



Introduction to Mining Law

**NISHIMURA
& ASAHI**

09 March 2020 | Contributed by Nishimura & Asahi

Energy & Natural Resources, Japan

- 🕒 **Introduction**
- 🕒 **Specified materials**
- 🕒 **Mining rights**
- 🕒 **Mining taxes**
- 🕒 **Title to land and minerals**

Introduction

Japan's mining industry has recently enjoyed renewed interest thanks to technological advancements that have identified or made accessible various significant on-shore and offshore mineral deposits. This article examines the Mining Law (Law 289/1950) and its application.

The Mining Law was enacted in 1950 and, at that time, applied a first-to-file principle, pursuant to which mining rights were granted based on which entity was first to successfully submit its application. In 2012 this first-to-file approach was replaced with a permit system for certain specified minerals (as described below), such that mining rights were granted only to entities with sufficient capacity to fully exploit such opportunities, as determined by the Ministry of Economy, Trade and Infrastructure (METI). METI continues to monitor and amend the applicable standards and guidelines pursuant to which it will assess mining right applicants. METI most recently updated these guidelines in 2018, notably with respect to its assessment of any application to postpone, extend or cease any mining operations under any issued prospecting or digging right (both of which are described in more detail below).

Specified materials

The Mining Law distinguishes between minerals generally and those that are determined by METI to be especially important to the Japanese economy, classified under the Mining Law as 'specified minerals'. The Mining Law designates the following minerals as specified minerals:

- oil and combustible natural gas;
- 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;
- 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
- asphalt.

As noted above, mining rights for specified minerals are granted pursuant to a permit system, while mining rights for non-specified minerals are granted on a first-to-file basis.

Mining rights

Under the Mining Law, mining rights can generally be classified as 'prospecting rights' and 'digging rights'.

Prospecting rights

A 'prospecting right' is a permit that allows an entity to conduct boring or drilling to survey or investigate a particular area of land for the purpose of identifying mineral deposits, which is generally valid for two years. On METI granting a prospecting right, the recipient will have precedence over any third parties with regard to the subject area for as long as the prospecting right remains valid.

Where an application for a prospecting right is for specified minerals, METI will designate a tender bid period to receive and assess applications. The specific duration of the tender offer period is determined on a case-by-case basis. In assessing such applications, METI will consider a number of factors, including the applicant's:

- financial resources;
- technical expertise and know-how; and
- social responsibility.

For applications relating to non-specified minerals, the assessment period will generally last approximately nine months, being composed of a six-month period for METI's assessment followed by a three-month period to conduct consultations with the local governments.

Regardless of whether an application is for specified or non-specified minerals, the applicant must be a Japanese national or corporation. The applicant Japanese corporation can be controlled by a non-Japanese person or entity.

On receipt of a prospecting right, permit holders are required under the Mining Law to begin the exploratory drilling work within six months of the permit being granted, unless they can obtain METI's approval to postpone the commencement of drilling operations by the deadline. If the holder breaches this obligation, the prospecting right may be terminated. The Mining Law does not specifically define what constitutes 'beginning the exploratory digging work' or prescribe any minimum work obligations or expenditures that must be met by the permit holder in order to satisfy this requirement. METI will assess the conduct of each permit holder on a case-by-case basis. However, in practice, a standard benchmark in this analysis is whether any drilling work has commenced (surface exploration work alone is insufficient).

A prospecting right permit can be extended for two subsequent two-year periods (for a total maximum duration of six years). **(1)** In order to receive an extension, permit holders must satisfy METI that:

- they have diligently conducted exploration activities for the subject minerals;
- it is necessary to continue the exploration activities to confirm the status of the subject mineral deposits; and
- they have paid all applicable taxes relating to such permit and exploration activities.

Digging rights

A 'digging right' is a permit that allows an entity to conduct digging for the production of applicable minerals on a particular area of land. There is no procedure under the Mining Law to convert a prospecting right into a digging right automatically. A holder of a prospecting right must submit a separate application to METI to obtain a digging right. The application must include an explanatory document outlining the location, strike, dip, thickness and other relevant information regarding the status of the mineral deposits identified during the prospecting period.

Similar to the issuance of prospecting rights, digging rights for specified minerals are issued pursuant to a permit system, whereby a tender offer period will be commenced in order for METI to identify and grant the digging right to the entity determined to be most capable of exploiting the subject specified minerals.

Again, similar to the treatment of prospecting rights holders, the Mining Law requires digging rights holders to commence the work set out in the operation plan to extract the subject minerals within six months of the grant of the right, unless they obtain METI's approval to postpone the commencement of the work by the deadline. The Mining Law does not explicitly prescribe any minimum work obligations or expenditures that must be met in order to satisfy this requirement.

There is no tenure for digging rights under the Mining Law. Digging rights remain indefinitely once the right is registered in the official mining registry. However, if the holder of the digging rights discontinues all digging activity on the site for more than one year, the digging right may be revoked at METI's discretion.

Mining taxes

Two types of Japanese tax apply to mining activities:

- a mining lot tax, imposed proportionate to the size of the area for which the mining right has been granted; and
- a mineral product tax, imposed proportionate to the amount of minerals produced.

Title to land and minerals

Finally, under the Mining Law, regardless of the registration of any mining rights (either prospecting or digging), the surface rights to the relevant parcels of land will remain with the registered landowner. Title to the subject minerals will transfer to the holder of the mining rights (either prospecting or digging) once the minerals are produced from the land.

For further information on this topic please contact Peter G Armstrong, Hiroyasu Konno or Yoshiaki Otsuki at Nishimura & Asahi by telephone (+81 3 6250 6200) or email (p_armstrong@jurists.co.jp, h_konno@jurists.co.jp or y_otsuki@jurists.co.jp). The Nishimura & Asahi website can be accessed at www.jurists.co.jp.

Endnotes

(1) With the exception of prospecting right permits for oil and combustible natural gas, which are valid for an initial term of four years and can be extended twice for subsequent two-year periods (for a total of eight years).

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Peter G Armstrong Hiroyasu Konno Yoshiaki Otsuki