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In China, mining activities are regulated under the *Mineral Resources Law* and various Administrative Measures. These laws are administered by the Ministry of Land and Resources (MOLAR) and the various provincial, regional and municipal geology and mineral resources departments. The two types of mining licences available in China are:

- an exploration licence;¹ and
- a mining licence.

The usual timeframe for deciding on an application for an exploration licence is 40 days and for a mining licence is also 40 days.

For foreign investment in mining activities in China, approval from the Ministry of Commerce is required under the Administrative Measures for the Administration of Foreign-invested Mineral Exploration Enterprises.

Mining companies should also be aware of the following environmental requirements:

- an approval from the relevant environment authority is required under the *Law of Appraising of Environmental Impacts* before either an exploration or a mining licence will be issued. An environmental impact assessment report must be submitted to the relevant environmental authority, whose decision on the report must be made within 60 days, and
- the use of forest land in China for mining projects is subject to approval by the relevant forestry authority under the *Forestry Law* and the *Regulation on the Implementation of the Forestry Law*. The approval process generally takes 20 days.

In addition, there are various requirements for the compensation of affected land owners and occupiers depending on whether the land will need to be requisitioned and whether the site is in a rural or urban area. In each case, a mining company will need to negotiate with the landholders regarding compensation for the destruction of property (such as houses or crops) and relocation of the occupants. In rural areas, the MOLAR has issued guidelines for land requisition, which include guidance on appropriate compensation and resettlement of farmers.

2.1 INTRODUCTORY OVERVIEW OF MINING LAW

Under the *Mineral Resources Law*, all mineral resources are owned by the state. The MOLAR is responsible for the supervision and administration of mining and exploration within China. There are also provincial, regional and municipal geology and mineral resources departments that are responsible for exploration and mining in their respective areas.

There are a number of ways in which a foreign mining company may obtain a right to mine in China. These include:

- purchasing the right directly from a domestic enterprise in accordance with Chinese regulations following approval by relevant administrative authorities;
- entering into a joint venture with a domestic entity already holding mining rights;

¹ China has imposed a moratorium on granting exploration licences for coal mines until 31 December 2013, subject to certain exceptions. There is a national policy to encourage the local provincial governments to restructure the local coal mining companies—small coal mines are to close, while large private ones are to be sold to state-owned entities (with exceptions).

- obtaining an approval to explore, and subsequently, a right to mine, and
- obtaining a right to mine through the tender, auction or bid process.

The holder of an exploration licence or a mining permit will be subject to annual exploration right usage fees or mining right usage fees which are calculated based on the size of the area in question. Mining permit holders must also pay a mineral resource compensation fee based on a percentage of their sales revenue in accordance with the *Administration Measures for Collection of Mineral Resource Compensation Fee*.

In addition to an exploration licence or mining permit, other permits may be required in certain instances. For example, for gold mining operations a gold operating permit is required.

2.2 BASIC APPROVAL PROCESS

The relevant law relating to mining approvals is contained in the following legislation:

- *Mineral Resources Law*
- *Administrative Measures Concerning the Registration of Tenement of Mineral Resources Exploration and Surveying*
- *Administrative Measures Concerning the Registration of Mineral Resources Exploitation*
- *Administrative Measures for Transferring Exploration Rights and Mining Rights*.

The steps involved in obtaining an exploration licence are contained in the Administrative Measures Concerning the Registration of Tenement of Mineral Resources Exploration and Surveying. An applicant must submit to MOLAR:

- an application form and a drawing/map of the scope of blocks in which exploration will be conducted;
- a copy of the certificate validating the qualification of the exploration entity;
- an exploration working plan and an exploration contract or documents evidencing that the exploration entity and project are entrusted by the state;
- an implementation proposal for the exploration;
- documents of proof showing the source of the funds for the exploration project and
- any other material required.

MOLAR must decide on the application within 40 days. If approved, an exploration licence is issued after payment of the exploration right usage fees. The licence is valid for three years and may be renewed for a further two years by submitting an application for renewal at least 30 days prior to the expiration date of the licence.

