

PANORAMIC

MINING

Thailand



LEXOLOGY

Mining

Contributing Editors

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MINING INDUSTRY

Standing

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

Thailand was formerly a major tin producer but now produces mainly industrial minerals, including limestone, granite, basalt, lignite and shale.

Law stated - 22 March 2024

Target minerals

What are the target minerals?

In Thailand, 35 minerals were produced in 2022. Based on the latest information provided on the Department of Primary Industries and Mines' website, the most-produced target minerals were industrial minerals.

Law stated - 22 March 2024

Regions

Which regions are most active?

Generally, there is exploration and mining activity in all regions. The northeastern region covers the largest mining production. There have also been developments in mining in the eastern area for construction purposes, in connection with the attempt to promote the Eastern Economic Corridor project, which aims to focus on infrastructure development.

Law stated - 22 March 2024

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

Is the legal system civil or common law-based?

Thailand's legal system is civil law-based.

Law stated - 22 March 2024

Regulation

How is the mining industry regulated?

The mining industry is regulated by the Ministry of Industry (MOI) and the Department of Primary Industries and Mines (DPIM) at the central level and by the local mineral industry officials at the provincial level. However, several government agencies have regulatory powers over various aspects of mining projects. It is regulated by the Minerals Act, BE 2560

(2017) (Minerals Act) and its subordinate regulations. Terms in the mining concession are in the template fixed by a subordinate regulation.

Law stated - 22 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 Minerals Act and its subordinate regulations are the principal laws that regulate the mining industry and place significant obligations on mining businesses.

The DPIM is responsible for implementing and enforcing the Mineral Acts, while the MOI is charged with the administration of the Minerals Act. Both are empowered to issue subordinate regulations governing the industry.

Three committees were established under the Minerals Act. They are responsible for the following mining issues:

- the National Minerals Administrative Policy Board is mainly responsible for proposing national strategies and plans for minerals management including monitoring the implementation process;
- the Minerals Committee is charged with advising ministers on bidding and issuance of subordinate regulations, licence-related matters in relation to Categories 2 and 3 mining leases, and considering complaints and providing assessments of the health and environmental impact; and
- the Provincial Minerals Committee is responsible for a wide range of issues related to Category 1 mining leases.

Law stated - 22 March 2024

Classification system

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

There is no legal classification system for reporting mineral resources and mineral reserves. In practice, the DPIM will classify the ore reserves based on reserves in mining lease areas and areas of mineral potential.

Law stated - 22 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?

Mining

Mining rights are granted by the Ministry of Industry (MOI) under the Minerals Act, BE 2560 (2017) (Minerals Act) through the issuance of a mining lease. Unless the mining lease is obtained, no person can conduct mining in the area, regardless of having the right over the surface area. Minerals belong to the state and mining leases do not grant title to minerals in the ground. The mining leaseholder can only sell minerals specified in the mining lease. Other minerals acquired incidentally may be sold upon receiving a licence or special permission from the Department of Primary Industries and Mines (DPIM). Mining leases are classified into three categories (namely, Mining Category 1, Category 2 and Category 3) depending on the size of the mining area, location, and the type of mining.

No limit is imposed on the number of mining leases that may be acquired by one person. Therefore, in practice, it is possible to mine over a larger area than the prescribed area limits. The application process for a mining lease is the same for the landowner and non-owner of the mining area.

The maximum duration of mining rights is 30 years.

Prospecting

Prospecting rights are granted through the issuance of:

- a general prospecting licence (GPL), valid for one year;
- an exclusive prospecting licence (EPL), valid for up to two years for an area of not more than 2,500 rai; and
- a special prospecting licence (SPL), valid for up to five years for an area of not more than 10,000 rai onshore and 500,000 rai offshore.

All three licences are non-exclusive, non-renewable and non-transferable.

Law stated - 22 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?

Mining laws and regulations, information regarding the number of mines by the types of minerals, numbers of licence holders and applicants for licences, and mineral assessment statistics are publicly available via the DPIM [website](#). The DPIM prepares mineral assessments by collecting mineral assessment reports submitted by licence holders. The database of the DPIM is available online.

Law stated - 22 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?

