsu-ken*) for Specified or Non-Specified Minerals can be mortgaged to secure financial obligations, whereas prospecting rights (*shikutsu-ken*) cannot be mortgaged in this manner. The creation of a mortgage will not become effective until such mortgage is registered.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The Act prohibits two or more mining rights from being created in the same mining area. However, holders of digging rights (*saikutsu-ken*) for Non-Specified Minerals may apply for approval to divide up a certain mining area.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, this is possible in respect of mining rights. If two or more persons jointly apply for a grant of mining rights, each person will be granted an undivided portion of one mining right. In addition, if one holder of a mining right transfers a portion thereof to a third party, such third party may acquire the undivided portion of the mining right if the transfer is approved by the METI.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore for or mine secondary minerals?

Those who wish to mine two or more kinds of mineral in the same mining area are required to apply for mining rights

in respect of each mineral under the Act. Holders of mining rights are only entitled to mine for secondary minerals if they have also been granted mining rights for those minerals.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled also to exercise rights over residue deposits on the land concerned?

Yes. The holder of mining rights is entitled to exercise them over residue deposits on the relevant land, provided such residue deposits are of the same mineral for which the METI approval is granted.

7.5 Are there any special rules relating to offshore exploration and mining?

As stated in question 3.2 above, the Amendment Act provides for a new approval system for mineral exploration without mining by specific methods within the EEZ, a sea area relating to a continental shelf or territorial waters.

Further, as stated in question 1.1 above, with respect to mining and exploration on or below the ocean floor in the high seas not subject to the sovereignty of any country, the DSM Act applies and requires that persons who wish to conduct deep seabed mining or exploration obtain the approval of the METI.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

No. Since mining rights are categorised separately from rights to use the surface of the land, the holder of the rights will need to separately obtain the rights to use the surface of the relevant mining area, such as ownership rights (*syoyu-ken*), superficies rights (*chijo-ken*) or leasehold rights (*chinshayu-ken*).

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

As stated in question 8.1 above, since holders of mining rights must obtain the rights to use the surface of the mining area, they must acquire the ownership rights or be granted a superficies right or leasehold right by the relevant landowner.

The Act provides for the following obligations of the mining right holders:

- (i) When an application for the grant of mining rights is made, if the exercise of mining rights causes any inconvenience to the use of the relevant land, the METI will be required to notify the landowner of such application for approval, and to give the owner an opportunity (within a reasonable time frame) to submit a written opinion. If so ordered by the METI, the applicant is required to submit a document setting out the name and address of the landowner.
- (ii) Applicants for mining rights, or holders of mining or mining lease rights, may access land owned by others upon obtaining the approval of the METI. The METI will be required to notify the landowner of such application for access, and to give the owner an opportunity (within a reasonable time frame) to submit a written opinion. If

applicants obtain such approval and wish to access the land, they are required to notify the landowner or the lawful occupier in advance.

- (iii) Holders of mining rights may compulsorily use or acquire the land owned by others for certain specific purposes, such as to open a pithead or well, install machinery for mining, open a railroad or a track, etc., if approval of the METI is received. The METI will be required to notify the landowner or the lawful occupier of such application for approval, and to provide such owner or occupier with the opportunity to attend and present its opinion in a public process.

8.3 What rights of expropriation exist?

Expropriation under the Act is limited to expropriation “without digging” using seismic methods, electronic or magnetic methods, or intensive sampling methods. Therefore, permitted expropriation does not automatically include rights to use the land.

9 Environmental and Social

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The MS Act is the main statute to prevent both harm to employees of the mine and mining pollution. In order to enforce the MS Act, Mine/Explosives Supervisors (*Kozan-Kayaku-rui-Kanrikan-zuke*) are placed in the Headquarters of the METI, and nine Industrial Security Supervisory Departments (*Sangyo-Hoan-Kantoku-bu*) (“ISSDs”) have been created as local divisions to administer the MS Act.

In addition, the MS Act has placed mining supervisors (*komu-kansakan*) in the METI and in each local ISSD, who have the authority to require holders of mining rights or other related parties to provide information required for the supervision of security, to access mines or any ancillary facilities and to act as judicial police (*shiho-keisatsu-in*) for the purposes of criminal procedure under the Act.

Further, Mine Safety Councils are located in the Headquarters of the METI and local ISSDs to investigate and consider important matters regarding mining safety. A Mine Safety System Review Subcommittee has been set up separately from Mine Safety Councils. The Mine Safety System Review Subcommittee was established to investigate and consider technical policies for mine safety.

