PANORAMIC

MINING

India

LEXOLOGY

Mining

Contributing Editors
John D Fognani and **Christopher J Reagen**
Haynes and Boone LLP

Generated on: June 13, 2024

Contents

Mining

Contributors

India

Trilegal

TRILEGAL

Kaneeka Mehta
Neeraj Menon
Nandini Bimbraw

neeraj.menon@trilegal.com

MINING INDUSTRY

Standing
What is the nature and importance of the mining industry in your country?

Mining is an important economic activity in India and India is one of the largest exporters of bauxite, chromite, iron ore, manganese and mica in the world.

While there has been private-sector participation in mining, the government, through its various public-sector companies, continues to be the largest participant in the domestic mining industry. Much of India's potential mineral resources are yet to be fully explored. Historically, government policies and legislation largely focused on the regulation of mines and minerals rather than on exploration and development. Regarding the stagnation of the mineral industry, various reforms have been initiated by the government to open up the mining sector allowing for greater private-sector participation in mineral exploration, mine development and maintenance. However, there is much that still needs to be done to harness the mineral resources for increased economic growth. The Confederation of Indian Industry has stressed that to fuel India's economic growth, policymakers need to focus more on the mining sector, with concerted efforts to regain its 3 per cent share of gross domestic product (GDP) by 2024–2025. Currently, the mining sector contributes approximately 2.2 per cent to the GDP of the country.

Law stated - 25 March 2024

Target minerals
What are the target minerals?

India produces nearly 95 minerals, which include atomic, fuel, metallic and non-metallic minerals. India is a leading producer of several metallic minerals such as aluminium, bauxite, chromite, copper, iron ore, manganese, rare earth minerals, silver and zinc.

India has recently achieved substantial progress in lithium mining to support the domestic production of lithium-ion cells for batteries used in electric vehicles. There was a significant breakthrough in the Salal-Haimana area of Reasi district in Jammu and Kashmir, where 5.9 million tonnes of lithium reserves were uncovered, positioning India competitively on a global scale.

Law stated - 25 March 2024

Regions
Which regions are most active?

India's mining wealth is concentrated in Andhra Pradesh, Chhattisgarh, Jharkhand, Karnataka, Madhya Pradesh, Gujarat, Odisha, Rajasthan, Tamil Nadu, Maharashtra, and Telangana. Iron ore reserves are predominantly found in Andhra Pradesh, Chhattisgarh, Goa, Jharkhand, Karnataka, Maharashtra and Odisha. Manganese reserves are mainly found in Karnataka, Madhya Pradesh, Maharashtra and Odisha.

Copper reserves are available in Jharkhand, Madhya Pradesh and Rajasthan. Zinc reserves are predominantly found in Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra and Rajasthan. Chromite ore reserves are available in Andhra Pradesh, Jharkhand, Karnataka, Maharashtra, Manipur, Nagaland, Odisha and Tamil Nadu.

In the past year, the government has successfully conducted auctions for mining rights of bauxite, limestone, iron ore, glauconite, gold, manganese, phosphorite and copper in Jharkhand, Chhattisgarh, Maharashtra, Goa, Rajasthan, Gujarat, Karnataka, Andhra Pradesh, Madhya Pradesh and Uttar Pradesh.

Law stated - 25 March 2024

LEGAL AND REGULATORY STRUCTURE

Basis of legal system
Is the legal system civil or common law-based?

The Indian legal system is common law-based.

Law stated - 25 March 2024

Regulation
How is the mining industry regulated?

Regulatory framework

The mining industry is regulated both at the central and state level. Under the Indian Constitution, the states have the power to regulate mines and mineral development. However, this power is subject to the central laws and regulations on mining.

Mineral classification

Minerals are classified into two types: major and minor. State governments have the power to frame policy and regulate the exploration, extraction and processing of all minor minerals such as building stones, clay and sand. All minerals (other than the minor minerals) are automatically classified as major minerals. The central government has the power of revision, fixing of royalty, issuing regulations, etc, in respect of major minerals. As metallic minerals and precious stones (including diamond) are largely classified as major minerals, we have focused on central legislation and major minerals in this chapter.

The central government also has ownership over all offshore minerals (namely, minerals extracted from the sea or ocean floor in the Indian maritime zones such as territorial waters, continental shelf and exclusive economic zones). The central government has the right to allot concessions and collect royalties for mining offshore minerals.

Law stated - 25 March 2024

Regulation

What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) is the central legislation that regulates the mining sector and ensures that the states exercise their power within a uniform national framework. The Mines Act 1952 sets out the regulations for health and safety in mines and the conduct of mining operations. The development and regulation of offshore mineral resources are regulated by the Offshore Areas Mineral (Development and Regulation) Act 2002.

Mining regulatory bodies

The Ministry of Mines is responsible for legislation, policy formulation and administration of mines and minerals in the country. It is principally composed of:

- the Geological Survey of India, which carries out regional exploration and mapping of mining resources;
- the Indian Bureau of Mines, which maintains the National Mineral Inventory, and is the national regulator for state governments, approving mining plans, closure operations and the conservation of mineral materials;
- the Controller of Mining Leases, which governs modification of mining leases granted before 1972; and
- the Directorate General of Mines Safety, which is the principal health and safety regulator for this sector.

