

# 미얀마 광업법연구

법무법인(유한) 태평양

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## I. 연구의 배경과 목적

미얀마는 복잡한 지질학적 구조로 되어 있으며, 이러한 천혜의 자연조건 때문에 미얀마에는 각종 에너지 및 광물자원이 풍부하게 매장되어 있다.

### <미얀마 주요 자원 보유 현황>

구분	생산량 (2013년 추정치)	매장량 (2010년 추정치)
석탄	380,272 톤	3.9억톤
니켈	9,300 톤	4,266만톤
구리	25,000 톤	11억톤
아연	5,000 톤	532만톤
텅스텐	130 톤	1,500만톤

(출처: 생산량(USGS 2016. 5.), 매장량(KOTRA 2016. 2.))

미얀마 광업국(Department of mines)의 2016년 9월자 정책자료<sup>1</sup>에 의하면, 2016년 8월 기준 미얀마 광업허가보유자는 1,608인이다. 대부분은 금, 석탄, 주석-텅스텐, 납 등의 광물에 관한 광업허가를 보유하고 있고, 대규모생산에 관한 광업허가보유자의 경우 주로 석탄 또는 석회암의 대규모생산에 관한 광업허가를 받았다. 또한, 위 정책자료에 의하면 미얀마에서 광업허가를 받은 외국인투자자는 총 20인이다.

<sup>1</sup> Department of Mines, Myanmar's New Policy for the Development of Mining Sector, 2016. 9. 23.

<미얀마 주요 자원 보유 현황>

	광물	대규모생산	소규모생산	탐사	기타	총 합
1	금 (gold)	5	491	6	-	502
2	석탄 (coal)	49	85	142	2	278
3	주석-텅스텐 (tin-tungsten)	11	38	118	-	167
4	납 (lead)	4	101	46	-	151
5	안티몬 (antimony)	1	71	33	20	125
6	석회암 (lime stone)	42	6	19	7	74
7	철 (iron)	3	20	43	-	66
8	구리 (copper)	2	50	13	-	65
기타		36	79	53	12	180
총합		153	941	473	41	1608

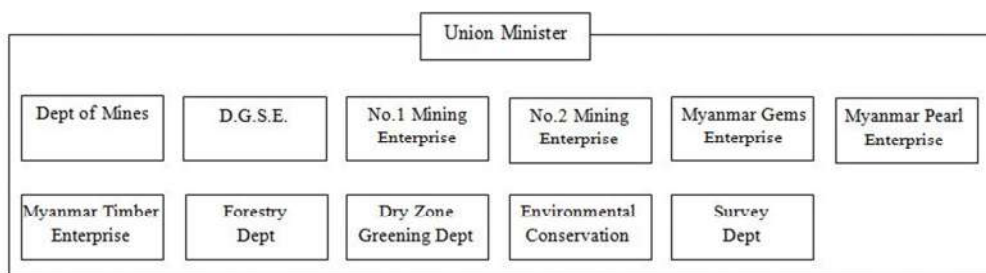
(출처: Department of Mines, Myanmar's New Policy for the Development of Mining Sector (2016. 9. 23.))

이하에서는 이와 같은 미얀마의 광물자원개발에 투자하고자 하는 우리나라 기업의 편의를 위하여, 미얀마의 광업법 등의 주요 내용에 대한 연구결과를 소개하고자 한다.

## II. 광물자원개발 관련 정부기관

미얀마 광물자원의 소관 부처는 자연자원·환경보전부(Ministry of Natural Resources and Environmental Conservation)이다. 자연자원·환경보전부는 2016년 3월 30일 대통령령 제 1/2016호에 따라 광업부(Ministry of Mining)와 환경보전임업부(Ministry of Environmental Conservation and Forestry)가 통합되면서 신설되었다<sup>2</sup>.

### < 미얀마 자연자원·환경보전부 구조 >



자연자원·환경보전부 산하의 부서 및 국영기업 중 광업과 관련된 부서 및 국영기업은 다음과 같다<sup>3</sup>.

- ① 광업국: 광업정책 수립 및 로열티를 관리하는 업무
- ② 지질조사·광물탐사부(Department of Geological Survey and Mineral Explorer): 지질조사 업무
- ③ 제1광업공사(No. 1 Mining Enterprise): 납(lead), 아연(zinc), 은(silver), 구리(copper), 철(iron), 니켈(nickel), 석탄(coal), 석회암(lime stone), 산업광물(industrial minerals)을 담당하는 업무
- ④ 제2광업공사(No. 2 Mining Enterprise): 금(gold), 주석(tin), 텅스텐(tungsten), 희토류(rare earth), 티타늄(titanium), 백금(platinum)을 담당하는 업무
- ⑤ 보석공사(Myanmar Gem Enterprise): 보석 및 옥을 담당하는 업무
- ⑥ 진주공사(Myanmar Pearl Enterprise): 진주를 담당하는 업무

<sup>2</sup> Myanmar International TV Channel, Reformed Ministries: 21 Ministries Identified, 2016. 3. 17., (<http://www.myanmarinternational.tv/news/reformed-ministries-21-ministries-identified>)

<sup>3</sup> Department of Mines, Myanmar's New Policy for the Development of Mining Sector, 2016. 9. 23.

### III. 광물자원개발 관련 법규 체제

#### 1. 헌법

2008년 5월 제정된 미얀마 신헌법(2008 Myanmar Constitution)에 의하면, 미얀마의 모든 토지와 모든 천연자원의 궁극적 소유자는 국가이다. 다만, 정부는 경제주체가 국가 소유의 천연자원을 개발하고 이용하는 데 필요한 사항을 법률로 정하여야 하며, 법률이 정하는 바에 따라 국민의 사유재산권과 상속권을 보장하여야 한다(2008 Myanmar Constitution 제37조).

또한, 미얀마 신헌법에 의하면, 미얀마 연방정부는 자연환경을 보호 및 보존할 의무가 있으며(2008 Myanmar Constitution 제45조), 미얀마 국민은 연방정부의 환경보존에 협력할 의무가 있다(2008 Myanmar Constitution 제390조 제2호).

#### 2. 1994년 광업법 및 2015년 광업법

에너지 및 광물자원을 포함한 미얀마의 자원관리에 관한 기본법은 1994년 광업법(Mining Law 1994)이다. 헌법에 따르면, 미얀마의 광물자원의 궁극적인 소유자는 국가이기 때문에, 1994년 광업법에서는 탐사, 개발, 생산 등 모든 자원개발활동을 하기 위해서는 정부의 허가를 받도록 규정하고 있다.

2015년 12월 24일에 1994년 광업법을 개정한 광업법(the Law amending the Myanmar Mining Law 2015; 이하 “2015년 광업법”)이 공포되었다. 다만, 2015년 광업법은 기존 광업규정(the Myanmar Mining Rules 1996; 이하 “1996년 광업규정”)을 개정한 새로운 광업규정이 제정되어야 시행될 예정이다. 그러나 2016년 10월 말 현재까지 1996년 광업규정을 대체하는 새로운 광업규정이 제정되지 않았다.

#### 3. 기타 광업활동 관련 법규

그 밖에 광업활동을 일반적으로 규율하는 주요 법규는 아래와 같다.

- the Law amending the Myanmar Mining Law (2015)
- the Myanmar Mining Rules (1996) (새로운 Myanmar Mining Rules 제정 작업 중)
- Myanmar Mining Notification, 125/1996
- the Myanmar Mine Safety Law (제정 작업 중)
- the Myanmar Gems Law (1995) and amended Myanmar Gems Law (2016)
- the Myanmar Gems Rules (1995) (새로운 Myanmar Gems Rules 제정 작업 중)

- the Myanmar Pearl Law (1995) and the Law amending the Myanmar Pearl Law (2014)
- the Myanmar Pearl Rules (2015)
- Myanmar Pearl Notification, 48/2000
- the Foreign Investment Law (2012)
- the Foreign Investment Law Rules (2013)
- MIC Notification No. 26/2016
- the Myanmar Insurance Law (2013)
- the State-Owned Economic Enterprises Law (1989) (SEE Law)
- the Territorial Sea and Maritime Zone Law 3/1977 and the Law Amending Territorial and Maritime Zone Law, 8/2008
- the Protection of Wild Life and Wild Plants and Conservation of Natural Areas Law (1994)
- the Environmental Conservation Law (2012)
- the Cultural Heritage Law (1998)

#### 4. 환경 관련 법규

광업활동에 적용되는 환경 관련 주요 법규는 아래와 같다.