Major mining rights include exploration rights and mining leases with certain conditions and validity as prescribed by the Minerals Act. The Minister of Industry has the power to revoke the rights if the holder fails to comply with the conditions attached to the granted right. The approval of mining rights is not specified in the law itself and can vary. To apply for any mining rights, the applicant must submit an application, supporting documents and information required to the local mineral industry officials (LMIOs) and pay the specified fees.

Exploration rights

For exploration activities, a prospecting licence must be acquired. In the case of overlapping applications for the same area, the application that was submitted the earliest will be processed first.

A GPL grants rights for mineral prospecting and exploration within a designated area. The LMIO has the authority to issue a GPL.

An EPL grants exclusive mineral prospecting and exploration rights within a designated area (not exceeding 2,500 rai). The Director-General of the DPIM has the authority to issue an EPL.

An SPL is issued by the Director-General of the DPIM with approval of the Minerals Committee, is valid for five years and is non-transferable and non-renewable. The exploration area that may be granted under an SPL cannot exceed 10,000 rai, except for applications to explore offshore, which may be made for 500,000 rai each. An application for an SPL must include a work plan and an estimate of expenses for each year for the whole project, as well as an offer of 'special benefits' to the government. The special benefits will bind the holder of the SPL upon receiving a mining lease for mining in the area for which the SPL has been granted. A progress report must be submitted to the DPIM for every 180-day period commencing from receipt of a licence. An SPL is suitable for large projects entailing high-value minerals or substantial investment capital, and an applicant requires more time or a larger area for exploration. The holder may relinquish areas he or she no longer wishes to prospect.

An SPL holder will generally get preferential rights to acquire a mining lease for the area the SPL covers. If there are multiple applicants, the owners or possessors of the land have priority above all other applicants under the Land Code, BE 2497 (1954).

Mining rights

Upon discovery of a commercial mineral deposit, a prospector must apply for a mining lease to conduct mining activities. Generally, applications will be treated on a first-come, first-served basis.

Mining leases may not be transferred without the approval of mining lease issuers. An applicant for a mining lease must provide a map showing the area to be mined, reliable evidence of the discovery or existence of the mineral to be mined, evidence showing acquisition of surface land rights, plans on the rehabilitation, proposals of special benefits to the state and other documents or evidence as prescribed in the ministerial regulation.

Special rules apply to underground mining and offshore mining.

Law stated - 22 March 2024

Renewal and transfer of mineral licences

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

Exploration licences

All prospecting licences are non-transferable and non-renewable.

Mining leases

A mining lease is transferable subject to approval from the mining lease issuer. The application and required supporting documents for approval of a transfer or renewal of mining lease Category 1 must be submitted to the LMIOs and approved by the Provincial Minerals Committee, while the mining lease Categories 2 and 3, must be submitted to the LMIOs and approved by the Minerals Committee and the Director-General of the DPIM. The mining leaseholder may apply for a renewal and the terms of the mining lease; the aggregate term of the mining lease including renewal shall not exceed 30 years.

Law stated - 22 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?

Prospecting

The general prospecting licence, exclusive prospecting licence and special prospecting licence are valid for a maximum of one year, two years and five years, respectively.

Mining

Category 1, 2 and 3 mining leases are valid for a maximum of 30 years. The mining leaseholders may relinquish the rights in whole or in part by submitting an application and surrendering the leases to the local mineral industry officials, provided that there are no unpaid debts, the area has been completely rehabilitated, and other conditions have been complied with.

Grounds for revocation are prescribed in several sections of the Minerals Act.

Law stated - 22 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?

Under the law, it is possible to grant mineral rights to a foreign company under a special agreement. The majority foreign-owned company can operate a mining business only if at least 40 per cent, or (with approval of the Cabinet) 25 per cent, of the capital is held by Thai nationals or Thai entities and at least two-fifths of the directors are Thai nationals. However, government policy is not to grant mineral rights to foreign nationals (including companies which are foreign majority owned).

Law stated - 22 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?