The Mines and Mineral (Development and Regulation) Amendment Act 2021 (2021 MMDR Amendment) introduced the following key amendments to MMDRA:

- earlier, on the expiry of a mining lease, the statutory clearances issued to the previous lessee (including environmental permits) were transferred to the new lessee only for a two-year period within which the new lessee was required to obtain fresh clearances. The amendment now provides that the transferred clearances will remain valid and vested with the new lessee;
- under the MMDRA, the state government is required to conduct the auction process. The 2021 MMDR Amendment provides that the central government may specify a time period for the completion of this auction process in consultation with the state government. If the state government is unable to complete the auction process within the specified time, the central government may conduct the auction;
- existing captive mines (other than atomic minerals) are entitled to sell up to 50 per cent of the yearly mineral production in the open market, after meeting the end-use requirements;
-

in the event the auction process is incomplete, or the lease is terminated within a year of the auction, the state government can transfer the lease to a government company for a 10-year period or until a new lessee is selected (whichever is earlier); and

- non-exclusive reconnaissance permits cannot be obtained.

The Mines and Minerals (Development and Regulation) Amendment Act 2023 (2023 MMDR Amendment) classified certain minerals, including lithium, nickel, cobalt and graphite as ‘critical and strategic minerals’ and streamlined the auction process for such minerals to bolster the development of the mining blocks. The central government will conduct auctions through competitive bidding for grant of mining lease or composite licence (namely, a prospecting licence-cum-mining lease) for critical and strategic minerals. The mining lease pursuant to such auctions will be executed by the state government and the royalty, dead rent and other statutory payments for such minerals will also accrue to the state government. The Mineral (Auction) Amendment Rules 2023 were enacted to govern the conduct of such auctions by the central government for critical and strategic minerals.

The 2023 MMDR Amendment also introduced a category of minerals, which includes gold, graphite, diamond, silver and lithium for which an exploration licence (namely, a licence for the conduct of reconnaissance and (or) prospecting operations) can be granted by the state government through a competitive auction process. Any person can submit a proposal to the state government for an exploration licence over a particular area along with available geoscience data. Where a mining block is identified basis the exploration activities, the state government will initiate the auction for grant of mining lease. If the auction is not successful, the state government will pay a maximum of one million rupees to the exploration licensee. If the auction is successful, the exploration licensee is entitled to a share of the amount quoted in the auction of mining lease payable by the lessee to the state government, for the area where the exploration licensee undertook the prospecting operations. The exploration licensee can participate in an auction for mining lease but does not have any preferential right in the mining lease. The Mineral (Auction) Amendment Rules 2024 were also enacted to govern the grant of exploration licence through auction, including the requirement to furnish payment security by the exploration licensee.

In November 2023, the central government announced the first tranche of the e-auction of critical and strategic minerals for grant of mining lease and composite licence for 20 mineral blocks. In February 2024, the second tranche of the e-auction of critical and strategic mineral blocks for grant of mining lease and composite licence for 18 mineral blocks was announced and the Ministry of Mines awarded five start-ups financial grant of 60 million rupees for funding research and innovation. In March 2024, the third tranche of the e-auction of critical and strategic mineral blocks was announced for grant of composite licence for seven mineral blocks that were not successfully auctioned in the first tranche.

In March 2024, the states of Karnataka and Rajasthan have conducted auction for grant of exploration licence for critical and deep-earth minerals such as gold, copper, lithium, rare earth elements and potash.

Law stated - 25 March 2024

Classification system

What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The National Mineral Inventory, under the Indian Bureau of Mines, has been following the UN Framework Classification for Fossil Energy and Mineral Resources (UNFC) since 2000. It is a globally recognised system that provides a method of standardisation for regulatory and statistical purposes.

The other international system for classification, the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) (which includes the Canadian Institute of Mining, Metallurgy and Petroleum Definition Standards on Mineral Resources and Reserves, the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves and the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves) is geared more for public reporting by companies to provide information to investors. UNFC classification, on the other hand, is more beneficial for government reporting of mineral resource estimates and forecasts to attract investment and exploration activities. While Indian companies are required to report to the government in the UNFC format, as modified by the Minerals (Evidence of Mineral Contents) Amendment Rules 2021, there is no specific system that they need to follow for their memoranda or press releases. Every holder of a mining lease is required to monitor its mining and allied activities as per the template of star rating to be specified on this behalf by the Indian Bureau of Mines from time to time and is required to submit online its yearly self-assessment report, along with the digital images of mining lease area in accordance with applicable law.

Key definitions and terminology used for reporting mineral resources under these two classification systems have been aligned. However, unlike the CRIRSCO system, where there must be reasonable prospects for eventual economic extraction of mineral resources, the UNFC classification reports on undiscovered or uneconomic mineral reserves as well.

Law stated - 25 March 2024

MINING RIGHTS AND TITLE

State control over mining rights

To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The central government regulates mining and mineral development and the state government grants concessions and collects royalty and other fees when the mineral is located in land vested in the state. While earlier concessionary rights were granted on a first-come, first-served basis, following the amendments in 2015, all major minerals are granted through an auction. A private party that has a mining lease for particular minerals has full title, albeit with permitted end-use stipulations as may be applicable over these minerals.

There are large areas where mining rights are held by private parties and in 2013, the Supreme Court conferred rights to mineral wealth on owners of surface rights rather than vesting them in the state, which has been upheld in recent judgments as well. However, the Supreme Court has yet to rule on certain aspects of ownership of minerals such as the liability of private owners to pay royalties to the state.

A landowner who wants to grant a prospecting licence or mining lease to a third party can do so only with state government authorisation. In cases of such private mining leases, the mining lessee must comply with the central government mining regulations and provide the state government with a security deposit for ensuring compliance with the mine-closure plan.