- the Environmental Conservation Law 2012
- the Environmental Conservation Rules 2014
- the Environmental Impact Assessment Procedures 2015
- the National Environmental Quality (Emission) Guidelines 2015
- the The Protection and Preservation of Cultural Heritage Law 1998
- the The Yangon Water-works Act 1885
- the The Water Power Act 1927
- the The Underground Water Act 1930
- the Forest Law 1992
- the Factories Act 1951
- the Private Industrial Enterprise Law 1990
- the Land Acquisition (Mines) Act 1885
- the Salt Enterprise Law 1992
- the Myanmar Mines Law 1994
- the Myanmar Pearl Law 1995
- the Myanmar Gemstone Law 1995

## IV. 광물자원개발허가

### 1. 광업활동의 유형

1994년 광업법은 탐광, 탐사, 대규모생산, 소규모생산, 자급생산, 광물처리만을 광업활동(mining activities)으로 규정하고 있다. 2015년 광업법은 위 광업활동 중에서 자급생산은 가내생산(Household Production)으로(2015년 광업법 제2조 (m)), 광물처리하는 처리(Processing)으로 변경되었으며(2015년 광업법 제2조 (n)), 타당성조사(Feasibility Study), 중규모생산(Medium Scale Production), 판매 및 구매행위(Sale and purchase of mineral)를 새로이 광업활동으로 추가하였다(2015년 광업법 제2조 (e), (h), (f)). 이처럼 새로이 광업활동이 추가 또는 변경되었을 뿐만 아니라 일부 광업활동의 정의도 변경되었다.

- 광물탐광(Mineral Prospecting): 1994년 광업법에서는 매장된 광물을 조사하는 작업을 말한다(1994년 광업법 제2조 (h)).<sup>4</sup> 2015년 광업법에서는 매장된 특정 광물의 종류·위치·규모·구조·품위 및 부존량을 분석하고 탐광하는 작업을 지칭한다(2015년 광업법 제2조 (d)).
- 광물탐사(Mineral Exploration): 매장된 광물의 규모·형태·위치·품위 및 부존량에 관한 정보를 규정하고 알아내는 작업을 말한다(1994년 광업법 제2조 (i)).
- 타당성조사(Feasibility Study): 2015년 광업법에 의하면, 타당성조사는 탐광을 마친 광물을 시험 및 측정하여 사업타당성을 평가하는 작업을 말한다(2015년 광업법 제2조 (e)).
- 광물생산(Mineral Production): 채광하는 모든 단계를 말한다(1994년 광업법 제2조 (j)).
  - 대규모생산(Large Scale Production): 1994년 광업법에 의하면, 대규모생산은 광물의 상업적 생산을 위해서 상당한 투자 및 특수한 기술적 노하우, 기법이 필요한 경우를 말한다(1994년 광업법 제2조 (k)). 2015년 광업법에 의하면, 광물이 대규모로 매장되어 있어 상당한 투자가 필요한 경우를 말한다(2015년 광업법 제2조 (g)).
  - 중규모생산(Medium Scale Production): 2015년 광업법에 의하면, 광물이 중규모로 매장되어 있어 중규모의 투자가 필요한 경우를 말한다(2015년 광업법 제2조 (h)).
  - 소규모생산(Small Scale Production): 1994년 광업법에 의하면, 소규모생산은 광물의 상업적 생산을 위해서 별도의 투자가 필요하지 않은 경우를 말한다(1994년 광업법 제2조 (l)). 2015년

<sup>4</sup> 일반적으로 탐사와 탐광은 개발 전 단계로 서로 밀접한 연관이 있어 하나의 활동으로 분류되기도 한다. 이때 탐사단계에서는 유망지 선정, 지표물리탐사, 지질조사와 같은 행위가 이루어지고, 탐광단계에서는 시추/시굴 및 분석 작업 등이 이루어진다(전기·에너지·자원산업 인적자원개발위원회, 광물·석유자원개발·생산 실태조사 보고서, 2015. 9, p2~3).

광업법에 의하면, 광물이 소규모로 매장되어 있어 별도의 투자가 필요하지 않은 경우를 말한다(2015년 광업법 제2조 (l)).

- 자급생산(Subsistence Production): 1994년 광업법에 의하면, 자급생산은 도구를 이용하여 채광하는 경우를 말한다(1994년 광업법 제2조 (m)). 2015년 광업법에서 자급생산은 가내생산(Household Production)으로 그 명칭이 변경되었으며, 가내생산은 일정 마력 이하의 간단한 기계 또는 장비를 이용하여 채광하는 경우를 말한다(2015년 광업법 제2조 (m)).
- 광물처리(Mineral Processing): 1994년 광업법에 의하면, 광물처리는 철광석 또는 광물의 품위 또는 가치를 높이는 것을 말한다(1994년 광업법 제2조 (n)). 2015년 광업법에서는 광물만을 처리 대상으로 규정하고 있다(2015년 광업법 제2조 (n)).
- 광물 판매 및 구매(Sale and purchase of mineral): 2015년 광업법에 의하면, 광물 판매 및 구매는 광물의 판매·구매·운반·저장 행위를 말한다(2015년 광업법 제2조 (f)).

## 2. 광물자원개발허가의 종류

1989년 공기업법(the State Owned Economic Enterprises Law 1989)에 따르면, 진주, 비취, 귀금속 및 광물에 관한 탐사, 생산 및 수출 행위는 미얀마 정부만이 할 수 있다(공기업법 제3조). 그러나 미얀마 정부는 민간기업에 광업허가를 부여할 수 있다(공기업법 제4조).

1994년 광업법에 따르면, 자연자원·환경보전부는 정부의 승인 아래 외국인투자가 수반된 보석, 금속광물, 산업광물 또는 석재의 탐사·탐광·대규모생산·소규모생산 활동에 대한 허가를 신청인에게 발급할 수 있다(1994년 광업법 제7조 (a)). 허가 없이 광물 탐사 및 생산행위를 한 경우 7년 이하의 징역 또는 50,000 차트(Kyat) 이하의 벌금에 처한다(1994년 광업법 제30조). 한편, 보석법(the Myanmar Gemstone Law, 8/1995)이 2015년 제정되었기 때문에, 2015년 광업법은 보석을 광업법의 적용대상에서 제외하고 있다(2015년 광업법 제2조 (b)).

1996년 광업규정에 따르면, 허가의 종류는 광물탐광허가, 광물탐사허가, 대규모생산허가, 소규모생산허가, 자급생산허가, 광물탐사·탐광·생산 중 1가지 이상의 통합허가가 있으며(1996년 광업규정 제2~7장), 광물처리는 1996년 광업규정 상 허가 종류로 규정되어 있지 않다.

2015년 광업법은 1994년 광업법의 허가대상인 광물탐사, 광물탐광, 광물생산뿐만 아니라 기존에 허가대상이 아니었던 처리, 새로운 광업활동인 타당성조사, 그리고 판매 및 구매행위도 허가대상으로 규정하고 있다. 2015년 광업법에 따르면, 외국인투자자도 타당성조사, 광물의 처리, 판매 및 구매행위를 허가를 받아 수행할 수 있다(2015년 광업법 제4조 (a)). 한편, 허가지역에서 광물탐사, 광물탐광, 타당성조사를 수행한 회사는 그 지역의 광물생산허가를 취득할 수 있다(2015년 광업법 제13조).