Thailand has an independent court system, including an administrative court to hear cases involving government agencies. Current government policy is that contracts with a government agency cannot include arbitration provisions unless approved by the Cabinet. Foreign arbitration awards are enforceable under Thai law. Judgments entered by a foreign court are not enforceable in Thailand but can be introduced as evidence in an enforcement proceeding in a Thai court. A Thai court is free to examine new issues arising in such a case.

Law stated - 22 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?

Mining rights under the Minerals Act do not include any rights to occupy the surface. Surface rights over a mine vary depending on the type of land. Before applying for a mining lease, an applicant must acquire the right to use the surface from the public or private owner, as the case may be. Negotiation with a private landowner is concluded by purchase or lease. If the land is owned by the government, a permit issued by the concerned agency is required to be submitted along with the mining lease application.

Law stated - 22 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?

Although there is no prohibition on the government participating in mining projects, there is no precedent for such direct engagement by the government. However, there are cases where the government, through the Ministry of Finance, invests in a Thai company by holding shares, with the purpose of conducting mining projects.

The requirements under the Minerals Act do not apply to the DPIM, the Department of Mineral Resources or the Department of Mineral Fuels for the purpose of survey, testing, study and research. Currently, no state enterprise is involved in mining operations. There is also no local listing requirement for a mining company.

Law stated - 22 March 2024

Government expropriation of licences

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

The MOI has the power to revoke a licence when the holder fails to comply with certain provisions under the Minerals Act, or the conditions and obligations attached to the licence, among others.

The Minerals Act itself has no provision regarding government expropriation of mining businesses or mining leases.

There are guarantees against expropriation in the Investment Promotion Act, BE 2520 (1977), the ASEAN Comprehensive Investment Agreement and several bilateral investment treaties.

Law stated - 22 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?

Some categories of reserved areas have been declared closed to exploration and mining activities. These include wildlife reserves, national parks, forests (conservation forests and economic forests) and areas reserved for security purposes. Development activities, including mining, are strictly prohibited in Category 1A watershed areas, and restrictions apply to mining activities in economic forest areas. Other areas of land are classified as urban areas, water bodies and areas for settlement programmes.

In addition, the national strategies and plans for mineral management, established by the National Minerals Administrative Policy Board, may further designate certain areas as protected areas, thereby prohibiting mining activities within those designated areas.

Law stated - 22 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?

A company earning revenues from mining is liable to pay corporate income tax under the Revenue Code. The current rate is 20 per cent of net profit. Dividend payments are generally subject to a withholding tax of 10 per cent.

Mineral royalties, fees and special contribution

The Thai government collects mineral royalties from mining and mineral production. The Minerals Act, BE 2560 (2017) (Minerals Act) provides that the mining leaseholder and the metallurgical operator must pay a mineral royalty, fees and a special contribution. The royalty rate for each type of mineral is determined by the ministerial regulation (MR) issued under the Minerals Act and cannot exceed 30 per cent of the market price.

The MR prescribes mineral royalty rates, based on a market price per metric tonne announced by the Director-General of the Department of Primary Industries and Mines (DPIM), at the following rates:

- tin ore, gold ore and mineral ore with tungsten oxide: 2.5 per cent to 20 per cent;
- lead ore and zinc ore: 2.0 per cent to 15 per cent;
- gemstone: 10 per cent; and
- other mineral ores, at rates between 4 per cent to 10 per cent.

Mining leaseholders must pay a special contribution of no more than 10 per cent of the mineral royalty of the minerals produced under that lease.

The schedule of fees is detailed in the Minerals Act whereby the Minister of Industry has the authority to reduce the fees.

Value added tax

Mining companies are subject to value added tax (VAT) at a flat rate of 10 per cent (temporarily reduced to 7 per cent). A zero VAT rate applies to exports of minerals by mineral traders.

Double tax treaties with other nations

At present, Thailand has double tax treaties with 61 countries, including China, Japan and the United States.