Where a company already has an approval to explore and now seeks a right to mine, the company must apply in accordance with the requirements set out in the *Administrative Measures Concerning the Registration of Mineral Resources Exploitation*.

There are a number of steps involved. The applicant must:

1. apply to reserve the exploration rights under the exploration licence and discontinue the minimum exploration expenditure required under that licence;
2. apply to the MOLAR for approval of the mining area boundaries;

3. produce a mineral deposit report in conjunction with a qualified appraisal organisation which then reports to the Geological Mineral Department of MOLAR;
4. prepare a mining project proposal and feasibility study and establishment (or application to restructure the exploration entity into a mining entity) for submission to the Ministry of Commerce at the appropriate level of government for approval by the National Development and Reform Commission;
5. commission a company holding a mining design certificate to carry out a mineral resource development and utilisation plan—if this results in an adjustment in the amount of expenditure required, further approval from the Ministry of Commerce may be required;
6. apply to MOLAR for the right to mine, submitting the required documentation which might include: application form and map of mining area boundaries, proof of qualifications, plan for mining and utilisation of resources, business licence, appraisal report or document of authorisation, environmental impact assessment report and approval from the environment authority;
7. submit the land rehabilitation plan to the MOLAR when filing the application for the mining rights. The land rehabilitation plan must include:
 - an overview of the project and the status of land utilisation in the project area;
 - an analysis and forecast of the damaged land and an assessment of the feasibility of land rehabilitation;
 - the objectives and steps for land rehabilitation; the quality requirements and criteria for land rehabilitation;
 - a description of the land rehabilitation project and the estimated or approximate investment;
 - the arrangements made for the land rehabilitation fee;
 - the arrangements made for the implementation of the land rehabilitation plan; and
 - any other documents required by the MOLAR.
8. pay the mining royalty fee within 30 days of receiving the approval notice.

The usual timeframe for deciding on an application for a mining licence at step 6 above is 40 days, however the expected timeframe from the initial applications through to the issuing of a licence to mine (from step 1 to step 7) is approximately 310 days. The term of the mining permit issued will depend on the construction scale of the mine—a large-scale mine may have an initial term of 30 years. An application to renew the permit must be made at least 30 days prior to the expiration date.

Where a viable deposit has been located, but no entity has obtained valid exploration rights for that site, the government may sell those rights to a pre-qualified applicant by tender, auction or bid in accordance with the Administrative Measures Concerning the Invitation and Submission of Bids, Auctions, and the Listing of Exploration and Mining Rights. An entity that successfully obtains the right to mine by one of these methods must then enter into an agreement confirming the terms and conditions of the allocation of the mining rights.

Exploration rights and mining rights may not be transferred unless the transfer meets the requirements laid out in the Administrative Measures for Transferring Exploration Rights and Mining Rights, and is approved by the MOLAR.

Any transfer of exploration rights must meet all the following conditions:

1. Two full years have passed since the issue of the exploration licence, or the discovery of the mineral resources available for further exploration or mining in the exploration zone, or one full year full year has passed since the mining enterprise began mining.
2. The specified minimum input to exploration has been fulfilled.
3. There is no dispute regarding the ownership of the exploration rights and mining rights.
4. The exploration right usage fees, the mining fees or any price for the exploration and mining rights has been paid.
5. Other requirements as required by the MOLAR.

A licensee must apply to the MOLAR for approval to transfer. The required documentation includes:

- an application letter;
- the transfer contract signed by the parties;
- documents proving the qualifications of the transferee;
- documents proving that the transferor has met the requirements for the transfer;
- a report on the condition of the exploration or the mining; and
- any other document required by the MOLAR.

The MOLAR must make a decision on the application within 40 days as of the date of receipt of the application for transfer. Where the transfer is approved, the transferor and the transferee must, within 60 days as of the date of receipt of the approval notice of transfer, go through the formalities for registration modification with the original licensing authority. After paying the relevant fees, the transferee will obtain the exploration licence or mining licence and become an exploration licensee or a mining concessionaire. The transfer contract will come into effect as of the date of approval.