Law stated - 25 March 2024

Publicly available information and data

What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The National Mineral Inventory of the Indian Bureau of Mines provides a comprehensive overview of exploration, development and mining activities carried out in India by central and state governments, public-sector utilities and private agencies. The inventory provides mineral-wise and state-wise information with regard to location, infrastructure, geology, exploration, physical and chemical properties, freehold or leasehold status.

The Mining and Mineral Statistics Division of the Indian Bureau of Mines functions as the nodal agency for statistics on the mineral sector. All mine owners, and the mineral-based traders, exporters, etc, must provide periodic reports on the extraction and disposal of mined minerals such as data on employment, production, stocks, dispatches, sale prices and details of materials consumed. The mining sector data is published as part of various Indian Bureau of Mines publications.

The Geological Survey of India (GSI) carries out geological mapping and acquires geoscience data for the entire country. It generates and disseminates this information to other exploration agencies for accelerating the mineral exploration process.

Under the National Mineral Exploration Policy 2016, the GSI is required to provide all pre-competitive baseline geoscience data free of cost to parties. Other than the GSI, the Directorates of Geology and Mines of certain state governments, the Mineral Exploration Corporation Limited and other government-owned companies also carry out detailed exploration of mining areas and maintain information databases.

The National Mineral Exploration Trust also carries out regional and detailed exploration for minerals. In addition, the Indian Bureau of Mines provides information on the number of mines in operation and their mineral quality either at a cost or on a restricted access basis at its offices.

As regards reporting, a mineral concession holder is required to provide geophysical data relating to prospecting, mining and engineering to the GSI and the state government.

Law stated - 25 March 2024

Acquisition of rights by private parties

What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

A private party can apply for a reconnaissance permit, prospecting licence, an exploration licence, mining lease or composite licence.

Currently, exploration licenses, mining leases and composite licenses are only granted through a competitive bidding process. A composite licence holder has the right to move from prospecting to mining; however, a reconnaissance, prospecting or exploration licence holder is not entitled to a preferential claim for grant of a composite licence or mining lease.

Obligations of the rights holder include:

- obtaining all necessary permits and consents;
- operating the mine in accordance with the mining plan;
- commencing mining operations within two years of execution of mining lease;
- payment of royalty, dead rent, surface rate or other fees;
- keeping accurate accounts of minerals mined, waste material excavated, employees and all mining plans;
- allowing inspections by the authority;
- restoring the land, to the extent possible, affected by prospecting or mining activity; and
- payment of compensation for all damages, injury or disturbances caused in the exercise of its rights.

Law stated - 25 March 2024

Renewal and transfer of mineral licences

What is the regime for the renewal and transfer of mineral licences?

A mining lease is granted for a period of 50 years and cannot be renewed.

The state government may renew a prospecting licence (which is usually granted for three years) subject to a maximum of five years, provided an application for the renewal is made 90 days before expiry.

The state government may extend the term of an exploration licence (which is granted for five years) subject to a maximum period of two years, provided an application for extension is made after a period of three years from the grant of such licence but before its expiry.

A mining lease, composite licence or exploration licence can be transferred to a third party with prior approval of the state government, in compliance with the Mines and Mineral (Development and Regulation) Act 1957. Prior to the transfer, the parties are to jointly apply to the state government in the specified format. The state government is required to convey its decision within a period of 90 days of receipt of the application, failing which, the state government will be deemed to have no objection to such transfer. Following the transfer, the parties are to submit a duly registered transfer deed in the prescribed form to the state government. The transfer of a mining lease cannot change the status of a captive mine to a merchant mine or vice versa.

Law stated - 25 March 2024

Duration of mining rights

What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

Mining leases are granted for 50 years, at the end of which, the mine is to be re-auctioned. A reconnaissance permit or prospecting licence may be granted for three years, and the latter may be extended subject to a maximum period of five years. An exploration licence may be granted for a period of five years and may be extended for a maximum period of two years.

The state or central government may terminate a lease or licence before its term on the following grounds:

- regulation of mines and mineral development;
- preservation of the natural environment;
- control of floods;
- prevention of pollution;
- to avoid danger to public health or communications;
- to ensure the safety of buildings, monuments or other structures;
- for conservation of mineral resources; and
- for maintaining safety in the mines.

No such order for premature termination can be made without giving the licence or leaseholder a reasonable opportunity to be heard.

A mining lease lapses if an entity fails to start mining operations within two years of the date of execution of the lease or discontinues mining for a period of two years unless the state government is satisfied with the reasons for such delay and in which case an extension not exceeding one year may be granted. There is no requirement for relinquishment of any portion of the mining rights to the government after a specified period.

Law stated - 25 March 2024

Acquisition by domestic parties versus acquisition by foreign parties

Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only. However, foreign parties can invest up to 100 per cent in the equity of such companies through the automatic route under the Indian foreign direct investment policy.

Law stated - 25 March 2024

Protection of mining rights

How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

There are no special courts or tribunals to adjudicate mining rights. However, the Mines and Mineral (Development and Regulation) Amendment Act 2015 provides for the establishment of special courts to deal with cases of illegal mining. Furthermore, the National Green Tribunal may also adjudicate disputes regarding environmental non-compliance in any mining activity. India has an independent judicial system that consists of the Supreme Court of India as the apex judicial body under which are the High Courts, subordinate courts as well as the various tribunals.

India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) as well as the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (the Geneva Convention). If a party receives a binding award from a country that is a signatory to the New York Convention or the Geneva Convention and the award is made in a territory that has been notified as a convention country by India, the award would then be enforceable in India.