Law stated - 22 March 2024

Tax advantages and incentives

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

Board of Investment promotional incentives

Under the Investment Promotion Act, prospecting of minerals, mining, mineral dressing, mineral smelting, and metallurgy operations of targeted potential minerals projects are eligible for promotion. As a precondition to applying for Board of Investment (BOI) incentives, the prospecting licence must be obtained prior to submission of an investment promotion application for prospecting projects, and a mining lease or mining sub-lease must be obtained for mining, mineral dressing, mineral smelting, and metallurgy operations projects prior to submission of a BOI promotion application. For mining, mineral dressing, mineral smelting, and metallurgy operations projects, the projects must involve activities related to targeted potential minerals such as rare earth, precious metals, alkali metals, quartz, potash and other minerals specified by the National Mineral Management Policy Commission (except industrial stones for the construction industry), and meet other criteria such as, obtain the certification of Green Mining or Corporate Social Responsibility from the DPIM, or other international standards approved by the BOI within two years from the deadline for full operation, among others.

Other non-tax incentives may be granted by the BOI to a promoted mining project.

Law stated - 22 March 2024

Tax stabilisation

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

No legislation currently provides for either tax stabilisation or tax stabilisation agreements.

Law stated - 22 March 2024

Carried interest

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

Although there is no prohibition on the government holding an interest in mining projects, there is no precedent for such engagement by the government. However, there are cases where the government, through the Ministry of Finance, invests in a Thai company by holding shares, with the purpose of conducting mining projects.

Law stated - 22 March 2024

Transfer taxes and capital gains

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

Consideration paid for the transfer of a licence is categorised as taxable income, which is subject to income tax at the rate prescribed by the Revenue Code. Capital gains are treated as normal income. VAT is applicable to transfers of rights.

Law stated - 22 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?

No.

Law stated - 22 March 2024

BUSINESS STRUCTURES

Principal business structures

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

A Thai limited company is the usual choice of entity to hold mining leases. Mining rights will not be granted to branches, non-registered partnerships, joint ventures or trusts.

Law stated - 22 March 2024

Local entity requirement

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

Under the current law, an entity doing business in mining (excluding exploration activity) must be Thai majority-owned; otherwise, a foreign business operation licence granted by the Minister of Commerce with the approval of the Cabinet must be obtained.

Law stated - 22 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?

Thailand has signed 42 bilateral investment treaties (BITs), of which 36 are in force, and it has double tax treaties with 61 countries. Among these BITs, those with Australia (Thailand–Australia Free Trade Agreement (TAFTA)), Japan (Japan–Thailand Economic Partnership Agreement) and the United States (Treaty of Amity) are considered more favourable. The TAFTA specifically addresses the mining right as a company with majority shareholders holding Australian nationality (up to 60 per cent) can engage in mining activities, but must be approved by the Ministry of Industry, and at least two-fifths of the directors must be Thai. This treaty does not avoid the restrictions on foreign land ownership.

The ASEAN Comprehensive Investment Agreement also includes provisions regarding mining and quarrying.

Law stated - 22 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?

Domestic and foreign financial institutions are the principal source of financing for mining projects, by way of loans on standard commercial terms.

Public and private limited companies (with the consent of the Stock Exchange of Thailand (SET)) may issue debentures. Public limited companies may apply to be listed on the SET, in accordance with SET-prescribed rules.

Law stated - 22 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?

Generally, no.

Law stated - 22 March 2024

Security regime

Please describe the regime for taking security over mining interests.

A licence for mining activities granted by the governmental agency cannot be mortgaged, pledged or assigned as security under Thai law. Rights under a mining lease are not subject to the execution of a judgment.

Law stated - 22 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?

The import of machinery and equipment is subject to customs duty, at rates prescribed in the Customs Tariff, and value added tax. Exemptions may be granted by the Board of Investment for promoted projects. There is no specific requirement about the source of service.

Law stated - 22 March 2024

Standard conditions and agreements

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

International Federation of Consulting Engineers contracts are often used in infrastructure and construction projects in Thailand. In practice, international engineering, procurement and construction contracts are split into offshore supply agreements ('sales of goods agreements' not subject to withholding tax or stamp duty) and onshore hire of work contracts (subject to withholding tax and stamp duty).

Law stated - 22 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?

The person who conducts mineral processing must be the holder of a provisional mining lease or mining lease who undertakes mineral processing operations within its mining

concession area, unless a mineral processing licence is obtained from the local mineral industry official, which will designate the mineral processing area. Mineral processing must be conducted in accordance with the approved flow sheet and mineral processing procedure under the supervision and responsibility of a licensed engineer.