General environmental statutes, such as the Industrial Safety and Health Act, the Air Pollution Act, the Water Pollution Prevention Act, the Soil Contamination Countermeasures Act, etc., are enforced by supervisory authorities such as the Labour Minister, the Prefectural Labour Directors, the Environment Minister and the Prefectural Governors.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The MS Act and Enforcement Regulations thereunder prescribe specific measures that mining right holders are required to take for the disposal of waste rocks, ore residues and other mining waste, mine water and drainage, and other harmful substances.

9.3 What liabilities does a mining company face in the event that mining activities result in ground water or other contamination affecting third parties?

Under the Act, a holder of mining rights in a mining site (or a holder of mining lease rights, if a mining lease right is established in the relevant mining site) must, in the event that any person suffers damage as a result of land excavation for the purpose of mining minerals, discharging mine water or wastewater, depositing waste rock or slag, or discharging metallurgical smoke, compensate that person at the time of occurrence of damage.

If the mining rights have already expired at the time of the occurrence of damage, such damage must be compensated by the holder of mining rights in the relevant mining site at the time of expiry of the mining rights (or the holder of mining lease rights, if a mining lease right had been established in the relevant mining site at the time of expiration).

9.4 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The holder of the mining right is required to register the extinction of such mining right due to relinquishment. Upon registration, the extinction of the mining right becomes effective.

9.5 Are there any social responsibility requirements (such as to invest in local infrastructure and communities) under applicable law or regulation?

The applicable laws and regulations generally do not impose social responsibility requirements, other than general requirements for the protection of the environment in the vicinity of mine development sites.

9.6 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

The Act provides the following requirements for the mining area:

- Boundaries of mining areas should be established by straight lines, and the outer limits are directly below the boundaries on the surface of the Earth.
- The total surface area of a coal, oil, asphalt or combustible natural gas mining area must not be less than 15 hectares; that of a limestone, dolomite, silica, feldspar, agalmatolite, talc or fireclay mining area must not be less than one hectare; and mining areas for other minerals must not be less than three hectares. However, this does not apply to placer mining.
- The total surface area of a mining area must not exceed 350 hectares. However, this does not apply where the total surface area must unavoidably be larger to allow for the reasonable development of minerals.
- In areas where the Environmental Dispute Coordination Commission finds that it is not appropriate to mine minerals due to the public interest in general, or agriculture, forestry and other industries, and the creation of a mining right for specified minerals is prohibited (hereinafter referred to as a “mining prohibition area”) – no mining area can be established for the specified minerals.
- In the case of a prohibition pursuant to the preceding paragraph, if the Environmental Dispute Coordination Commission finds that the mining of the minerals specified by the preceding paragraph in a mining prohibition

area has become substantially adverse to public welfare, the commission may recommend that the Minister of the METI dispose of the mining right by which such mining takes place in the mining prohibition area, pursuant to the provision of Article 53 of the Act.

- More than two mining rights must not be created in the same mining area. However, this does not apply where the subject minerals are minerals that occur in different types of ore deposit, or as specified in Article 46.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Generally, no native title or other statutory surface use rights have any impact on exploration or mining operations. However, the Act empowers the METI to reject an application on the following grounds: “When the mining of minerals in mining application areas is found to [...] disrupt the protection of cultural properties, parks or hot spring resources, or impair the interests of agriculture, forestry and other industries, and be extremely adverse to public welfare.”

11 Health and Safety

11.1 What legislation governs health and safety in mining?

The MS Act governs health and safety for employees in mining.

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The MS Act imposes the following obligations upon holders of mining rights and mining lease rights:

- to take necessary measures to prevent harm to persons in mines regarding (i) cave-ins, collapse, flood, protrusion of gas, explosion of gas or coal dust, spontaneous ignition, and underground fire, (ii) the treatment of gas, dust, rock dump, slag, mine water, wastewater, and mineral smoke, (iii) the use of machinery, appliances (excluding sanitary protective equipment; the same shall apply hereinafter) and structures, and (iv) the handling of explosives and other materials, power and fire;
- to take necessary measures for ensuring aeration related to hygiene and rescue in the event of a disaster;
- to take necessary measures to protect mineral resources from sinking, collapse, flooding, protrusion of gas, explosion of gas or coal dust, spontaneous ignition, and mine fires;
- to take necessary measures for the maintenance of machines, appliances, buildings, structures and other facilities in accordance with the classification of workplaces in and outside the mine;
- to take necessary measures for the prevention of mine pollution with regard to the treatment of gas, dust, rock dump, slag, mine water, wastewater, mineral smoke and the excavation of land;
- to provide mining workers with the safety education necessary for their work;

