

# Granting Mineral Rights

El Source Book Learning Module

**The School of Mining Engineering and Centre  
for Sustainability in Mining and Industry  
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# Introduction

- Most countries developed regulatory regimes governing the mineral sector;
- Regimes may be inferred from:
  - Constitutions
  - Number of laws affecting the industry
  - Specific mining legislation
  - Model development agreements
  - Ad hoc agreements

# Introduction .....continued

- Legal framework guides both government and investor;
- Legal framework is guided by legal system
  - Civil law, Islamic law, common law or hybrid of legal systems;
- Process of mineral rights allocation either competitive or non-competitive (tender); and
- Success or attractiveness of framework based on satisfaction of investors, governments and citizens

# Principles governing rights allocation

- Equality before the law – non-discriminatory
  - First-come-first-served system (free-entry)
  - Competitive bidding system (tender)
  - Pre-defined eligibility criteria
  - Compliance requirements and titleholder obligation
  - Public disclosure of application
  - Written notification
  - Suspension or cancellation of mineral rights
  - Timeframe for actions
  - Standard terms and conditions

# Principles governing rights allocation

- Stability and certainty in the regulatory system
  - Provisions of mineral law must apply to equally to all titleholders (free-entry and tender)
  - Details of bidding process be stated in law

# Principles governing rights allocation

- Good governance
  - The rule of law
  - Administrative justice and procedural fairness
  - Consistence in the application of the law
  - Clarity of administrative procedures
  - Guided discretionary powers
  - Security of tenure
  - Compliance with the law
  - Access to courts

# Principles governing rights allocation

- Social and environmental protection
  - Compilation of Environmental and Social Impact Assessments
  - Good labour practice



# Principles governing rights allocation

- Equitable distribution of benefits
  - Fiscal terms serving interests of investor and host country
  - Employment equity and charters to ensure benefits filter to society in general

# Good Practice Note/Score-card

- Derived from practices of nine selected countries and principles
- These were:
  - Algeria
  - Argentina
  - Madagascar
  - Chile
  - Democratic Republic of Congo (DRC)
  - Ghana
  - Mongolia
  - Zambia

# Good Practice Note/Score-card

## Description and recommended practice

- **State Agency**  
Licensing and registration authorities must be clearly stated (Ministry in charge of Minerals)
- **Mode of granting licences**  
First-come, first-served and/or auctioning bases
- **Eligibility criteria**  
Must be specified in each country's mineral legislation. Investors must familiarise themselves with these criteria and Licensing authority must ensure strict compliance
- **Consultation with affected parties**  
Obligatory
- **Notification of action regards application/mineral rights status**  
Decisions, instructions and directives affecting applications or obtained rights must be in writing addressed to the titleholder
- **Compliance to timeframes for actions**  
Obligatory
- **Mineral fiscal terms and conditions**  
Fiscal terms and conditions which serve the interests of both the investor and host country (citizens) equitably must be instituted and clearly stipulated in legislation

# Good Practice Note/Score-card

- **Exploration Permit/ Prospecting licence**  
Yes
- **Exploration fee**  
Issuing/ Renewal/Transfer/Assignment/ annual mineral right fees are to stipulated
- **Maximum size**  
Should be specified
- **Renewal**  
Yes, which is conditional on compliance with specified terms and requirements of the licence
- **Relinquish areas**  
50% of area (should be mandatory in order to decrease speculative and passive practices)
- **Minimum investment spending**  
Prescribed obligatory minimum expenditure
- **Work to program**  
Yes (obligatory)
- **Environmental plan**  
Yes (obligatory)
- **Social requirement**  
Yes (obligatory)
- **Reporting requirement**  
Yes (obligatory)

# Good Practice Note/Score-card

- **Rights of holder**  
Exclusive/ Conversion/ Extension/rights to erect temporary buildings
- **Other information**  
Right is transferable, assignable and tradable after the prior written approval of the Minister/ can be used as a pledge/ liable to mortgage/ Sustainable development /Government participation
- **Mining Concession/ Lease**  
Yes
- **Mining fee**  
Application/Issuing/ Renewal/ Modification/ Transfer/ Assignment/Annual mineral right fees are prescribed
- **Maximum size**  
Should be specified
- **Duration (years)**  
25 – 50/ according to life of deposit
- **Renewal**
- Yes, according to the estimated life of deposit reserves but it is conditional on compliance with specified terms and requirements of the licence

# Good Practice Note/Score-card

- **Minimum spending**  
Prescribed fixed annual obligatory investment
- **Work to program**  
Yes (obligatory)
- **Environmental plan**  
Yes (obligatory)
- **Social requirement**  
Yes (obligatory)
- **Reporting requirement**  
Yes (obligatory)
- **Rights of holder**  
Exclusive/Large-scale exploitation/ rights of occupancy of land/market and transform exploited minerals/erect necessary infrastructures/Extension
- **Other information**  
Right is transferable, assignable, tradable after prior written consent of the granting authority/leasable or used as collateral or can be mortgaged/ Sustainable development/ Government interest is allowable

# Implementation Institutional Framework

- Well-defined institutional responsibility
  - Single regulatory authority
- Separation of responsibilities
  - Licensing authority and title registry
- Mineral Resources Management
  - Effective system along whole mineral value chain
- Measurement system
  - Elements of targets: score-cards, charters, etc.
- Computerised cadastre system