CLIFFORD CHANCE

Briefing note

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India proposes a new mining law

Over the next few months the Indian parliament is set to debate a new draft mining law, the Mines and Minerals (Development and Regulation) Bill 2011 ("Bill").

Increased significance of the mining industry to the Indian economy coupled with widespread concerns about the impact of mining activities on the environment and on the local communities, allegations of illegal mining, perceived lack of transparency in allocation of mining concessions, procedural delays and absence of infrastructure development in the mining areas are the primary motives behind current attempts to replace the existing Indian mining laws that were adopted in 1957.

Notably, the Bill introduces a High Technology Reconnaissance cum Exploration licence (**HTREL**) as a new concession instrument to encourage the use of more efficient new technology for exploration; increases the role of local bodies and local communities; requires mining operations to be undertaken in a sustainable manner; introduces corporate social responsibility requirements; and, lastly, imposes a new tax in the form of payments to a District Mineral Foundation (**DMF**).

Transparency

To improve transparency in allocation of concessions, a bidding mechanism is proposed for areas of known mineralization. For other areas, a prospecting license can be granted on a *'first-in-time basis'* with a *'swiss challenge'* system to prevent any misuse, where the Government invites competitive counter proposals in a manner prescribed under the Bill. The Bill provides for non-exclusivity of reconnaissance concessions and requires direct mining leases to be granted on a competitive basis with preference to applicants that propose value addition on parameters prescribed in the Bill.

The Bill proposes a simpler procedure for the transfer of reconnaissance and prospecting licences. Government approval is required for the transfer of a mining lease and the government may call for better financial bids if it is of the opinion that the amount agreed between the transferor and transferee of a lease is inadequate.

Role of local communities

Perhaps the most significant aspect of the Bill is the creation of rights for local communities in relation to mining activities conducted in their area. Each member of the family affected by mining related operations has to be allotted "at least one share" in the company holding the mining lease (such shares being non-transferrable). The mining lease holder must provide employment or other assistance to persons holding a occupation or usufruct or traditional rights over the leased land in accordance with the rehabilitation and resettlement policy of the relevant State.

Consultation within local bodies is mandatory before notification of public lands for the grant of mineral concessions. Concurrence of local bodies is necessary for grant of prospecting or mining concession for minor minerals (but is not required for major minerals, listed in the First Schedule to the Bill). Final mine closure plans must be approved in consultation with local bodies. Mining companies are liable to pay for damages, if any, to person or family holding occupation or usufruct or traditional rights of the surface of the land as part of the mine closure and restoration process.

Taxation of mining

The Bill provides for revenue outflow for a mining licence holder in the form of:

- royalty (at rates specified in a schedule to the Bill)
- dead rent (as specified in the lease instrument)
- payment to DMF at the rate mentioned below
- a duty to the Central Government (as a custom duty in case of exports or an excise duty for domestic consumption) and to the State Government (at a rate not exceeding 10% of the royalty).

The payment to the DMF is an amount equal to the royalty for all major minerals except for coal and lignite, for which the amount is 26% of the profits (after deducting tax paid). The amount payable to the DMF for minor minerals shall be prescribed by the state governments in consultation with the National Mining Regulatory Authority. This new tax has attracted criticism from the domestic industry associations and it is feared that this new tax could make the conduct of mining operations expensive in India as compared to other major mining economies and hamper the development of mining, despite India being a mining resource rich country.

Corporate social responsibility

Along with the mining plan for all major minerals, a mining lease holder is required to prepare a corporate social responsibility document. This is to comprise a scheme for annual expenditure by the lessee on socio-economic activities in and around the mine area for the benefit of the adjoining host population including for enabling and facilitating self employment opportunities.

Transition

Once the Bill comes into force, all grandfathered concessions will continue and mining leases shall be extended irrespective of the size of the area. Current applications other than those:

1. for seamless transition from a reconnaissance to prospecting and from prospecting to a mining lease
2. that are approved by the Central Government
3. where a letter of intent to grant a concession is issued,

will need to be recommenced under the new legislation.

Perhaps with a view to avoid a flood of new applications once the new Bill becomes effective, it is provided that direct mining lease may only be issued after an area is notified by the State Government. The Bill also proposes a moratorium period of up to 3 years for new prospecting applications in respect of major minerals (except coal and atomic minerals) thereby enabling the States to notify which areas in their region they propose to offer mining concessions over.

Timelines

The Bill has been tabled in the Indian Parliament. It will now be referred to a Standing Committee of Members of Parliament dealing with Mining affairs for further discussions and deliberations. It is reasonable to expect that the Bill will be heavily debated and discussed in the Standing Committee of Members of Parliament for Mining affairs as well as on the floor of both houses of Indian Parliament. Considering the slim majority enjoyed by the ruling coalition and its consequent dependence on smaller political groups to remain in power, it is likely that the Government may, with a view to build political consensus, introduce significant amendments to the Bill. It is likely that the Bill will be discussed only in the next session which is likely to be scheduled in the months of March - April 2012. An update will be provided when the Bill is approved by the Parliament and referred to the President of India for final approval.

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