- not to use or install machinery, equipment, explosives or other materials that are highly dangerous;
- to ensure that the safety of mining right holders, buildings, structures and other facilities used in mining is maintained;
- to notify the Director-General of the ISSD of the construction plan when they intend to carry out construction work for the installation or alteration of buildings, structures or other facilities used in mining;
- to take certain prescribed measures with respect to the waste stone or slag accumulated and mine tunnels, etc., even after they have transferred or renounced them;
- to investigate the current status of the mine and record and preserve the results when commencing mining or other activities;
- to establish safety regulations with regard to the measures necessary for safety to be taken in accordance with the current state of the mine and notify the METI;
- to appoint a safety supervisor and a work supervisor and notify the ISSD thereof;
- to establish a safety committee for mines in order to investigate and deliberate over important safety matters, cooperate with the safety supervisor and the safety manager in the execution of safety duties, and have them make recommendations; and
- not to dismiss or otherwise disadvantageously treat mining employees who exercise their statutory right to take necessary measures, including the suspension of the work, to avoid a hazard, based on their judgment.

The MS Act imposes upon mine employees the obligation to observe the matters necessary for: (i) the prevention of harm to persons in mines; and (ii) the maintenance of facilities, in accordance with the measures taken by the holders of the mining right.

12 Administrative Aspects

12.1 Is there a central titles registration office?

Yes. Each prefecture maintains a mining registry where: (i) the digging rights are registered; (ii) the prospecting rights are registered; and (iii) the mining area maps are disclosed to the public.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes, the Act provides for administrative procedures to appeal any disposition by the Director of a regional bureau of the METI. Any judicial action for the rescission of a disposition pursuant to the Act may only be filed after the determination of such an administrative appeal.

13 Constitutional Law

13.1 Is there a constitution that has an impact upon rights to conduct reconnaissance, exploration and mining?

No, there is no specific provision of the Constitution that has any impact on rights to conduct exploration or mining.

13.2 Are there any State investment treaties that are applicable?

There are no State investment treaties other than the treaties between Japan and South Korea regarding the joint development of the continental shelf between those countries.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

The following taxes are payable on mining activities:

- (i) Application Fees and Registration Tax
Prescribed application fees are levied upon the application for the creation, transfer or amendment of mining rights. A separate registration tax is also levied upon the application for registration of the creation, transfer or amendment of mining rights.
- (ii) Mining Area Tax (*Koku-zei*)
The following local taxes are levied:
 - Mining area for prospecting rights: 200 Yen *per annum* per 10,000 m².
 - Mining area for digging rights: 400 Yen *per annum* per 10,000 m².
 - Sand mining area (both for prospecting and digging rights): 200 Yen *per annum* per 10,000 m².
 - Mining area for oil and combustible natural gas: two-thirds of the above fees.
- (iii) Mining Tax (*Kosan-zei*) – to be levied by each municipality upon holders of mining rights
 - A mine earning more than 2 million Yen per month: 1% (standard rate) of the sale price of minerals extracted (1.2% maximum rate).
 - A mine earning 2 million Yen or less per month: 0.7% (standard rate) of the sale price of minerals extracted (0.9% maximum rate).

14.2 Are there royalties payable to the State over and above any taxes?

There are no royalties other than the taxes noted in question 14.1 above.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

Generally, there are no local provincial or municipal laws that specifically need to be taken into account. However, there may be local ordinances (*jorei*) to be considered when conducting mining, depending on the municipality.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are no regional rules, protocols, policies or laws relating to Japan and its neighbouring countries that need to be taken into account.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Yes, the Act assumes that a holder of mining rights may abandon or waive them, and has certain provisions once the holder does so, such as procedures for the protection of a mortgagee and holders of mining lease rights.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

The Act provides that a holder of a mining lease right with fees attached may not relinquish such right unless he/she gives six months' notice or pays six months' lease fees, unless the purpose of such mining lease right cannot be pursued due to a natural disaster or any other unavoidable reason.

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Yes. The Minister of the METI is required to decrease the relevant portion of the mining area or rescind the mining rights if either of the following events occurs:

- the mining of minerals is found to be harmful to health, destroy facilities for public use (or any equivalent facility), hinder the protection of cultural properties, parks or hot spring resources, or impair the interests of agriculture, forestry and other industries, and be extremely adverse to the public welfare; or
- the mining of certain minerals significantly interferes with the mining of others and there is no other way to eliminate such interference.

