

New Mining Law for Japan

On 21 January 2012 the Japanese Ministry of Economy, Trade and Industry substantially amended the Mining Act for the first time since 1950. It is hoped that the amended Mining Act will stimulate domestic natural resource development and ensure a steady supply of certain key resources in Japan.

Background

Prior to the amendment, the Mining Act (the "Act") was in need of updating to reflect the current needs of Japan to optimise the development of its own natural resources. Japan has now moved to stimulate productivity in its mining sector.

The amended Act seeks to ensure that competent developers are selected to exploit mining rights and ensure that certain resources, which are nationally important to Japan, are appropriately protected.

The Former Process

The original regime established by the Act, allowed the Minister of Economy, Trade and Industry ("METI") to grant mining rights to entities for the purpose of extracting minerals. These rights were allocated to the applicant who was first in time making an application, the so called "first to file" system.

The Act did not provide for any minimum standards for applicants to ensure that the parties granted mining rights possessed adequate financial and technical capabilities to undertake the activity.

Consequently, mining rights were granted to the first developer to apply for the permit, rather than the applicant with the most appropriate

business capabilities. As a result of this system, many applications were filed in order to block other applicants while sites were left undeveloped. Exploration rights are subject to a two-year time limit (or four-year in the case of petroleum or combustible natural gas) but exploitation rights can be held for up to 20 years.

Further, there were no restrictions on exploratory and investigative activities, including the use of seismic methods.

The New Regime

The revisions to the Act strengthen the regulatory powers of METI to ensure greater quality in successful applicants for mining rights.

The new regime establishes two different classes of minerals:

1. Specified Minerals
2. Non-Specified Minerals

The application process for mining rights differs for each type of mineral.

Specified Minerals

Specified minerals are those minerals (such as oil and natural gas) which the Japanese Cabinet has designated as being of particular importance to the national economy ("**Specified Minerals**").

If an area contains, or is likely to contain, a Specified Mineral then METI may designate that area as a "Specified Area" and a different application procedure will apply to

mining in such area. METI will designate an area as such if it considers that it is necessary, for the promotion of the public interest, to select a developer who is most capable of developing that Specified Mineral (a "**Specified Developer**").

METI will then establish implementation guidelines and publicly invite applications for the position of Specified Developer in relation to the Specified Area. METI will specify a timetable for applications with the invitation period being not less than six months. An applicant will be required to include a business plan in its application which will, among other things, set out its proposed mining method, financial

Key issues

- Reforms instituted to stimulate Japan's mining industry
- New classification of minerals with particular importance to the economy
- Requires applicants to have a solid financial and technical basis to demonstrate that they are able to exploit the resource
- Permission required to conduct investigative and exploratory activities

plan and expected environmental impact.

METI will only consider applicants that have a sufficient financial basis and the technical capabilities to properly carry out development of the site to a reasonable standard. Whether the applicant has sufficient social credibility will also be a factor in its decision – the criteria for this includes lack of regulatory misdemeanours, complaints and fines.

METI will then examine the business plans of the applicants and select the developer it considers most capable of developing the Specified Mineral appropriately.

Non-Specified Resources

For minerals that are not Specified Minerals the first to file system will still apply. However, new restrictions have now been included to lay down some basic requirements for every applicant for a mining right.

In order for an application to be considered by METI, the applicant must demonstrate, as required for Specified Minerals, that they have a sufficient financial basis and the technical capabilities to properly carry out development of the site to a

reasonable standard. They must also have sufficient social credibility. Once an applicant fulfils those requirements the first to file system will apply.

Exploration

The new regime has introduced a requirement to obtain permission from METI to undertake exploratory activities. This permission system is restricted to the use of any seismic methods and any other methods which are specified by METI. Among other general requirements, METI will consider whether the application is in the public interest and whether it would be inappropriate to allow it given the prevailing domestic and foreign social and economic circumstances.

This new permission system will give METI much more control over any exploratory activities and a wider discretion to limit the amount and type of activities that are undertaken.

Potential Impact

The 2012 mining reforms have introduced substantial changes into Japan's mining industry. It is hoped that such reforms will encourage development of the industry by ensuring that the most capable applicants are awarded permits.

Read our other publications

If you would like to receive copies of our other publications for the mining sector or which are Japan related, please email:

julie.dean@cliffordchance.com

Mining:

Resource Nationalism (December 2011)

New Angolan Mining Code (October 2011)

Guinea's new mining code (September 2011)

Japan:

Japan opens to investment in renewable energy: New feed-in tariff system to be a major step for sector (January 2012)

The Industrial Revitalisation Law Amendment (June 2011)

Reform of The Civil Code of Japan (June 2011)

Amendments to the Merger Filing Procedure in Japan (April 2011)

Contacts

If you would like to know more about the subjects covered in this publication or our services, please contact:



Kenji Miyagawa
Counsel

T: +(81 3) 5561 6629
E: kenji.miyagawa
@cliffordchance.com



Andrew O'Shea
Senior Associate

T: +(81 3) 5561 6630
E: andrew.o'shea
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ
© Clifford Chance LLP 2012

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.