After exploration rights or mining rights are transferred, the period of validity of the exploration licence or mining licence will be the remaining period of the period of validity of the original exploration licence or mining licence minus the period of exploration or mining already passed.

2.3 ENVIRONMENTAL APPROVAL PROCESS

Chapter III of the *Law on Appraising of Environmental Impacts* provides for the appraisal of the environmental impacts of construction projects. The Administrative Measures on Environmental Management of Construction Projects set out the procedures that need to be complied with, depending on the likely impact of a project on the environment.

As mining projects are likely to cause major impacts on the environment, an environmental impact assessment report will need to be prepared and approval from the relevant environment authority obtained prior to applying to MOLAR for the right to mine.

An environmental impact assessment report must include:

- an overview of the construction project;
- current state of the environment surrounding the construction project;
- analysis and predictions of environmental impacts which may be caused by the construction project;
- measures for environmental protection and their financial and technical authentication;
- environmental impact economic cost-benefit analysis;
- proposals for environmental monitoring of the construction project; and
- conclusions of the environmental impact assessment.

The environmental authority is required to make its decision on the report within 60 days.

An environmental approval is necessary for both the exploration and mining stages. The same process applies to applications for approval at the exploration and mining stages, although the requirements at the exploration stage are less strict than those at the mining stage. Special requirements for the exploration of petroleum and natural gas exist due to pollution concerns.

Under the Provision for the Protection of the Geological Environment of Mines, a mining right applicant must create a plan for the protection, control and restoration of the mine's geological environment, and must apply to the relevant MOLAR for approval. The documentation is the same as for the environmental assessment report.

The design and construction of the project for the protection, treatment and restoration of the mine's geological environment must be carried out during the mining of the mineral resources. The mining rights holder must pay a security deposit for the treatment and restoration of the mine's geological environment, based on the relevant state provisions. The deposit and interest will be refunded if the mining rights holder has fulfilled its obligations in this respect and has passed an inspection organized by the relevant MOLAR.

2.4 FORESTRY

The relevant law includes:

- *Forestry Law*
- Regulation on the Implementation of the Forestry Law
- Administrative Measures for the Examination and Approval of Forest Land Occupancy.

There are four separate approvals that may be required by a company seeking to occupy and construct on forest land in China. These are:

- a forest land-use approval document
- an approval for construction use land
- a cutting licence
- transport documentation.

The approval process for each of the above takes approximately 20 days.

Under the *Forestry Law* and the Regulations on the Implementation of the Forestry Law, prospecting, mining and various construction projects must not occupy woodlands or must occupy as little woodland area as possible. However, in the case of necessary occupancy or expropriation of woodlands, the land use organisation must obtain a forest land use approval document by submitting a land use application to the competent forestry authority of the people's government at or above the county level and pay forest vegetation recovery expenses in line with the relevant provisions of the State Council. Occupancy or expropriation of woodlands may only occur after:

- examination and approval of forest land use by the competent forestry authorities under the people's government above the county level; and
- examination and approval formalities for land needed for construction in line with relevant land administration laws and administrative regulations.

A forest land use approval document is required before an approval of construction use land can be granted. The *Administrative Measures for the Examination and Approval of Forest Land Occupancy* set out the process for obtaining the competent forestry administration approval for a construction project on forested land. A number of documents need to be submitted including:

- proof of occupation of the land;
- a land use application form;
- the exploration or mining licence and other project approval documents;
- proof of ownership documents;

- the feasibility report of project forestry land use;
- the compensation agreement and resettlement subsidies agreement between the construction entity and those whose land is being occupied or expropriated; and
- the opinions of relevant administrative authorities (in certain cases).

The company will also need to apply to the local forestry authorities for an on-site inspection report and a specific examination opinion, which is then sent to the State Forestry Administration.

A company also requires a cutting licence to cut down trees in certain areas as set out in the legislation. A cutting licence can be obtained by applying to the competent forestry authorities at the county, provincial or central level. The application must include the cutting objective, location, tree species, tree situation, area, stock, approach and reforestation measures.

After the cutting licence has been obtained according to the law, the competent forestry authorities will issue transport documentation for the timber cut in line with the provisions of the licence to be transported out of the forest districts.