그리고, 미얀마투자위원회는 중·소규모의 광물 개발사업을 외국인투자금지업종으로 분류하고 있으므로(MIC Notification No. 26/2016 제1조), 1994년 광업법하에서는 외국인투자자들은 대규모

생산허가만 받을 수 있다. 그러나, 2015년 광업법에 따르면, 외국인투자자가 중·소규모생산허가를 받은 미얀마 내국인과 합작투자회사를 설립하는 경우 대규모생산허가를 받지 않더라도 대규모생산을 할 수 있다(2015년 광업법 제4조 (f)). 다만, 2015년 광업법 제4조 (f)에서는 단서로 매장자원의 품위 및 부존량에 따라 대규모생산이 제한될 수 있다고 규정하고 있으나, 이때 매장자원의 품위 및 부존량의 의미에 대하여 2015년 광업법에 명시되어 있지 않다.

#### 가. 광물탐광허가(Mineral Prospecting Permit)

금속광물의 탐광을 하고자 하는 자는 자연자원·환경보전부에, 산업광물 또는 석재의 탐광을 하고자 하는 자는 광업국(Department of Mines)에 광물탐광허가를 신청하여야 한다(1994년 광업법 제4조, 제5조). 이때 외국인투자자의 경우 정부의 승인을 받아야 한다(1994년 광업법 제7조 (a)). 허가면적은 4,200m<sup>2</sup>를 초과할 수 없다(1996년 광업규정 제5조 (b)).

#### 나. 광물탐사허가(Mineral Exploration Permit)

금속광물의 탐사를 하고자 하는 자는 자연자원·환경보전부에, 산업광물 또는 석재의 탐사를 하고자 하는 자는 광업국에 광물탐사허가를 신청하여야 한다(1994년 광업법 제4조, 제5조). 이때 외국인투자자의 경우 정부의 승인을 받아야 한다(1994년 광업법 제7조 (a)). 허가면적은 3,150m<sup>2</sup>를 초과할 수 없다(1996년 광업규정 제14조 (c)).

#### 다. 타당성조사허가(Feasibility Study Permit)

2015년 광업법에 의하면, 탐광을 마친 광물을 시험 및 측정하기 위해서는 타당성조사허가를 받아야 한다(2015년 광업법 제2조 (e), 제4조).

#### 라. 대규모생산허가(Large Scale Mineral Production Permit)

광물을 상당한 투자 및 특수한 기술적 노하우, 기법을 이용하여 대규모로 생산하고자 하는 자는 자연자원·환경보전부에 허가를 신청해야 하며(1994년 광업법 제4조), 신청 시 환경보호계획 등도 함께 제출하여야 한다(1996년 광업규정 제24조 (a) (2)). 외국인투자자의 경우 정부의 승인을 받아야 한다(1994년 광업법 제7조 (a)). 대규모생산허가를 받는 경우 인접지역에 대한 생산허가지역의 확대가 가능하다(1996년 광업규정 제32조). 2016년 9월자 광업부의 정책자료에 의하면, 광물 부존량에 따라 대규모생산허가의 허가범위는 달라진다.



**마. 중규모생산허가(Medium Scale Mineral Production Permit)**

광물을 중규모로 생산하고자 하는 자는 중규모생산허가를 받아야 한다(2015년 광업법 제8조). 2016년 9월자 광업부의 정책자료에 의하면, 2015년 광업법에서 허가범위는 산업광물은 50 Acre 이상 1km<sup>2</sup> 이하, 기타 광물은 10 Acre 이상 50 Acre 이하, 금의 경우 1 Acre 이상 20 Acre 이하이다.

**바. 소규모생산허가(Small Scale Mineral Production Permit)**

별도의 특별한 투자 없이 금속광물(metallic minerals)을 소규모로 생산하고자 하는 자는 자연자원·환경보전부에, 산업광물(industrial minerals) 또는 별도의 특별한 투자 없이 석재를 소규모로 생산하고자 하는 자는 광업국에 소규모생산허가를 신청하여야 한다(1994년 광업법 제4조). 허가면적은 1km<sup>2</sup>를 초과할 수 없다(1996년 광업규정 제37조 (b)). 한편, 2016년 9월자 광업부의 정책자료에 의하면, 1994년 광업법에서 허가범위는 산업광물은 1km<sup>2</sup> 이하, 기타 광물은 50 Acre 이하, 금의 경우 20 Acre 이하이며, 2015년 광업법에서 허가범위는 산업광물은 20 Acre 이하, 기타 광물은 10 Acre 이하, 금의 경우 1 Acre 이하이다.

**사. 자급생산허가(Subsistence Mineral Production Permit)**

광물을 자급생산을 하고자 하는 자는 관련 광업공사 또는 자연자원·환경보전부의 권한을 위임받은 행정기관에 자급생산허가를 신청하여야 한다(1994년 광업법 제6조). 2016년 9월자 광업부의 정책자료에 의하면, 자급생산의 허가범위는 1 Acre 이하이다.

**아. 광물탐광·탐사·생산 중 1가지 이상의 통합 허가(Integrated Permit)**

광물탐광, 탐사, 생산 중 1가지 이상의 통합허가 또한 자연자원·환경보전부에 신청해야 하며, 조건은 앞서 살펴본 바와 같다(1996년 광업규정 제47조).

**자. 처리허가(Processing Permit)**

2015년 광업법에 의하면, 광물을 처리하기 위해서는 처리허가를 받아야 한다(2015년 광업법 제4조).

#### 차. 광물 판매 및 구매허가(Sale and Purchase of Mineral Permit)

2015년 광업법에 의하면, 광물을 판매·구매·운반·저장하기 위해서는 광물 판매 및 구매허가를 받아야 한다(2015년 광업법 제4조).

### 3. 허가권자

앞서 살펴본 바와 같이 허가권 부여 권한은 자연자원·환경보전부 또는 광업국에 있으며, 외국인 투자의 경우 정부의 승인을 받아야 한다.

한편, 1996년 광업규정에 따르면, 자연자원·환경보전부는 필요하면 광업국장(Director General of Department) 또는 광업공사의 상무이사(Managing Director of Mining Enterprises)에게 개인 또는 기관과 광물탐광, 탐사, 생산과 관련된 계약을 체결할 수 있는 권한을 부여할 수 있다(1996년 광업규정 제83조). 이에 미얀마 광물자원에 투자하는 외국인투자자는 일반적으로 광업공사와 특정 광구에 대한 생산물분배계약(product sharing contract)을 체결하는바, 생산물분배계약이 체결되는 경우 일반적으로 위 허가들을 받을 수 있다<sup>5</sup>.

### 4. 허가기간

1996년 광업규정에 따르면, 광물탐광허가의 허가기간은 1년이며, 이후 최대 1년까지 연장할 수 있다(1996년 광업규정 제5조 (a), 제7조). 광물탐사허가의 허가기간은 3년이고, 일반적으로 1년씩 2회 연장되며 필요 시 추가 연장이 가능하다(1996년 광업규정 제14조, 제21조, 제22조). 대규모생산허가의 허가기간은 25년을 초과할 수 없으며, 정부의 승인을 받아 5년 단위로 연장이 가능하다(1996년 광업규정 제25조 (f), 제29조). 소규모생산허가의 허가기간은 5년이며, 1년씩 최대 4년까지 연장할 수 있다(1996년 광업규정 제37조 (a), 제40조, 제41조). 자급생산허가의 허가기간은 1년을 초과할 수 없다(1996년 광업규정 제44조).

표준 생산물분배계약에 따르면, 자연자원·환경보전부는 광물탐광허가의 허가기간을 2년, 광물탐사허가의 허가기간을 3년(연장신청서를 제출하는 때에만 1년까지 연장 가능), 생산허가의 허가기간을 25년(5년씩 최대 4년까지 연장 가능)으로 하여 각 허가를 발급하고 있다.

2015년 광업법에 의하면, 대규모생산의 허가기간은 50년 이하(2015년 광업법 제2조 (g)), 중규모생산의 허가기간은 15년 이하(2015년 광업법 제2조 (h)), 소규모생산의 허가기간은 10년 이하로 각각 연장되었으나(2015년 광업법 제2조 (l)), 탐사, 탐광, 가내생산에 대한 허가기간은 변함

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<sup>5</sup> 코트라, 주요국의 자원개발 규제현황(2007), p46

이 없다. 2016년 9월자 광업부의 정책자료에 의하면, 타당성조사, 처리, 판매 및 구매행위에 대한 허가기간은 1년으로 예상된다.