Further, the Minister of the METI is entitled to rescind the mining rights if any of the following events occur:

- a holder of a mining right, or a director of the corporation having a mining right, commits certain crimes under the Act or the MS Act, and two years have not passed since the enforcement of any criminal sanction was completed;
- a holder of a mining right does not comply with certain orders of the METI for the increase/decrease of a mining area or for the application of digging rights;
- a person who has acquired a mining right due to inheritance, etc., does not file with the METI within three months thereafter;
- a person who has acquired a mining right due to inheritance, etc., but is notified by the METI that he/she fails to fulfil eligibility requirements, does not transfer such mining right;
- a holder of a mining right does not commence activities within six months after the registration;
- a holder of a mining right conducts mining activities not in accordance with his/her filed operational plan; or
- a holder of a mining right does not comply with an order of the METI to suspend its mining pursuant to the Act or a certain order of the ISSD under the MS Act.

17 Mining Finance: Granting and Perfecting Security

17.1 In relation to the financing of mines, is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is possible to create a mortgage that covers mining rights, land, buildings, superficies, leases, machinery, automobiles, industrial properties and other equipment related to mining activities under the label of "mining foundation" (*kougyo-zaidan*). It is also possible to create a mortgage (*teitou-ken*) over digging rights pursuant to the Act. However, it is generally understood that mining rights cannot be the subject of a pledge (*shichi-ken*) as such rights must be exercised by the holders thereof. Additionally, prospecting rights cannot be the subject of a mortgage (*teitou-ken*).

17.2 Can security be taken over real property (land), plant, machinery and equipment (whether underground or overground)? Briefly, what is the procedure?

Yes. As noted in question 17.1 above, it is possible to create a mortgage over real properties, plants, machinery, equipment and mining rights under the label of "mining foundation".

A mining foundation is established by registering the preservation of ownership in respect of the relevant assets in the mining foundation register. A mining foundation consists of the following: (i) mining rights; (ii) land and structures; (iii) superficies and rights to use land; (iv) rights to lease property with the consent of the lessor; (v) machinery, instruments, vehicles, ships, cattle, horses and related accessories; and (vi) industrial property rights. A mining foundation that is registered in the mining foundation register will be deemed a single real property.

17.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Security can be taken over receivables pursuant to the general rule on security interest over receivables under the Civil Code of Japan. Whether the chargor is free to collect the receivables in the absence of a default is dependent on the agreement between the chargor and the lender. In most cases, the chargor would be free under contract to collect the receivables in the absence of a default. To create security interest over receivables, the chargor will have to: (i) make an assignment for security interest; or (ii) pledge its receivables to the lender. Such assignments or pledges can be perfected by way of: (i) notice to the third-party obligor; (ii) procurement of consent of the third-party obligor; or (iii) registering the relevant assignment or pledge in the claim-assignment register.

17.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

It is possible for a depositor to pledge its deposit claims by entering into a pledge agreement with the lender and obtaining consent for the pledge from the bank holding the deposit. In

this regard, bank deposit terms and conditions usually require the prior consent of the relevant bank before a deposit claim may be assigned or pledged.

17.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes, security over shares usually takes the form of a pledge. Listed companies in Japan have scripless shares, recorded in a book-entry system. Private companies in Japan, on the other hand, may choose to issue physical share certificates. A pledge over shares in respect of which share certificates have been issued is created through an agreement and delivery of the certificates, and perfected by delivery of the certificates. A pledge over shares in respect of which no share certificates have been issued is created by an agreement only, and perfected by registration of the name and the address of the pledgee in the relevant company's shareholder register.

17.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

Where perfection of a pledge or assignment for security over receivables is made by way of notice to or consent of an obligor, a notarisation fee for a fixed-day stamp of 700 Yen per document is payable.

A registration tax of 30,000 Yen is payable for registration of preservation of mining foundation. Additionally, an amount equivalent to 0.25% of the amount of the relevant secured claim is payable for registration of mortgage over a mining foundation. An amount equivalent to 0.4% of the amount of the relevant secured claim is also payable for registration for creation of mortgage over mining rights.

A 200 Yen stamp duty will be levied per original copy of an assignment agreement for security. No stamp duty will be levied on pledge agreements in respect of shares, receivables or mortgage agreements.

17.7 Do the filing, notifications or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

No – filing, notifications or registration requirements in relation to security do not involve a significant amount of time or expense, although a registration tax is payable. The amount of registration tax payable will depend on the amount of the secured claim.

17.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment at a mining operation?

No regulatory consents are required for the creation of mortgages over mining rights or mining foundations, or the creation of pledges over shares or receivables.

18 Other Matters

18.1 What actions, if any, could be taken by the Government to encourage further foreign direct investment in the mining industry?

No, there has been no specific actions by the Government to encourage FDI in the mining industry. Rather, the Government seems keen to protect mining resources and industry from foreign investors in the interest of national economic security.



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