Law stated - 25 March 2024

Surface rights

What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

A mining rights holder is required to obtain surface rights over the area or obtain the consent of the owner to start prospecting or mining operations.

In relation to government-owned land, the selected bidder is granted surface rights by the government authorities. During prospecting, the approval of the government authority, such as the deputy collector, needs to be taken to clear vegetation to construct drains or use any underground water. The rights holder is liable to pay surface rent and water cess for the surface area used for the purposes of mining operations. The mining leaseholder must, prior to using any land for new surface operations, give written notice to the government authority, which has a right to raise objections and restrict the rights holder's use of the surface.

When private landowners grant prospecting licenses or mining leases, they may grant surface rights to such third parties according to the terms of their agreement.

Furthermore the government exercising the power of eminent domain can acquire land for public purposes (such as mining) under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. However, this is subject to consent requirements from the surface rights holders and such acquisitions can be opposed.

Law stated - 25 March 2024

Participation of government and state agencies

Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

Yes. The government and state agencies have a right to participate in mining projects and the public-sector companies have traditionally dominated the mining sector. All companies undertaking mining activity must be incorporated in India – there is no specific listing requirement.

Law stated - 25 March 2024

Government expropriation of licences

Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The government has the right to prematurely terminate a prospecting licence, exploration licence or mining lease on grounds of preservation of the environment, regulation of mines and mineral development, danger to public health or safety, conservation of mineral resources or maintenance of mine safety or other purposes that the government may deem fit.

Law stated - 25 March 2024

Protected areas

Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

Under the Indian Constitution, the Indian President may notify certain lands as ‘scheduled areas’ that have a special governance mechanism. Scheduled areas are tribal-dominated areas that are underdeveloped and show marked economic disparity. Laws formulated in relation to scheduled areas typically have more restrictions on land acquisitions and transfers. Furthermore, the central or state government may also reserve certain areas (that are not already held under lease or licence) with a view to conserving any mineral. Any mining activity in such reserved areas is only done by government companies.

Law stated - 25 March 2024

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Royalty

The central government specifies the royalty payments for each mineral and the state government collects the royalty on mining. Royalty in most cases is charged on an ad valorem basis as a percentage of the price notified by the government. Any enhancement to the royalty can only be made once every three years.

Dead rent

A mining rights holder is liable to pay either royalty or dead rent in respect of a mining area, whichever is higher. Dead rent is, therefore, meant to be paid when the mine is closed or is being underexploited. Dead rent is fixed by the central government and is collected by the state. Any enhancement to the dead rent can only be done once in three years.

NMET and DMF contributions

A rights holder must pay a sum equal to 2 per cent of the royalty as a contribution to the National Mineral Exploration Trust (NMET). Contributions to the district mineral foundations (DMFs) are to be fixed by the central government but cannot exceed one-third of the royalty specified.

Other payments

The rights holder may also have to pay, where applicable, surface rent to the surface rights owners or application fees for the licence or lease that are fixed by the central government and collected by the state.

Taxes

The taxes or levies differ in quantum and nature depending on the states. Principal taxes and duties applicable to the mining industry are:

- direct taxes, such as corporate tax or minimum alternative tax;
- indirect taxes, such as goods and services tax (GST) and customs duty;

- stamp duty;
- water tax;
- forest-related taxes, such as forest tax (levied on forest produce removed from forest areas), compensatory afforestation charges (levied to promote afforestation and compensate for deforestation), net present value payments of forest land diverted for mining; and
- cess is also levied on mineral ores under various legislations.

Law stated - 25 March 2024

Tax advantages and incentives

What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

The Income Tax Act,1961 (ITA) provides for certain special deductions to businesses engaged in exploration and mining, which follow.

- An Indian resident engaged in any operations relating to prospecting, extraction or production of any mineral is allowed a deduction in the relevant financial years of an amount equivalent to one-tenth of the prescribed expenditure incurred at any time during the year of commercial production and any one or more of the four years immediately preceding that year. The expenditure incurred should be wholly and exclusively on any operations relating to prospecting for the prescribed mineral or group of associated minerals.
- Any person engaged in the business of prospecting, extraction or production of mineral oils in relation to which the central government has entered into an agreement for participation or any person authorised by the central government in such business is allowed a deduction as specified in the agreement in relation to prescribed expenses (such as expenditure in relation to infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production, expenditure in respect of drilling or exploration activities or services or in respect of physical assets used in that connection subject to prescribed conditions, depletion of mineral oil in the mining area) for a prescribed period and computed in the manner specified in the agreement.
- A deduction of one-sixth of the amount paid as lump sum consideration for acquiring know-how (defined to mean any industrial information or technique likely to assist in the manufacture or processing of goods or the working of a mine, oil well or other sources of mineral deposits including the searching for, discovery or testing of deposits or the winning of access thereto) is available and the balance amount is available as a deduction in equal instalments for each of the five immediately succeeding years. If the know-how is developed by a prescribed laboratory, university, or institution, one-third of the lump sum consideration paid in that financial year is allowed as a deduction and the balance amount is allowed as a deduction in equal instalments in the two immediately succeeding financial years.

There are also a few concessional GST and basic customs duty rates available for certain goods required for specified petroleum operations or coal bed methane operations, which include rigs, marine vessels and pipes.

Law stated - 25 March 2024

Tax stabilisation

Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There is no legislation providing for tax stabilisation in India. In other words, the tax treatment is subject to change with a change in law. Certain tax laws, however, do provide for an advance ruling mechanism that allows the person to obtain certainty from the authorities on the tax treatment (such as classification, tax rates, availability of exemptions, etc) of the proposed transaction. The advance ruling is binding on the person seeking the ruling and the jurisdictional tax authorities unless there is a change in the structure of the transaction or a change in law.