## 5. 허가 유지 및 취소

1996년 광업규정에 따르면, 광업허가보유자가 1994년 광업법 또는 1996년 광업규정에 따른 납부기한을 준수하지 못한 경우, 자연자원·환경보전부 또는 광업국에 거짓 정보를 제출한 경우, 1996년 광업규정을 위반한 경우 또는 파산 등의 사유가 발생한 경우, 자연자원·환경보전부는 광업허가보유자에 대한 허가를 정지 또는 취소할 수 있다(1996년 광업규정 제80조).

## 6. 허가의 이전

자연자원·환경보전부 또는 광업국의 인가가 있는 경우 허가는 이전될 수 있다(1996년 광업규정 제74조 (a)). 미얀마투자위원회(the Myanmar Investment Commission)의 승인을 받은 외국인투자자의 경우 허가 이전 시 미얀마투자위원회의 승인도 필요하다<sup>6</sup>. 광업허가보유자는 허가를 이전하려는 경우 이전신청서를 이전계약서(초안)와 함께 제출하여야 한다(1996년 광업규정 제74조 (b)).

## 7. 허가 관련 규제

앞서 설명한 바와 같이, 공기업법에 따르면, 광물의 탐사, 생산 및 수출 행위는 원칙적으로 미얀마정부만 할 수 있으나, 미얀마정부는 민간기업에 광업허가를 줄 수 있다.

# V. 토지 및 공공용수 사용

1994년 광업법 및 1996년 광업규정에 의하면, 광물생산에 관한 광업허가보유자가 허가대상부지에서 광물생산활동을 수행하기 위해서는 해당 부지에 대하여 경작권, 소유권, 사용권 등을 보유하고 있는 개인 또는 기관과 계약을 체결하여야 한다. 만약 광물생산에 관한 광업허가보유자가 위 계약을 체결하지 못한 경우 자연자원·환경보전부에 필요한 조치를 신청할 수 있다(1994년 광업법 제14조, 1996년 광업규정 제69조).

<sup>6</sup> Getting The Deal Through, Mining 2016, Myanmar, 제11번 답변

광물생산에 관한 광업허가보유자가 공공용수를 사용하고자 하는 경우 광업국에 공공용수사용을 요청할 수 있다(1994년 광업법 제16조).

## VI. 로열티

1994년 광업법에 따라 광업허가보유자는 미얀마정부에 다음과 같은 연간 로열티를 납부하여야 한다(1994년 광업법 제18조).

- 보석: 5 ~ 7%
- 금, 백금, 우라늄, 은 등 기타 귀금속: 4 ~ 5%
- 구리, 주석, 텅스텐, 니켈, 철, 아연, 납, 알루미늄 등 기타 금속광물: 3 ~ 4%
- 산업광물 및 석재: 1 ~ 3%

2015년 광업법에서 각 광물의 로열티율을 다음과 같이 명시하고 있다.

광물	1994년 광업법	2015년 광업법
gemstone	5~7%	-
gold, platinum, uranium and other value minerals	4~5%	5%
silver, iridium, palladium, ruthenium, rhodium, tantalum, columbium, niobium, thorium and other precious metallic minerals	4~5%	4%
copper, tin, tungsten, nickel, cadmium	3~4%	4%
heavy sand, molybdenum, osmium, rare earth minerals, barium, titanium,	-	4%
iron, zinc, antimony, aluminum, arsenic, bismuth, chromium, cobalt, manganese and other metallic mineral and other metallic mineral	3~4%	3%
industrial raw mineral or stones	1~3%	2%

## VII. 납세 방법

1994년 광업법에 따르면, 로열티와 기타 비용(세금 등)은 차트(Kyat) 또는 외화로 내야 하나 (1994년 광업법 제12조 (f)), 2015년 광업법에 따르면, 광물(minerals) 또는 현금으로 낼 수 있다 (2015년 광업법 제14조). 그러나, 외국인투자법의 적용을 받는 사업의 경우 기존과 같이 비용을 차트(Kyat) 또는 외화로 내야 한다(2015년 광업법 제15조).

즉, 2015년 광업법에 따르면, 미얀마 내국인사업자는 광물 또는 현금으로 납세할 수 있으나, 외국인사업자는 현금으로만 내야 한다.

## VIII. 합작계약

2015년 광업법에 의하면, 미얀마 정부는 광업허가보유자와 광물생산에 관한 계약을 체결하면서 기존의 생산물분배계약(production sharing contract)뿐만 아니라 수익을 분배하는 수익분배계약(profit sharing contract) 또는 지분비율에 따라 분배하는 지분분배계약(equity sharing contract)을 체결할 수 있다(2015년 광업법 제33조). 이는 기존에 1996년 광업규정에만 있던 내용을 명확히 한 것이다(1996년 광업규정 제85조). 미얀마 정부가 광업허가보유자와 생산물분배계약을 체결하는 경우 환경영향평가 (environmental impact assessment) 비용에 관한 사항도 계약에 포함시켜야 한다(2015년 광업법 제33조). 다만, 미얀마 법령상 각 합작계약의 형태에 따른 차이가 명시되어 있지 않다.

## IX. 환경

1994년 광업법에서는 환경 보호에 관한 일반적인 규정만 존재하였으나, 2015년 광업법은 환경에 관한 더욱 구체적인 사항들을 규정하고 있다.

- a. 외국인자원개발사는 광물생산 시 지역사회 및 환경에 미치는 영향을 최소화하기 위하여 특별한 주의를 기울여야 한다. 또한, 매년 환경보존계획을 수행하기 위한 펀드를 조성하여야 한다. 그리고 채광 종료 시 재건 계획(rehabilitation plans)을 위한 펀드를 조성하여야 한다(2015년 광업법 제16조).
- b. 총 감독관(Chief Inspector)은 환경영향평가 시스템 및 사회영향평가(social impact assessment system)를 검사하여야 한다(2015년 광업법 제23조).
- c. 타당성조사에는 프로젝트가 사회 및 환경에 미치는 영향에 관한 정보를 포함하여야 한다 (2015년 광업법 제2조 (e)).

## X. 2015년 광업법 주요사항 (요약)

2015년 광업법의 주요사항을 요약하면 다음의 표와 같다.

변경사항	2015년 광업법
광업활동 추가	기존 광업활동에서 타당성조사, 중규모생산, 광물 판매 및 구매가 추가됨
허가대상 추가	기존 허가대상에서 타당성조사, 처리, 광물 판매 및 구매가 추가됨
중소규모생산허가 로 외국인투자 허 용	외국인투자자는 중·소규모생산허가를 받은 미얀마 내국인과 합작투자회사를 설립하는 경우 대규모생산허가를 받지 않더라도 대규모생산가능함
허가기간 연장	대규모생산 50년 이하, 중규모생산 15년 이하, 소규모생산 10년 이하로 연장됨
로열티율	각 광물의 로열티율이 명시됨.
합작계약	생산물분배계약 이외에 수익분배계약, 지분분배계약 체결 가능함
환경	외국인 자원개발사는 환경보존계획, 재건계획을 위한 펀드 조성 필요. 타당성조사 시 사회 및 환경에 미치는 영향에 대하여도 조사 필요.

## XI. 조세

일반적 사항을 제외한 광물 관련 미얀마 조세제도는 아래와 같다(일반적 사항은 미얀마 석유가스법제연구에 대한 연구 중 조세제도 참조).

