

## CHAPTER 10 MINING

The mining industry comes under the jurisdiction of the Department of Mineral Resources ("DMR") which is itself supervised by the Ministry of Industry.

**Mining Council** Those who wish to engage in exploration or mining must first apply to become members of the Mining Council. Applications are routinely approved. The Mining Council acts as a liaison body between the government and private industry.

**Licenses** Before engaging in either exploration or mining, the appropriate license must first be obtained.

**Exploration licenses** There are three types of exploration license:

*General prospecting license* This is a one-year non-exclusive, non-renewable license issued by the local Mineral Resources Office. It permits the holder to explore for minerals in a specified area.

*Exclusive prospecting license* This license is exclusive for the area covered by it. It requires exploration to commence within 60 days, a suitable amount of work to be performed and reports to be made. An EPL for onshore exploration is valid for one year while one for offshore exploration is valid for three years.

*Special prospecting license* This license requires the expenditure of a specified sum of money every year and the use of high technology with the expenditure monitored by the Department of Mineral Resources. Reports must be filed every 120 days. This license is valid for five years.

**Mining licenses and provisional mining licenses** Once a mineral discovery has been made, an application may be made for a mining license to cover mining activities on or offshore as the case may be. In some cases, a one year provisional mining license is granted. A mining license is valid for a period of up to 25 years, including the period covered by a provisional mining license.

**Underground mining** The Minerals Act (2002) imposes conditions that apply to applications for a license for underground mining, emphasizing the importance of technical specifications, supervision, insurance, safety, environmental considerations and other matters. Those who suffer loss as a result of underground mining activities are also granted certain rights.

**Surface rights** In addition to a license, where the exploration or mining will take place on land, it is necessary to obtain the permission of the surface owners or possessors prior to proceeding. The fact that a license has been issued to explore or mine does not imply or constitute permission of those with surface

rights. In fact obtaining surface rights is often a far more difficult task, since each owner's or possessor's rights may extend to only a small piece of land. Where a mining project requires a large tract of land negotiations may involve numerous owners and/or possessors.

**Foreign involvement in mining activities** Mining is a restricted business activity under Schedule 2 of the Foreign Business Act. This means that minority foreign ownership of such a business is permissible without consent, but if majority foreign ownership is desired, an application must be submitted to the Cabinet (see further Chapter 1 *Foreign Business Restrictions*). The United States – Thailand Treaty of Amity excludes the exploitation of natural resources from the equal national treatment afforded to Americans in most other cases (see further Chapter 2 *The United States - Thailand Treaty of Amity*). Accordingly, all foreign ownership restrictions contained in the Foreign Business Act also apply to Americans engaged in mining.

Exploration is not '*mining*' and so is not covered by the Foreign Business Act. However, a Cabinet resolution passed in 1966 restricts aliens from exploring or mining above the 11th parallel, which divides the southern peninsula of Thailand. Whilst this resolution is not law, it is enough to inhibit the granting of exploration licenses above the 11th parallel to foreigners.

**Offshore mining in shallow waters** Companies which are engaged in mining in waters up to a depth of up to 200 feet, may apply for renewal of their mining licenses only if they become 60% Thai owned. New mining licenses may be issued to companies which are initially at least 51% Thai owned and which agree to become 60% Thai owned within two years.

**Board of Investment incentives** The BOI promotes mineral prospecting and mining. Promoted exploration projects are subject to minimum expenditure requirements and must be majority Thai owned.

**Royalties and taxes** Mining license holders must pay royalties, based on the value of minerals extracted. This is except in the case of gem mining, where the royalty is based on the size and value of the land covered by the mining license. Mine operators, unlike petroleum concessionaires, are subject to the normal Revenue Code taxes.

*Revised 1 August 2010*