2.5 LANDHOLDER APPROVALS

At the exploration stage, mining companies must negotiate with landholders regarding compensation for damages to houses and crops. At the mining stage, the company may also need to requisition the land.

The applicable regulatory regime depends on whether the activity is to take place in an urban or rural area.

In urban areas, the former Administrative Measures on the Dismantlement of Urban Houses, which governed the dismantling of houses for land to be used in construction projects, were replaced by the Regulations on the Expropriation of Buildings on state-owned Land and Compensation on 21 January 2011. However, the Regulations only deal with requisitions for 'public interest' and do not stipulate the conditions for commercial exploitation. As such, the Administrative Measures are still being adhered to in practice. A company dismantling a house is required to compensate and relocate the occupants. The terms of relocation and amount of compensation are to be agreed between the dismantler and the owners and tenants of the houses. Compensation may be monetary or by transfer of property rights. Monetary compensation is based on the market value of the property being dismantled.

If no agreement can be reached on compensation or relocation terms, the matter can be referred to the relevant house dismantlement administrative department for a decision. This decision may be appealed in a court.

In rural areas, land titles are owned by collective organisations, in which the farmers are included, who possess the land on the basis of contractual management rights.

The MOLAR has promulgated guidelines for rural land requisition, as well as for the compensation and resettlement of farmers. Each provincial MOLAR formulates a reference compensation rate for the rural land within its jurisdiction. If the land is being requisitioned in the name of 'public interest', the MOLAR may unilaterally enforce its decision. However, for mining operations,

the consultation process will have to be completed. In practice, mining companies need to negotiate with landholders (including the collective) to determine the conditions on which they may use the land. While these may include factors such as the term, fees, and compensation, there are no compulsory standards and the terms are entirely dependent on the parties' negotiations and relationship. Big state-owned enterprises tend to receive strong government support in this regard and often the government will assist a mining company by coordinating negotiations with the landholders, including in some cases by engaging a third party to assess the likely damage for compensation purposes.

After the parties have arrived at compensation terms, a mining company will make the necessary payments and if applicable, the local MOLAR will requisition the land, change its nature from rural to construction land, and transfer the land use rights to the mining company.

2.6 OTHER APPROVALS

(a) Foreign investment approvals

The *Catalogue of Industries for Guiding Foreign Investment* (2011) includes various mining and quarrying activities under its list of industries in which foreign investment is encouraged, and rare earth and radioactive minerals under its list of industries in which foreign investment is not allowed.

The Administrative Measures for the Administration of Foreign-invested Mineral Exploration Enterprises set out the process for forming a foreign-invested mineral exploration enterprise.

In the case of enterprises engaged in activities included in the *Catalogue of Industries for Guiding Foreign Investment* (2011) the following information must be submitted to the Ministry of Commerce:

- a project feasibility study report (including aspects of the project such as exploration techniques, economic benefits, resources utilisation, environmental protection, safety protection, and human resources utilisation) signed by all investment parties;
- the contract and by-laws (or the by-laws alone for a wholly foreign-invested enterprise);
- the list of members of the board of directors and the letters of appointment of directors by each party;
- the notice of pre-approval of enterprise name issued by the administrative department of industry and commerce;
- the registration certifications and credit certifications of the Chinese and foreign investors;
- where a Chinese investor contributes the exploration rights as the investment or cooperation condition, it needs to submit a statement on the formation of exploration rights, survey input and other relevant information, an assessment report on exploration rights, and a photocopy of the survey licence;
- a statement on the status of business operation of the foreign investor; and
- any other documents required by the examination and approval authority.

The Ministry of Commerce must seek the opinion of the MOLAR, and once that is obtained, it must make a decision on approval or disapproval within 45 working days. If approved, a Certificate of Approval of a Foreign-invested Enterprise is issued to the applicant. In order to conduct mining operations after a viable mineral deposit is confirmed through exploration, a foreign-invested exploration enterprise may either transfer the exploration rights to a new mining company of its own establishment, or expand its business scope to include mining operations.