Law stated - 25 March 2024

Carried interest

Is the government entitled to a carried interest, or a free carried interest in mining projects?

No, however, it collects royalty, dead rent, tax and other fees from the licence holder.

Law stated - 25 March 2024

Transfer taxes and capital gains

Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Under the ITA, licences should qualify as a 'capital asset'. Accordingly, the transfer of a capital asset (namely, a licence) would be subject to capital gains tax under the ITA. The transfer of licences may also be treated as 'supply of service' and may be subject to GST.

Law stated - 25 March 2024

Distinction between domestic parties and foreign parties

Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

Under the ITA, the taxability of income (scope of taxation as well as tax rate) may vary depending on the residential status of a person. However, since mines can be owned and controlled only by an Indian entity, the distinction between domestic and foreign parties is not relevant.

Law stated - 25 March 2024

BUSINESS STRUCTURES

Principal business structures
What are the principal business structures used by private parties carrying on mining activities?

The principal business structure is usually a limited liability company. Private parties, when working together, may opt for a joint venture company or a special-purpose vehicle.

Law stated - 25 March 2024

Local entity requirement
Is there a requirement that a local entity be a party to the transaction?

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only.

Law stated - 25 March 2024

Bilateral investment and tax treaties
Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

The double tax avoidance agreements (DTAA) entered into between India and several jurisdictions (such as France, Mauritius, the Netherlands, Singapore, the United Arab Emirates, the United Kingdom, the United States, etc) provide for a narrower scope of taxability and (or) beneficial tax rates for income in the nature of royalty, fees for technical services, dividend, interest or other income. The availability of the beneficial provisions of the DTAAs would need to be evaluated on a case-to-case basis depending on the precise facts.

Law stated - 25 March 2024

FINANCING

Principal sources of financing
What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Private parties typically finance mining activities through domestic and foreign debt or equity. India has a mature domestic equity capital market, and large mining companies such as the National Mineral Development Corporation, Rohit Ferrotec, Vedanta Limited, Lloyds Metals and Energy Limited, and KIOCL Limited are listed on major stock exchanges in India. Privately owned companies also rely on issuing foreign currency bonds or listing equity on foreign exchanges.

Law stated - 25 March 2024

Direct financing from government or major pension funds

Does the government, its agencies or major pension funds provide direct financing to mining projects?

No. However, public-sector banks, in addition to private commercial banks and non-banking financial companies, provide debt financing for mining projects in India.

Law stated - 25 March 2024

Security regime

Please describe the regime for taking security over mining interests.

A concession holder is free to create encumbrances over the concession obtained through the auction process. The mineral concession is also assignable to a transferee that meets the eligibility conditions.

Law stated - 25 March 2024

RESTRICTIONS

Importation restrictions

What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions on the importation of machinery and equipment required for mining activities. However, customs duty and other duties or cess may be applicable on imports. The government, however, is keen to promote mining and exploration and, therefore, provides certain incentives. For example, capital goods imported for mining under the Export Promotion Capital Goods Scheme qualify for concessionary customs duty subject to certain export obligations.

Law stated - 25 March 2024

Standard conditions and agreements

Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

The International Federation of Consulting Engineers' standard agreements have been commonly used for equipment supply agreements in India.

Law stated - 25 March 2024

Mineral restrictions

What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Certain forms of manganese, iron ore, uranium, thorium and zirconium (set out in schedule 2 of the Indian Trade Classification Harmonised System) can only be exported through identified government-owned entities.

Furthermore, to ensure that the minerals are available domestically and to reduce exports, the government may impose high export taxes, which can be revised annually during its annual budget sessions.

Law stated - 25 March 2024

Import of funds restrictions

What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Indian fiscal policy provides for capital control restrictions, which prevent free convertibility between the rupee and foreign currencies. However, there have been several steps taken to liberalise both foreign equity and debt recently. While previously, investments in the mining sector beyond 74 per cent required prior government approval, the government now allows up to 100 per cent foreign direct investment in Indian companies engaged in the mining business (exploration and extraction). Indian mining companies can also use up to US$750 million in foreign debt from recognised lenders or shareholders without Reserve Bank of India (RBI) approval subject to certain end-use restrictions.

There are typically no requirements to use proceeds domestically and Indian companies can repatriate monies by declaring them as profits, dividends or royalty income. However, in certain cases of repatriation, such as acceleration of loans, or repatriation of amounts awarded pursuant to court awards, prior RBI approval may be required. There are also no export performance parameters for access to foreign exchange.

Law stated - 25 March 2024

ENVIRONMENT

Principal applicable environmental laws

What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental laws applicable to the mining industry include:

- the Environment (Protection) Act 1986 (EPA);
- the Forest (Conservation) Act 1980;
- the Water (Prevention and Control of Pollution) Act 1974; and
- the Air (Prevention and Control of Pollution) Act 1981.

Furthermore, the Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) empowers the central government to frame rules for the conservation and sustainable development of minerals and the protection of the environment by preventing or controlling pollution that may be caused by prospecting or mining operations. The Mineral Conservation and Development Rules 2017 (MCDR) regulate environmental aspects of mining and provide for sustainable mining.

The principal regulatory bodies are the Ministry of Environment, Forest and Climate Change (MoEF) and the Central and State Pollution Control Board. Specifically, the Indian Bureau of Mines and the state government regulate mining activities and their environmental impact.

