

New Mining Regulations for Thailand

28 March 2018

On 30th January 2018, the Ministry of Industry issued a new notification regarding prohibited actions for foreigners; **“Notification of the Ministry of Industry re: Prohibition of Actions which are by Nature, a Mining Business When Taken Over by a Foreigner, and the Prohibition of the Submission of an Application for a License Beneficial to Another Person B.E. 2560 (2017)”** (the **“Notification”**).

The purpose of the Notification, as stated in the preamble, is to prohibit foreigners from operating mining businesses through the use of **“cover up”** schemes in order to conceal ultimate foreign ownership.

The Notification prescribes 3 major provisions as follows:

1. As provided in Clauses 3 and 4, foreigners are prohibited from initiating a **“business takeover”**. Note that the notification itself does not alter the definition of **“Foreigner”** under the Foreign Business Operations Act B.E. 2542 (1999). Instead, it prescribes the definition of the term **“business takeover”**.

A business takeover means “having the control, power or influence, whether directly or indirectly, by a foreigner in determining the policy, management, operations, appointment of directors or high-level executives which may result in undermining the business management of a company. Having such control, power, or influence may be achieved through; 1) the holding of shares with voting rights as expanded from one half of the total number of voting rights to control of the majority votes in a shareholders meeting, or 2) by the appointment or removal of directors from one half of all directors”.

Key Contacts

Ratana Poonsombudlert
TEL 02 266 6485 Ext 153
(ratana.p@chandlermhm.com)

Suphakorn Chueabunchai
TEL 02 266 6485 Ext 112
(suphakorn.c@chandlermhm.com)

Tachatorn Vedchapun
TEL 02 266 6485 Ext 145
(tachatorn.v@chandlermhm.com)

Kiratika Poonsombudlert
TEL 02 266 6485 Ext 168
(kiratika.p@chandlermhm.com)

Chandler MHM Limited
7th-9th, 12th and 16th Floors
Bubhajit Building
20 North Sathorn Road
Bangkok 10500, Thailand
www.chandlermhm.com

Actions that can be constituted as affecting a business takeover and which are thus prohibited, include the following:

- business takeover through a nominee;
- business takeover through a special voting right;
- business takeover through the control of power;
- business takeover through the source of investment;
- business takeover through a contract related to intellectual property or a contract which renders the exclusive right to a foreigner or juristic person in an affiliate, and such contract results in the transfer of the cost and remuneratory benefit to the foreigner;
- business takeover through a procurement agreement and management agreement;
- business takeover through a joint operation agreement, and
- business takeover through transfer pricing

2. Clause 5 of this Notification prescribes that submission of an application for a license beneficial to another person having the following characteristics is prohibited:

- Being a nominee for submitting an application for a mining lease under the law on minerals;
- Being a nominee for submitting an application for a license for minor-scale mining, or minor-scale mining for another person or for the benefit of another person; and
- Being a nominee for reporting of mineral panning for another person or for the benefit of another person.

3. In Clause 6, applicants and holders of a license are required to self-certify. Self-certification under this Notification applies to both license applicants and current holders.

- License, according to this Notification, means a prathanabat, (a mining lease under the law on minerals), i.e. a license for minor-scale mining and for reporting of mineral panning under the law on minerals; and

-
- This “self-certification” process is meant to ensure that license applicants and holders do not undertake any actions which are contradictory to this Notification. This means that applicants and operators must certify that they are not involved in any cover up schemes.

Conduct contradictory to this Notification may result in the cancellation of a license application or revocation of a license.

However, this Notification is silent as to how its provisions would be implemented with regard to existing licensees. Thus, it remains to be seen whether existing licensees will be required to comply with this Notification forthwith, or upon the renewal of their licenses.

As these regulations will have an impact on the mining business in Thailand, operators may want to seek consultation in light of this new Notification.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.