

BRIEF

GOOD PRACTICE NOTE

GRANTING MINERAL RIGHTS

2010

Source Book Brief

Granting Mining Rights – Good Practice Note

1. Policy Problem/Statement of the Issue

Most countries in the developing world have established regulatory regimes which govern the minerals and mining sector. In all instances, the mineral resources are either directly owned by the State or held in trust by the respective Government on behalf of its citizens. Therefore, the mining and mineral legal framework exists to guide both the host Government's and the investor's action in relation to mineral development. The regulatory systems set out the boundaries of acceptable conduct in relation to exploration and exploitation.

2. Critical 'technical' considerations

Mining legal frameworks are guided by the legal systems (civil law, Islamic law, and common law or hybrid legal systems) of those countries. The process for the allocation of mineral rights is based on either a non-competitive (free-entry system) or a competitive (tender) process. It is commonly found that in some countries the mining legislation makes provision for both non-competitive (free entry system) and a competitive bidding process.

3. Typical Sub-Optimal Practices

The sub-optimal practices observed in the granting of mining rights include the following:

- Discriminatory practices and overuse of discretion by government and political officials
- Lack of clarity and transparency in the processes and procedures for acquiring mining rights
- Absence of consistency in the terms and conditions applied to mining rights
- Disregard for the 'rule of law' by both government and investors
- Poor governance with regards to rights and obligations of mining right holders
- Inadequate institutional frameworks for management of the mining sector
- No provision for social and environmental impacts of mining
- Inequitable distribution of benefits from mining

4. Key Principles for Good Practice

The key principles of 'good practice' regarding the granting of mining rights can be considered from the perspective of the following areas:

- **Equality before the law:-** This requires a framework that ensures non-discrimination based on:
 - Predefined eligibility criteria
 - Compliance requirements and titleholder obligation
 - Public disclosure of application
 - Standard terms and conditions
 - Transparent fiscal and royalty regime

- Equal application of the law in the acquisition of the mineral rights
- **Good governance**, implying the concept of ‘the rule of law’, should apply to both the host Government and the investor as reflected in the following:
 - Administrative justice and procedural fairness
 - Consistency in the application of the law
 - Clarity of administrative procedures
 - Guided discretionary powers
 - Security of Tenure
 - Access to courts
 - Compliance with the law
- **Social and environmental protection**, as reflected in the compilation of Environmental and Social Impact Assessments, and implementation good labour practice observance of health and safety acts
- **Equitable distribution of benefits** - fiscal terms that serve both the interests of the investor and that of the hosting country equitably; employment equity and charters that ensure benefits filter to society in general.
- **Institutional Framework for implementation, with well defined institutional responsibilities and capacity for effective mineral resources management system**, including targets, performance measuring tools and a cadastre system

5. Examples/”Nuggets” of Good Practice

The selection of countries was based on those countries that the World Bank has used as case examples as indicated in their report entitled “Mineral Rights Cadastre”. The countries are Algeria, Argentina, Madagascar, Chile, Democratic Republic of Congo (DRC), Ghana, Mongolia, Tanzania and Zambia.

Almost all countries have traditionally granted licenses using a first come first served basis, but have over time many have adopted the auction system, for example Algeria and Tanzania. A mining licenses are issued for periods varying between 25 and 40 years, renewable; and can be negotiated depending upon the estimated life of the mine. Three out of the eight countries prescribe minimum spending.

All countries make strong requirements for work programmes, environmental plans, social issues and reporting progress. In exchange, title holders have exclusive rights to specified minerals in the designated areas. All have the right to transfer and assign the rights with prior approval.

6. Conclusions/Guidance for Users of the Source Book

An effective programme for the allocation of mineral rights, as evidenced by the case studies, is reflected in the major components for allocating mineral rights. It commences with the granting of mineral rights by the host government in terms of their specific legal regime. This is done within the chosen process (be it competitive or non-competitive) with due regard to certain immutable principles. This process is a dynamic one, subject to continuous review and assessment which will influence the granting of the mineral rights.

It must be emphasised that mineral legal regimes reflect the government's mineral policy on the exploitation of the country's mineral resources and companies would do well to familiarise themselves and comply therewith.

7. Key References

1. Mining Rights Cadastre: Promoting Transparent Access to Mineral Resources, 2009. Gotthard Walser