Law stated - 25 March 2024

Environmental review and permitting process

What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The Environment Impact Assessment (EIA) Notification 2006, notified by the MoEF under the EPA, regulates the grant of environment clearances. The impact on the environment resulting from a mining project is assessed by an EIA study. Consequently, an environmental management plan is prepared, and the environment clearance is granted stipulating conditions to minimise the impact on the environment from the project.

Furthermore, in the case of mining projects on forest land, the central government may stipulate mitigative measures for the diversion of forest land, such as the creation and maintenance of compensatory afforestation.

The EIA process for mining takes a year, if not longer, as the EIA study must be conducted along with public consultations, followed by a review by the appraisal committee. If forest land is involved, then the clearance for diverting the forest land also needs to be obtained in parallel. While previously the process of getting environmental clearance was known to stretch for two years or more, under the present policy to encourage industry and development, clearances are granted in less time. The government has launched a single-window integrated environmental management system called Pro-Active and Responsive facilitation by Interactive, Virtuous and Environmental Single-window Hub (PARIVESH), where a project developer can apply for environmental clearances.

Following the Mines and Mineral (Development and Regulation) Amendment Act 2021, the environment and forest clearance, along with other statutory clearances, will continue to be valid even after the expiry or termination of the earlier lease and will be transferred to and vested, subject to applicable law, in the new lessee. A corresponding amendment in the EIA Notification 2006 was also made in July 2021, which provides that the prior environmental clearance vested with the previous lessee will be deemed to have been transferred to the successful bidder from the date of commencement of the new lease for the remaining validity period (calculated from the date from which said environment clearance was initially granted) subject to the successful bidder registering with the PARIVESH portal with an undertaking to comply with the conditions pursuant to which the environmental clearance had been granted to the previous lessee.

Law stated - 25 March 2024

Sustainability

Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

The Ministry of Corporate Affairs has issued the National Guidelines on Responsible Business Conduct, which has a core principle that businesses should make efforts to protect and restore the environment. There are several mechanisms to promote environmentally sustainable mining in India, which include a mandatory EIA, forest clearance provisions, air and water-pollution prevention acts and adherence to the sustainable development framework under the MMDRA. In addition, the MMDRA and associated rules prescribe detailed mining standards (specifically with regard to carrying out scientific and environmentally friendly mining) by mining companies. Accordingly, the Ministry of Mines has launched a star rating system through the Indian Bureau of Mines, which awards a star rating to mining companies for their efforts and the initiatives taken for the implementation of the sustainable development framework in mining.

Law stated - 25 March 2024

Closure and remediation process

What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

A mining lessee must prepare two mine closure plans: a progressive mine-closure plan and a final mine-closure plan. The progressive mine-closure plan is submitted with the mining plan while the final-closure plan is submitted for approval two years prior to the proposed closure. The mining lessee must ensure that the protective measures including reclamation and rehabilitation works are carried out according to the approved mine-closure plan. The government authority must certify that all protective works in accordance with the final mine-closure plan have been carried out.

Furthermore, a financial assurance in the form of a bank guarantee must be furnished for proper implementation of the mine-closure plan, failing which the state government may realise this bank guarantee.

Law stated - 25 March 2024

Restrictions on building tailings or waste dams

What are the restrictions for building tailings or waste dams?

Under the MCDR, the rights holder must ensure that:

- overburden, waste rock, tailings and slimes are stored in separate dumps;
- the waste dumps are properly secured to prevent floods and escape of material in quantities that may cause degradation of the environment;
- the site for waste dumps, tailings or slimes is as far as possible on impervious ground to ensure minimum leaching; and
- the waste dumps are to be suitably terraced and stabilised through vegetation or otherwise.

Inspection of mines is carried out by the Indian Bureau of Mines in an order of priority based on the following criteria:

- all mechanised mines;
- all underground mines;
- other A-category mines; and
- all mines whose leases are expiring within two years.

While no specific qualifications are detailed for persons in charge of the operation and management of waste dumps, qualified and experienced mining engineers and geologists need to be employed by mining companies for conducting prospecting and mining works. There are no requirements for mandatory alarm systems or emergency drills with local communities. The government has the primary responsibility for the rescue of people in the event of a dam failure; however, under the doctrine of absolute liability in India, the mining companies would be liable for the dam failure or loss of life or injury caused by the dam failure.

Law stated - 25 March 2024

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Mines Act 1952 sets out provisions regulating mining, health and safety of labour, employment terms, inspection of mines, etc. The Mines Rules 1955 set out the framework for medical examination of labour, basic health and sanitation provisions and welfare amenities for the miners and their families. The Directorate General of Mines Safety is the central government agency regulating the safety, health and welfare of persons employed in mines.

Law stated - 25 March 2024

Management and recycling of mining waste

What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016 (the Hazardous Waste Rules 2016) is the primary legislation relating to the management and recycling of mining waste products. The Ministry of Environment, Forest and Climate Change, in granting environmental clearance for mining operations, specifies conditions and restrictions for the management and recycling of waste. The State Pollution Control Board in issuing consent to operate also specifies conditions. The leaseholder has the right to explore and exploit mining waste products in tailing ponds and waste piles subject to any restrictions under Hazardous Waste Rules 2016.

Law stated - 25 March 2024

Use of domestic and foreign employees

What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Earlier, under the Mines Act 1952, the employment of women in above-ground mines during night hours and in underground mines was restricted. However, women can now be employed subject to conditions and with the prior consent of the woman, between the hours of:

- 6am and 7pm in underground mines, in technical, supervisory and managerial work where a continuous presence may not be required; and
- in any above-ground mine.