조세	개요												
<b>상업세</b> (Commercial Tax)	<ul style="list-style-type: none"> <li>국내 생산품(국내소비), 수입품 중 특별상품법(Special Goods Tax Law 2016)에 따른 16 종류의 특별상품에 대하여는 다음과 같은 특별상품 세율이 적용됨.               <table border="1"> <thead> <tr> <th>특별상품 (일부)</th><th>세율</th></tr> </thead> <tbody> <tr> <td>비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)</td><td>5%</td></tr> <tr> <td>비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)</td><td>15%</td></tr> </tbody> </table> </li> <li>원칙적으로 상품의 수출에는 상업세가 부과되지 않으나, 일부 상품의 수출에 대해서는 다음과 같은 상업세율이 적용됨.               <table border="1"> <thead> <tr> <th>상품 (일부)</th><th>세율</th></tr> </thead> <tbody> <tr> <td>비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)</td><td>5%</td></tr> <tr> <td>비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)</td><td>15%</td></tr> </tbody> </table> </li> </ul>	특별상품 (일부)	세율	비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)	5%	비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)	15%	상품 (일부)	세율	비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)	5%	비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)	15%
특별상품 (일부)	세율												
비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)	5%												
비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)	15%												
상품 (일부)	세율												
비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (완제품)	5%												
비취, 루비, 사파이어, 에메랄드, 다이아몬드 기타 보석 (원석)	15%												

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〈별첨1〉

The State Law and Order Restoration Council  
**The Myanmar Mines Law**  
(The State Law and Order Restoration Council Law No 8/94)  
The 2nd Waxing Day of Tawthalin, 1356 M.E.  
(6th September, 1994)

The State Law and Order Restoration Council hereby enacts the following Law :-

**Chapter 1**  
**Title and Definition**

1. This Law shall be called the Myanmar Mines Law.
2. The following expressions contained in this Law shall have the meanings hereunder:
  - (a) Mine means place, excavation or worksite where mining is carried on or various operations, building, land, machinery and equipment connected with mining or mineral processing at any place contiguous to such place of mining, excavation or worksite. The said expression also includes quarries where industrial mineral and stone are mined:
  - (b) Mineral means gemstone, metallic mineral, industrial mineral and stone obtained from the earth by mining or by other operation;
  - (c) Gemstone means ruby, sapphire, jade, diamond, spinel, peridot, chrysobetyl, tourmaline, danburite, aquamarine, zircon, topaz, phenakite, garnet, moonstone, iolite, apatite, epidote, lapis-lazuli, diopside, amber, fluorspar, nephrite, or stones of gem quality of the quartz group, which has not been processed. The said expression also includes substances which may be declared by the Ministry by notification with the approval of the Government from time to time to be gemstone;
  - (d) Metallic Mineral means gold, silver, platinum, iridium, osmium, palladium, ruthenium, rhodium, tantalum, columbium, uranium, thorium, iron, zinc, copper, lead, tin, tungsten, nickel, antimony, aluminium, arsenic, bismuth, cadmium, chromium, cobalt, or manganese. The said expression also includes substances which may be declared by the Ministry by notification with the approval of the Government from time to time to be metallic mineral:
  - (e) Industrial Mineral means coal, limestone, gypsum, baryte, graphite, manganese dioxide, dolomite, fluorite, fire clay, ball clay, industrial clay, feldspar, magnesite, red ochre, yellow ochre, soap stone, bentonite, asbestos, zinc carbonate, muscovite, or biotite. The said expression also includes substances which may be declared by the Ministry by notification with the approval of the Government from time to time to be an industrial mineral;



- (f) Stone means limestone, quartz, granite, marble, pegmatite, or gneiss that are of the quality to produce decorative stone. The said expression also includes substances which may be declared by the Ministry by notification with the approval of the Government from time to time to be stone of decorative stone quality, but does not include stones which are not of the decorative stone quality and are usually used for toad making;
- (g) Permit means a permit issued under this Law for the purpose of mineral prospecting, exploration or production issued separately or as an integrated permit;
- (h) Mineral Prospecting means searching for minerals deposits. The said expression also includes the process of testing mineral bearing qualities of the land;
- (i) Mineral Exploration means defining and gaining knowledge of the size, shape, location, quality and quantity of a mineral deposit;
- (j) Mineral Production means all stages of operation for obtaining minerals. The said expression also includes any or all stages of mining and mineral processing activity.
- (k) Large Scale Production means commercial production of mineral which requires substantial investment and expenditure or special technical know-how and methods;
- (l) Small Scale Production means commercial production of mineral which does not require substantial investment and expenditure or special technical know-how and methods;
- (m) Subsistence Production means production of mineral using ordinary hand tools;
- (n) Mineral Processing means the beneficiation of ore or mineral to improve their grade or their value. The said expression includes operation of mineral dressing, concentration, smelting, refining to obtain mineral concentrates and refined metals and cutting, polishing of raw gemstones to obtain finished products, but does not include cutting, polishing of raw gemstones on a small scale prescribed by the Ministry by notification with the approval of the Government from time to time;
- (o) Ministry means the Ministry of Mines;
- (p) Department means the Planning and Work Inspection Department of the Ministry of Mines;
- (q) Director General means the Director General of the Planning and Work Inspection Department of the Ministry of Mines.

## **Chapter II Objectives**

3. The objectives of this Law are as follows:

- (a) to implement the Mineral Resources Policy of the Government;
- (b) to fulfill the domestic requirements and to increase export by producing more mineral products;
- (c) to promote development of local and foreign investment in respect of mineral resources;
- (d) to supervise, scrutinize and approve applications submitted by person or organization desirous of conducting mineral prospecting, exploration or production;
- (e) to carry out for the development of conservation, utilization and research works of mineral resources;
- (f) to protect the environmental conservation works that may have detrimental effects due to mining operation.

## **Chapter III Application and Granting of Permit**

4. A person or organization, desirous of carrying out any of the following operations, shall apply to the Ministry in accordance with the stipulations for obtaining permit :-

- (a) prospecting, exploration, large scale production or small scale production of gemstone;
- (b) prospecting, exploration, large scale production or small scale production metallic mineral;
- (c) large scale production of industrial minerals;
- (d) large scale production of stones.

5. A person or organization, desirous of carrying out any of the following operations, shall apply to the Department in accordance with the stipulations for a permit :

- (a) prospecting, exploration or small scale production of industrial mineral;
- (b) prospecting, exploration or small scale production of stone.

6. A person or organization, desirous of carrying out subsistence production of gemstone, metallic mineral, industrial mineral or stone, prescribed in the notification by the Ministry

shall apply to the respective Mining Enterprise or to the officer authorized by the Ministry in accordance with the stipulations for obtaining a permit.

7. The Ministry may with the approval of the Government, grant permit for of the following operations:

- (a) prospecting, exploration, large scale production or small scale production of gemstone, metallic mineral, industrial mineral or stone involving foreign investment;
- (b) prospecting, exploration, large scale production or small scale production of gemstone with local investment;
- (c) prospecting, exploration, large scale production or small scale production of metallic mineral with local investment.

8. The Ministry may grant permit for the following operations:

- (a) large scale production of industrial mineral or stone with local investment;
- (b) integrated prospecting, exploration, large scale production or small scale production of industrial mineral or stone with local investment.

9. The Department may, with the approval of the Ministry, grant permit for any of the following operations:-

- (a) prospecting, exploration or small scale production of industrial mineral with local investment;
- (b) prospecting, exploration or small scale production of stone with local investment.

10. The respective Mining Enterprise or the officer authorized by the Ministry may issue permit in respect of subsistence production of gemstone, metallic mineral industrial or stone, specified in the notification by the Ministry.

11. The Ministry shall determine the classification of large scale production, small scale production or subsistence production as defined in sub-section (k), (l), (m) of section 2.

#### **Chapter IV** **Duties of the Holder of Permit**

12. The holder of permit shall:

- (a) abide by the provisions of this Law, rules, orders and directives made thereunder;
- (b) abide by the conditions contained in the permit;

- (c) pay rent for the land related to the permit calculated in accordance with the rates prescribed by the rules made under this Law;
- (d) pay rent for the land for each permit separately;
- (e) pay security deposit or advance payment or both security deposit and advance payment;
- (f) pay prescribed royalty and other fees payable under this Law either in Myanmar currency or foreign currency, or both Myanmar and foreign currencies.

**13.** The holder of permit shall comply with the rules prescribed under this Law in respect of the following matters:-

- (a) appointment of mine personnel and workers, assignment of work, prescribing of age, wages, salaries and other fees;
- (b) fixing of working days and working hours for the above and under ground workers in a mine;
- (c) making provisions for safety and the prevention of accidents in a mine and their implementation;
- (d) making and implementation of plans relating to the welfare, health, sanitation and discipline of personnel and workers in a mine;
- (e) making provisions for the environmental conservation works that may have detrimental effects due to mining operation;
- (f) reporting of accidents, loss of life and bodily injury received due to such accidents in the mine;
- (g) submission to the inspection of the Chief Inspector and inspectors.

## **Chapter V**

### **Right of Utilization of Land and Water for Mineral Production**

**14.** The holder of permit for mineral production within an area under the Ministry's administrative control or which does not lie within the Mineral Reserve Area or Gemstone Tract, shall carry out such production only after co-ordinating and receiving agreement from the individual or organization having the right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, right of succession or transfer of the said land.

**15.** If, in the interest of the State, it is necessary to acquire the land where mineral production could be undertaken on commercial scale, the Ministry shall co-ordinate with the relevant Ministry for the acquisition of such land in accordance with the existing law.

16. If the holder of mineral production permit requires the use of public water for mineral production he shall first and foremost inform the Department of such requirement in accordance with the prescribed manner.

17. If the Department, after scrutinizing the requirement submitted under section 16 finds that the use of public water is really necessary for the holder of mineral production permit, it shall co-ordinate with the relevant government department and organization for obtaining permission to use water in accordance with the existing law.

## Chapter VI Royalty

18. The holder of mineral production permit shall pay royalty on the value of the mineral sold when the sale is affected on the mineral produced by him within the rates mentioned below as determined by the Ministry:

- (a) for gemstone at the rate of 5% to 7.5%;
- (b) for gold, silver, platinum, iridium, palladium, ruthenium, rhodium, tantalum, columbium, niobium, uranium, thorium and other precious metallic minerals that the Ministry may, with the approval of the Government prescribe and publish by notification from time to time at the rate of 4% to 5%;
- (c) for iron, zinc, copper, lead, tin, tungsten, nickel, antimony, aluminium, arsenic, bismuth, cadmium, chromium, cobalt, manganese and other metallic mineral that the Ministry may, with the approval of the Government prescribe and publish by notification from time to time at the rate of 3% to 4%;
- (d) for industrial mineral or stone at the rate of 1% to 3%.

19. When calculating the value of mineral sold under section 18, the Department shall calculate in the prescribed manner based upon the prevailing international price of that mineral at the time of the sale.

20. The Ministry may:

- (a) prescribe by notification from time to time, royalty to be paid for the mineral obtained from mineral prospecting or mineral exploration;
- (b) exempt in whole or in part, any royalty payable or any mineral by the holder of a permit for such period as may be determined with a view of promoting production of mineral;
- (c) exempt payment of royalty, on mineral samples obtained by the government department concerned or government organization for the purpose of assay analysis or other examinations;
- (d) defer payment of royalty due for such period it may determine;

- (e) assess provisional royalty during the period where for any reason it is impracticable to assess the exact amount of the royalty due.

## **Chapter VII**

### **Designation of Mineral Reserve Area and Gemstone Tract**

**21.** The Ministry:-

- (a) may designate an area where mineral can be produced on commercial scale as Mineral Reserve Area by notification with the approval of the Government;,
- (b) shall, before designation any area as Mineral Reserve Area, declare in the manner prescribed, which area is intended to be declared as such;
- (c) shall, in designating the Mineral Reserve Area, form and assign duties to a committee consisting of skilled personnel with the Director General as the head of the Committee to inquire into the affected rights of the public in the relevant area and to enable them to receive reasonable rights and benefits and to carry out the demarcation of the Mineral Reserve Area;
- (d) if desirous of designating land under the administration of any government department or any organization as the Mineral Reserve Area under sub-section (a), shall do so after co-ordination with the relevant government department or organization;
- (e) if desirous of designating area under sub-section (a) any land in which an individual or an organization had the right of cultivation, right or possession, right of use and occupancy, beneficial enjoyment, right of succession or transfer as the Mineral Reserve shall do so after co-ordination with the relevant Ministry for acquiring land in accordance with the existing law.

**22.** The Ministry:

- (a) may, when information is received of the existence of gemstone for production on a commercial scale or the area where such gemstone is discovered designate such area as Gemstone Tract by notification with the approval of the Government;
- (b) shall form and assign duties to a committee consisting of skilled personnel with the Director General as the head of the committee to inquire into the affected rights of the public in the area already designated as Gemstone Tract and to enable them to receive reasonable rights and benefits and to carry out the demarcation of the Gemstone Tract.

**23.** The Ministry may, with the approval of the Government, cause the whole or a portion of the Mineral Reserve Area or Gemstone Tract, for the revision of the demarcation or cessation thereof.

24. All naturally occurring minerals found either on or under the soil of any land, in which an individual or an organization had the right of cultivation, right of possession right of use and occupancy, beneficial enjoyment, right of succession or transfer or all naturally occurring minerals found in the Continental Shelf shall under the existing law be deemed to be owned by the State.

### **Chapter VIII** **Duties of the Chief Inspector**

25. The Director General shall be the Chief Inspector for the purpose of this Law.
26. The duties of the Chief Inspector are as follows :-
- (a) inspecting in order to ascertain as to whether or not the provisions of this Law and the rules, orders and directives made thereunder are observed and conditions contained in the licence are complied with by the holders of licence;
  - (b) inspecting the health, sanitation, safety, prevention of accident, welfare, disciplinary measures of the personnel and workers in the mine;
  - (c) determining the duties of the inspectors and supervising the same;
  - (d) carrying out the duties as may be assigned from time to time by the Ministry.
27. The Chief Inspector may:
- (a) assign any suitable officer from the Department as an inspector for the purpose of this Law;
  - (b) delegate the powers to the inspectors.

### **Chapter IX** **Taking of Action by Administrative Means**

28. If the holder of permit or a person managing on his behalf or any of the worker fails to comply with any of the orders or directives made under this Law, or contravenes any of the terms of the permit, the person issuing the permit may pass any of the following administrative orders:—
- (a) suspending all or portion of the operations carried out under the permit;
  - (b) allowing continuation of the operation, after causing the payment of fine;
  - (c) cancelling the permit;
  - (d) cancelling the permit and confiscating the security deposit and the advance, payment and also causing the payment of fine in addition, if deemed necessary.

## **Chapter X**

### **Issue of Prohibition**

**29.** The Ministry may with the approval of the Government issue prohibitions in respect of purchasing, obtaining, storing, possessing, transporting, selling, transferring of any mineral obtained from mineral production.

## **Chapter XI**

### **Offences and Penalties**

**30.** Whoever carries out any of the following operations without the permit issued under this Law shall, on conviction be punished with imprisonment for a term which may extend to 7 years or with fine which may extend to kyats 50,000 or with both:

- (a) prospecting exploration or production of gemstone;
- (b) prospecting exploration or production of metallic mineral;
- (c) prospecting exploration or production of industrial mineral;
- (d) prospecting exploration or production of stone.

**31.** Whoever violates any of the prohibitions prescribed under section 29 shall, on conviction be punished with imprisonment for a term which may extend to 3 years or with fine which may extend to kyats 20,000 or with both.

**32.** The holder of a permit who violates any of the rules relating to section 13 shall, on conviction be punished with imprisonment for a term which may extend to 1 year or with fine which may extend to kyats 10,000 or with both.

**33.** Whoever trespasses the Mineral Reserve Area or Gemstone Tract demarcated under this Law without permission shall on conviction be punished with imprisonment for a term which may extend to 6 months or with fine which may extend to kyats 5,000 or with both.

**34.** The Court shall in respect of any legal proceeding instituted under section 30 or section 31, if found guilty, enforce punishment for the relevant offence, and in addition-

- (a) shall pass an order for confiscation of the mineral involved in the offence;
- (b) may pass an order for confiscation of the vehicle, animal and, other machinery, tools and implements used in commission of the offence.

## **Chapter XII**

### **Miscellaneous**

**35.** The licence or permit granted under any of the existing laws before the enactment of this Law, for prospecting, exploration or production of minerals shall be valid until the date of expiry.