Further restrictions can also be imposed by the central government.

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016, specify that the rights holder cannot employ a foreign national in the mining operations without the prior approval of the central government. There is also standalone legislation that governs the employment of foreign persons. A foreign employee must have a valid employment visa and be registered under the Registration of Foreigners Act 1939 if the visa duration is for more than 180 days.

Law stated - 25 March 2024

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR
What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Companies Act 2013 and the Companies (Corporate Social Responsibility) Rules 2014 contain the primary CSR obligations of companies in India. The CSR provisions are applicable to companies with an annual turnover of 10 billion rupees and more, a net worth of 5 billion rupees and more, or a net profit of 50 million rupees. These companies must spend 2 per cent of their average net profit in the past three years on CSR activities. The Companies Act 2013 lists an indicative set of CSR activities such as environmental sustainability, education, sanitation, enhancing vocational skills, etc. Companies may implement these activities, taking into account the local conditions after seeking board approval. A report on the CSR policy must be published by the company on its website and if the company fails to spend the prescribed amount, the report should specify the reasons. The Ministry of Corporate Affairs is the principal regulatory body for the Companies Act 2013.

Specifically, in relation to mining, the Mines and Mineral (Development and Regulation) Amendment Act 2015 provides for the setting up of district mineral foundations (DMFs) in all districts affected by mining-related operations. A rights holder is required to contribute to the DMF at rates specified by the central government that cannot exceed one-third of the royalty. The state governments have administrative jurisdiction over the DMFs in their region, provided that the central government may give directions regarding the composition and utilisation of funds from DMFs. In 2015, a scheme was also launched to provide for the welfare of areas and people affected by mining-related operations, using the funds generated by DMFs. This scheme was further superseded by a revised scheme, which was implemented in January 2024 for the effective utilisation of DMF funds. The revised scheme provides for the constitution of a State Level Monitoring Committee for supervising the performance of DMFs in the state and compliance with norms prescribed under the scheme.

Law stated - 25 March 2024

Rights of aboriginal, indigenous or disadvantaged peoples
How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Much of India's mining resources are largely based in underdeveloped tribal areas. One of the major sources of conflict is land acquisition in such tribal areas for mining. The governor of the state is vested with the power to make regulations pertaining to scheduled areas, including the power to 'prohibit or restrict the transfer of land by or among scheduled tribes in such areas'.

Various states have enacted their own legislation to deal with issues of land acquisition specific to certain tribal regions. These legislations govern the land rights of the tribes, including the transfer and utilisation of scheduled areas in the states, and the incidence of a tenancy. The major thrust is to define various categories of landholdings among the tribal classes, protect the land rights of the tribes against high rents or transfer of land, regulate the transfer of such lands and make provisions for the restoration of illegally alienated land.

The state government is also required to ensure that the panchayats, at the appropriate level, and the ***gram sabha*** have the power to prevent the alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a scheduled tribe. Tribal rights must be settled, and the tribes must agree through the ***gram sabha*** before industry or mining companies can get clearance to use tribal land.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (the LARR Act). is the overarching legislation that governs land acquisition in the country. The LARR Act recognises the special status of tribal lands in the scheduled areas. It provides that acquisition of land must not be made in scheduled areas as far as possible and when the acquisition does take place, it must be done as a demonstrable last resort. The state government can impose rehabilitation and settlement obligations on the sale and purchase of land acquired through private negotiations and prescribe the limits and ceilings for this purpose.

The Supreme Court has also upheld the cultural and religious rights of tribes over tribal areas.

Law stated - 25 March 2024

International law
What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

India is a party to many international treaties, conventions or protocols that relate to CSR issues in a general manner. However, there is no mandatory application of these in India in relation to CSR issues. Various global guidelines such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the International Labour Organization's Indigenous and Tribal Peoples Convention and the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy can be voluntarily applied in India.

Law stated - 25 March 2024

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation
Describe any local legislation governing anti-bribery and corrupt practices.

The Prevention of Corruption Act 1988 (PCA) is the principal legislation for the prevention of corruption and bribery in India. The PCA criminalises receipt of illegal gratification by public servants and its payment. Such illegal gratification can be pecuniary or non-pecuniary in nature. It is not necessary for there to be an actual payment of bribes; even an attempt to bribe attracts liability under the PCA.

The Central Bureau of Investigation is the central agency that undertakes the investigation and prosecution of offences pertaining to bribery and corruption and the states have their own anti-corruption wings. The Central Vigilance Commission, established by the Central Vigilance Act 2003, is the primary agency for monitoring all vigilance activity under the central government. It exercises superintendence over inquiries into offences under the PCA. The central government has also enacted the Whistle Blowers Protection Act 2011 to protect anyone who exposes wrongdoing in government bodies or projects.

Public officials are further governed by specific service rules that prohibit such officials from receiving gifts, lavish hospitality and other perks beyond certain threshold levels. It also prevents public officials from engaging in other trade or business and employment. The Foreign Contribution Regulation Act 2010 restricts acceptance of foreign contributions or hospitality by government servants, legislature members, political party candidates and government corporation employees without the permission of the central government. The Lokpal and Lokayuktas Act 2013 provides for an ombudsman body called the Lokpal at the central level, and the Lokayukta, at the state level, to inquire into allegations of corruption against public functionaries.