- 36.** The existing Gemstone Tracts designated by notification before the promulgation of this Law shall be deemed to be Gemstone Tract designated by this Law.
- 37.** If exhibit relating to any legal proceeding instituted under this Law cannot be produced easily before the court, such exhibit need not be produced before the court, but the report or other relevant documentary evidence as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the court and the relevant court may dispose of the same in accordance with the law.
- 38.** The rules, regulation, orders and directives issued under the laws repealed by this Law may continue to be complied so far as they are not inconsistent with the provisions of this Law.
- 39.** For the purpose of carrying out the provisions of this Law:
- (a) the Ministry may with the approval of the Government issue such rules and procedures as may be necessary;
  - (b) the Ministry or the Department may issue such orders and directives as may be necessary.
- 40.** The following laws are hereby repealed:-
- (a) The Upper Myanmar Ruby Regulation, 1887;
  - (b) The Mines Act, 1923;
  - (c) The Union of Myanmar Mines and Minerals Act, 1961.

Sd./ Than Shwe  
Senior General  
Chairman  
The State Law and Order Restoration Council

〈별첨 2〉

**The Law Amending the Myanmar Mines Law**  
Pyidaungsu Hluttaw Law No 72 of 2015  
The 13 Waxing Day of Nadaw 1377 M.E.  
24 December 2015

Pyidaungsu Hluttaw hereby enacts this Law.

1. This Law shall be called the Law Amending the Myanmar Mines Law.

2. In the Myanmar Mines Law Section 2:

(a) Sub section (b) shall be substituted as follows:

“(b) **Mineral** means metallic mineral, industrial raw minerals and stones obtained from the earth by mining or by other operation. This expression includes minerals obtained from underwater sea-bed and underwater land of the oceans, seas, rivers and creeks.”

(b) Sub-section (c) shall be deleted.

(c) Sub section (g) shall be substituted as follows:

“(g) **Permit** means the Permit issued under this Law to operate one activity or a combination of more than one activity of mineral exploration, prospecting, feasibility study, production, processing or sale and purchase.”

(d) Sub section (i) shall be substituted as follows:

“(i) **Mineral Prospecting** means testing and prospecting the type, location, size, structure, quality and amount of a particular mineral deposits. “

(e) The Sub-section (i-1) shall be added after Sub-section (i) as follows:

“(i-1) **Feasibility Study** means the study and observation of any mineral deposit, for which mineral prospecting has been conducted, in order to assess whether or not it is commercially benefitted. This expression includes the technique to explore and produce minerals, the technique for processing, the ability for commercial production, financial investment calculation, environmental impact assessment and social impact assessment systems.”

(f) After Sub-section (j), (j-1) must be inserted as follows:

“(j-1) **Sale and purchase of mineral** means the sale, purchase, transport and storage of minerals.”

(g) The Sub-section (k) shall be substituted as follows:

“(k) **Large Scale Production** means the production of minerals that are commercially feasible due to the large quantity of mineral deposits and requires substantial investment, and the minerals are produced by using special technical know-how and techniques under the permit for 15 years above and up to 50 years”

(h) The Sub-section (k-1) shall be substituted as follows after Sub-section (k):

“(k-1) **Medium Scale Production** means the production of minerals that are commercially feasible due to the medium quantity of mineral deposit and requires medium amount of investment and expenditure, and the minerals are produced by using restricted technical know-how and techniques under the permit for 15 years.”

(i) The Sub-sections (l), (m), (n), (p) and (q) shall be substituted as follows:

“(l) **Small Scale Production** means the commercial production of mineral under the permit for 10 years which does not require substantial investment and expenditure and where the quantity of mineral deposit is little;

(m) **Household production** means the production of minerals by using manual simple machine or equipment whose horse power does not exceed the limit determined under the rules of this Law;

(n) **Processing** means the beneficiation of mineral to improve their grade or their value. The expression includes mineral dressing, refining to obtain mineral concentrates and refined metals, boiling, polishing, electroplating and molding;

(p) **Department** means the Mines Department;

(q) **Director General** means the Director General of Mines Department.”

3. The Section 3 Sub-section (c) of Myanmar Mines Law shall be substituted as follows:

“(c) To develop the investment in relation to mineral resources.”

4. The Section 4 of Myanmar Mines Law shall be substituted as follows:

“4. Any person or institution that is desirous to operate any or more of the following activities shall apply the Ministry for obtaining the permit according to the stipulations:

(a) exploration, prospecting, feasibility study, large scale production, processing or sale and purchase of minerals, raw industrial materials or stones that involve foreign investment;

- (b) exploration, prospecting, feasibility study, large scale production, processing or sale and purchase of minerals, raw industrial materials or stones that involve citizen investment;
  - (c) exploration, prospecting, feasibility study, medium scale production, processing or sale and purchase of minerals and raw industrial materials that involve citizen investment;
  - (d) exploration, prospecting, small scale production, processing or sale and purchase of minerals or raw industrial materials that are restricted by the notification of the Ministry through citizen investment;
  - (e) carrying out a combination of at least three of the exploration, prospecting, feasibility study, medium or small scale production, processing or sale and purchase of minerals and raw industrial materials that involve citizen investment;
  - (f) the citizens who have the Permit to carry out medium or small scale production, processing or sale and purchase of minerals, raw industrial materials or stones changing the activities into large scale production by joint venture with foreign investment based on the geological report and quantity and quality of mineral deposits.”
5. The Section 5 of Myanmar Mines Law shall be substituted as follows:
- “5. (a) Any citizen or institution that is desirous to carry out exploration, prospecting, medium scale production, processing or sale and purchase of stones shall, according to the stipulations, apply to the Department for obtaining the Permit.
  - (b) Any citizen or institution that is desirous to carry out exploration, prospecting, small scale production, processing or sale and purchase of stones that are restricted by the Ministry through notification shall, according to the stipulations, apply to the Department for obtaining the Permit.”
6. The Section of Myanmar Mines Law shall be substituted as follows:
- “6. Any citizen or institution that is desirous to carry out exploration, prospecting, small scale production or household production, processing or sale and purchase of minerals, raw industrial materials or stones, which are authorized to be carried out by the Region or State according to the Rules under this Law through citizen investment, shall apply to the relevant Worksite Screening Body of the relevant Region or State formed and assigned duties under the approval of Union Government for obtaining the Permit.”
7. The Section 6-A shall be added after Section of Myanmar Mines Law:
- “6-A. The Ministry may form Worksite Screening Body in the relevant Region or State under the approval of Union Government.”
8. The Section 7 of Myanmar Mines Law shall be substituted as follows:

“7. The Ministry may, under the approval of Union Government, issue the Permit to carry out any one or more of the following activities:

- (a) exploration, prospecting, feasibility study, large scale production, processing or sale and purchase of minerals, raw industrial materials or stones that involve foreign investment;
- (b) exploration, prospecting, feasibility study, large scale production, processing or sale and purchase of minerals, raw industrial materials or stones that involve citizen investment;
- (c) the citizens who have the Permit to carry out medium or small scale production, processing or sale and purchase of minerals, raw industrial materials or stones changing the activities into large scale production by joint venture with foreign investment based on the geological report and quantity and quality of mineral deposits.”

9. The Section 8 of Myanmar Mines Law shall be substituted as follows:

“8. The Ministry may issue the Permit to carry out any one or more of the following activities:

- (a) exploration, prospecting, feasibility study, large scale production, processing or sale and purchase of raw industrial materials or stones that involve citizen investment;
- (b) exploration, prospecting, feasibility study, medium scale production, processing or sale and purchase of minerals or raw industrial materials that involve citizen investment;
- (c) exploration, prospecting, small scale production, processing or sale and purchase of minerals or raw industrial materials that are restricted by the notification of the Ministry through citizen investment.
- (d) carrying out a combination of at least three of the exploration, prospecting, feasibility study, medium or small scale production, processing or sale and purchase of minerals and raw industrial materials that involve citizen investment;
- (e) operating the worksites that meet geological facts and are feasible for commercial production due to the quantity of mineral deposits under separate conditions according to auction system.”

10. The Section 9 of Myanmar Mines Law shall be substituted as follows:

“9. The Department:

- (a) may, according to the stipulations, issue the Permit to a citizen or institution that has applied for exploration, prospecting, medium scale production, processing or sale and purchase of stones under the approval of the Ministry.
- (b) may, according to the stipulations, issue the Permit to a citizen or institution that has applied for exploration, prospecting, small scale production, processing or sale and purchase of stones that are restricted by the Ministry through the notification under the approval of the Ministry.”

11. The Section 10 of Myanmar Mines Law shall be substituted as follows:

“10.The Worksite Screening Body of the relevant Region or State formed and assigned duties under the approval of Union Government shall screen the application submitted by citizens or institutions according to Section 6 for exploration, prospecting, small scale production or household production, processing or sale and purchase of minerals, raw industrial materials or stones that are authorized to be carried out in the Region or State and may issue the Permit to them after discussing with the Ministry.”

12. The Section 11 of Myanmar Mines Law shall be substituted as follows:

“11. The Ministry shall determine large scale production, medium scale production, small scale production and household production by considering the tenure of the business, business area, width, investment amount, machinery and equipment according to Section 2 Sub-sections (k), (k-1), (l) and (m).”

13. The Section 11-A and 11-B shall be added after Section 11 of Myanmar Mines Law:

“11-A. The relevant Worksite Screening Body, formed and assigned duties under the approval of Ministry or Department or Union Government that issue the Permit, may grant the entrepreneur when he/she has applied for exploration and production of minerals at the worksite where he/she has successfully conducted the mineral exploration, prospecting and feasibility study under the Permit.

11-B. The operator who processes the minerals by buying from the producer under the Permit shall apply the Permit separately for selling and buying minerals.”

14. The Section 12 Sub-section (f) shall be substituted as follows:

“(f) Mineral tax and other fee payable under this Law shall be paid in minerals or in cash as prescribed.”

15. The Sub-section (g) shall be added after Sub-section (f) of Section 12 of Myanmar Mines Law:

“(g) Other fees shall be paid either in Myanmar Kyat or in foreign currency for businesses under Foreign Investment Law or in Myanmar Kyat equivalent to the foreign exchange determined by the Central Bank of Myanmar.”

16. The Sub-sections (e-1) and (e-2) shall be added after Sub-section (e) of Section 13 of Myanmar Mines Law:

- “(e-1) paying special attention to not damaging socio-economy of the local people with the minimum impact on the environment when carrying out mineral production; establishing the fund for annual environmental conservation plan;
- (e-2) establishing the fund and carrying out landscaping, conservation and rehabilitation plans according to the stipulations at the termination or closing down of mineral production business.”

17. The Section 18 of Myanmar Mines Law shall be substituted as follows:

“18. The Permit holder of mineral production shall pay the mineral tax according to the following rate on the value of minerals when selling the produced minerals:

- (a) 5% for gold, platinum, uranium and other value minerals notified by the Ministry under the approval of Union Government;
- (b) 4% for silver, copper, tin, tungsten, nickel, heavy sand, molybdenum, iridium, Osmium, palladium, ruthenium, rhodium, tantalum, columbium, niobium, thorium, Cadmium, rare earth minerals, barium, titanium and other precious metallic minerals that the Ministry may, with the approval of the Government, prescribe and publish by notification from time to time;
- (c) 3% for iron, zinc, antimony, aluminium, arsenic, bismuth, chromium, cobalt, manganese, magnesium and other metallic mineral that the Ministry may, with the approval of the Government prescribe and publish by notification from time to time;
- (d) 2% for industrial raw mineral or stones.”

18. The Section 19 of Myanmar Mines Law shall be substituted as follows:

“19. The mineral tax payable under Section 18 shall be paid to the Department by calculating the percentage of pure mineral constitution according to international mineral price ”

19. The expression “Gemstone Track” under the heading of Chapter 7 shall be deleted.

20. The Section 22 of Myanmar Mines Law must be deleted.

21. The expression in both Sections 23 and 33 “or Gemstone Track” shall be deleted separately.

22. The expression in Section 24 of the Myanmar Mines Law “in any Continental Shelf” shall be substituted as “in the sea territory and sea zones of Myanmar.”

23. The Sub-section b-1 shall be added as follows after Section 26 Sub-section (b) of Myanmar Mines Law:

“(b-1) inspecting the environmental impact assessment system and social impact assessment system in the business of exploration, prospecting, production, processing of minerals, industrial raw materials and stones.”

24. In Section 28 Sub-section (b) of Myanmar Mines Law, the expression of “fine” shall be inserted with the expression “fine not lesser than the insured amount”.

(b) The expression “security deposit and the advance” in sub section (d) shall be substituted with “insured money”

25. The Section 30 of Myanmar Mines Law shall be substituted as follows:

“(a) Any person who has been convicted of having carried out the following activities shall be punishable with imprisonment for a term which may extend to 10 years or with fine which may extend to 5,000,000 Kyats or both:

- (1) exploration of minerals, prospecting or processing;
- (2) exploration of industrial raw materials, prospecting or processing;
- (3) exploration of stones, prospecting or processing;
- (4) processing minerals without obtaining the Permit for sale and purchase;
- (5) production of minerals except the household production under Permit.

(b) Any person who has been convicted of having produced minerals without household production permit issued under this Law shall be punishable with imprisonment for a term which may extend from minimum one month to maximum three months or with fine which may extend to 100,000 Kyats.”

26. The Section 30-A shall be added as follows after Section 30 of Myanmar Mines Law:

“30-A. Any person who has been convicted again of having committed any offence under sub-section (a) of Section 30 shall be punishable with imprisonment for a term which may extend to 10 years and may be punishable with fine which may extend from minimum 1 million Kyats to maximum 5 million Kyats.”

27. The expression “ imprisonment up to 3 years or fine up to kyats 20,000 or both” in Section 31 of Myanmar Mines Law shall be substituted with the expression “imprisonment up to 3 years or fine up to 2 million Kyats or both.”

28. The Section 31-A shall be added as follows after Section 31 of Myanmar Mines Law:

“31-A. Any person who has been convicted again of having committed any offence under Section 29 shall be punishable with imprisonment for a term which may extend to 3 years and may be punishable with fine which may extend from minimum 0.5 million Kyats to maximum 2 million Kyats.”



29. The expression “imprisonment for a term which may extend to 1 year or fine which may extend to 10,000 Kyats or both” in Section 32 of Myanmar Mines Law shall be substituted with the expression “imprisonment for a term which may extend to 1 year or fine which may extend to 1 million Kyats or both.”
30. The Section 32-A shall be inserted after Section 32 of Myanmar Mines Law as follows:
- “32-A. Any Permit holder who is subsequently convicted of having failed to comply with the any provision of Section 13 shall be punishable with imprisonment for a term of one year and the fine of minimum 200,000 kyats to maximum 1 million kyats may be imposed. ”
31. The expression “imprisonment for a term which may extend to 6 month or fine which may extend to 5,000 Kyats or both” in Section 33 of Myanmar Mines Law shall be substituted with the expression “imprisonment for a term which may extend to 6 months or fine which may extend to 500,000 Kyats or both.”
32. The Section 33-A shall be inserted after Section 33 of Myanmar Mines Law as follows:
- “33-A. Any person who has subsequently breached the prohibition under Section 33 shall be punishable with imprisonment for a term of 6 months and a fine of 500,000 kyats may be imposed.”
33. The Section 35-A shall be inserted after Section 35 of Myanmar Mines Law as follows:
- “35-A. The Ministry shall, in regard to mineral production, practise profit sharing system in percentage on the production including environmental impact assessment expenditure or profit sharing system based on the return or profit sharing system based on both parties’ contributions when entering into joint venture with the permit holder. ”
34. The Section 36 of Myanmar Mines Law shall be substituted as follows:
- “36. The fees payable under this Law shall be collected as accrued income tax. In this case, the officer assigned duties by the relevant Ministry is entitled to practice the rights of the Collecting Officer according to the laws in force.”
35. The Section 39 of Myanmar Mines Law shall be substituted as follows:
- “39. When implementing the provisions of this Law:
- (a) the Ministry may issue the required rules, regulations and disciplines under the approval of Union Government;
  - (b) the Ministry may issue the required notifications, orders, instructions and procedures;

- (c) the Department may issue the required orders and instructions under the agreement of the Ministry.”

I hereby signed according to the Constitution of Republic of the Union of Myanmar.

Sd/xxx

Thein Sein

The President

Republic of the Union of Myanmar