Law stated - 25 March 2024

Foreign legislation

Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Companies are vigilant of the US Foreign Corrupt Practices Act 1977, which prohibits the bribing of foreign officials for the purpose of business. It is important because it applies not only to US entities and persons in the United States but also to persons abroad working for US entities. This could affect Indian companies that are in partnership with US-based companies or have an international footprint in the United States. The UK Bribery Act 2010 is also relevant to Indian companies because it imposes corporate criminal liability on UK-based and non-UK-based companies having business in the United Kingdom, equally, irrespective of whether any part of the offence of giving bribes took place in the United Kingdom or not. Companies with ties to France are also likely to pay attention to the French anti-bribery law, the Sapin II Law, which came into force in 2017.

Law stated - 25 March 2024

Disclosure of payments by resource companies

Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

No. India has not adopted the EITI Standard.

Law stated - 25 March 2024

FOREIGN INVESTMENT

Foreign ownership restrictions
Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

Mineral concessions are granted to Indian nationals or entities incorporated in India only. However, 100 per cent foreign direct investment is allowed in the exploration and mining of all metallic minerals as well as diamonds and precious stones through the automatic route, by way of equity participation in a company incorporated in India. With prior central government approval, 100 per cent foreign direct investment is allowed in connection with mining and mineral separation of titanium-bearing minerals, subject to certain restrictions.

Law stated - 25 March 2024

INTERNATIONAL TREATIES

Applicable international treaties
What international treaties apply to the mining industry or an investment in the mining industry?

While there is no comprehensive international law on mining, a number of treaties, conventions and declarations have provisions for protecting the environment and sustainable development that are relevant to the mining industry in India. These include:

- the Stockholm Declaration 1972, which declares that nations have the right to exploit their own resources pursuant to their own environmental policies but they also have the responsibility to ensure that such activities do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction;
- the UN Convention on the Law of the Sea 1982, which regulates deep seabed exploration and mining;
- the Convention on Biological Diversity 1992, which calls on states to promote environmentally sound and sustainable development in areas adjacent to protected areas;
- the UN Framework Convention on Climate Change 1992 and the Kyoto Protocol 1997 in relation to the decrease of emission of greenhouse gases;
- the Rio Declaration 1992 and the Johannesburg Declaration 2002 concerning sustainable development; and
- the Minamata Convention 2013, which protects human beings from harmful mercury emissions.

India is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which relate to foreign arbitration.

Law stated - 25 March 2024

UPDATE AND TRENDS

Recent developments

What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

In the past year, the central government has actively taken steps to bolster investments in the mining sector and incentivise mining activities, to harness the full potential of the country's mineral resources. In 2023, 113 mineral blocks were successfully auctioned, of which 50 mineral blocks were auctioned for mining lease and the remaining 63 were auctioned as composite licences.

In April 2023, the Ministry of Mines issued directions to all state governments and union territories to initiate the process for the auctioning of lapsed mining leases granted under the Mineral Concession Rules, 1960.

In June 2023, the Ministry of Mines directed state governments to dispose of the minerals that are excavated incidentally during public works (such as road construction or any other government infrastructure project) by auction or by giving them to any government entity for its consumption.

Pursuant to the Mines and Minerals (Development and Regulation) Amendment Act 2023, the government has also provided for the auction of mining rights to eligible bidders (including private players) for certain critical and strategic minerals that are crucial to India's economic development and national security. Such minerals include lithium, cobalt, beryl, phosphates, graphite, glauconite, zirconium and rare-earth minerals. Mining rights for such minerals were previously granted only to government entities.

To promote the mining of minerals extracted from the sea or ocean floor in the Indian maritime zones such as the territorial waters, continental shelf and exclusive economic zones (offshore minerals), the government enacted the Offshore Areas Mineral (Development and Regulation) Amendment Act 2023 (Offshore Amendment 2023).

The Offshore Amendment 2023 provides for the following in respect of offshore minerals:

- grant of composite licence or production lease through competitively bid auction, to improve transparency in the allocation of Offshore Minerals;
- grant of a composite licence (exploration licence-cum-production lease) as a two-stage operating right for the purpose of undertaking exploration operation followed by production operation. The holder of a composite licence is required to commence operation within one year, failing which, the operating rights will lapse;
- standardised period for the production lease and composite licence of 50 years (similar to onshore mining leases);
- restrictions on the area for which operating rights can be granted for offshore minerals;
- terms governing the transfer of a composite licence or a production lease;
- penalties for unauthorised reconnaissance, exploration or production of offshore minerals;

- establishment of a trust to ensure the availability of funds for exploration, mitigation of the adverse impact of offshore mining, disaster management, research, etc; and
- all production lessees are required to pay to the International Seabed Organization an amount equivalent to the payment required to be made by the central government pursuant to its obligation under article 82 of the UN Convention on the Law of the Sea, 1982. Such amount is payable for the offshore area falling in parts of the continental shelf beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

In December 2023, the central government reserved an area of 10277.10 hectares in the Arabian Sea for grant of composite licence to Jawaharlal Nehru Port Authority for the exploration and production of sand for reclamation for the proposed development of a greenfield port in Maharashtra.

Pursuant to the Offshore Amendment 2023, the central government proposed the following draft rules:

- Offshore Areas Mineral Trust Rules for setting up an Offshore Areas Mineral Trust Fund to which production lessees will make contributions equal to 10 per cent of the royalty;
- Offshore Areas Operating Right Rules for providing the terms and conditions of operating rights and payment of royalty and auction premium;
- Offshore Areas Mineral (Auction) Rules specifying the eligibility criteria and procedure for the auction of operating rights for minerals in Offshore Areas; and
- Offshore Areas Minerals (Existence of Mineral Resources) Rules prescribing the exploration levels required to be achieved to qualify as an area with the existence of mineral resources.

Law stated - 25 March 2024