The types and conditions of minerals requiring a licence to import into Thailand, and prohibited from export can be referred to in the Ministry of Industry's notifications.

Law stated - 22 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?

Exchange control regulations are administered by the Bank of Thailand (BOT) on behalf of the Ministry of Finance, under the Exchange Control Act, BE 2485 (1942). Approvals to repatriate capital and profits were discretionary and the approvals were granted as a matter of routine by the BOT. Presently, commercial banks are authorised to process most applications to purchase foreign currency. Foreign currency accounts may be established abroad and in Thailand.

Generally, the proceeds from the export sale of minerals must be repatriated within 360 days.

Law stated - 22 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?

Besides the Minerals Act, BE 2560 (2017) (Minerals Act), which contains numerous provisions for the protection of the environment and communities, there are many laws relating to the management of environmental issues, each with specific requirements and competent authorities.

The National Environment Protection and Promotion Act, BE 2535 (1992), as amended (Environmental Act), is the principal law for managing environmental issues, including water, air and noise pollution, hazardous waste and conservation of natural resources. In addition, the Environmental Act requires both private and public sectors to prepare an environmental impact assessment (EIA) or environmental and health impact assessment (EHIA) report for the prescribed operations or activities and provides for the establishment of an environmental fund. It is administered by the Office of Natural Resources and Environmental Policy and Planning, the Department of Pollution Control, and the Department of Environmental Quality Promotion.

While some mining projects may not be required to conduct such reports, the Mineral Act and its sub-regulations still impose obligations on them to ensure social and environmental protection and correction.

Moreover, Thailand is proactively enhancing the development of comprehensive environmental legislation to address environmental and public health issues, including emissions of pollutants, greenhouse gases, and other environmental concerns that may require further regulatory obligations for mining operators.

Law stated - 22 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 Constitution provides that any project or activity that may have a severe impact on the environment may not be carried out unless the impact on environmental quality and health of the people in the surrounding community has first been studied and evaluated. The community right is also protected thereunder.

Corresponding to this, the Environmental Act provides that projects or activities that may have an impact on the environment may be required to undertake either an EIA report or an EHIA report depending on the type and size of the project. The consideration period for EIA and EHIA will take approximately 75 working days.

Mining assessments

Most mining projects require an EIA report to be submitted in the mining lease application. Certain mining activities require an EHIA report submission, for example, seabed mines, and underground mines with collapsing structures without appropriate support and no substitute form inserted to prevent the collapse (all sizes).

Certain mining projects, such as sand or silica sand, marl, and kaolin mining, are not required to conduct the reports. However, there are still other preventive and corrective measures for these types of mining activities, as prescribed under the sub-regulations.

The Minerals Act includes numerous provisions for environmental review, by both existing and new government agencies.

Law stated - 22 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?

Regulators of the financial sector have established a working group on sustainable finance and financial institutions have started to integrate ESG into their strategies. The Bank of

Thailand (BOT) and the Thai Banker Association have jointly signed the Memorandum of Understanding to shift towards responsible leading. The National Economic and Social Development Guidelines No. 13 (2023 – 2027) is the main policy implemented to promote an environmentally friendly society and economy. The BOT and Securities and Exchange Commission launched Thailand Taxonomy Phase 1, which serves as a common framework for classifying economic activities that meet sustainability goals in 2023.

In addition, the Ministry of Industry (MOI) created a definition of 'green industry', where different levels of the green industry are eligible to receive benefits from the MOI.

The Industrial Estate Authority of Thailand also acknowledges the importance of the green industry and provides benefits to companies that can achieve it.

Law stated - 22 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?

Under the Minerals Act, the mining lease holders are responsible for the restoration of mining areas according to plans of restoration, development, utilisation and monitoring of the impact on the environment and people's health during mining and after the closure of the mine, as approved by the Minerals Committee, and placement of security for restoration, and insurance (in the case of Category 2 and 3 mining).

Law stated - 22 March 2024

Restrictions on building tailings or waste dams

What are the restrictions for building tailings or waste dams?

Essentially, section 68(6) of the Minerals Act provides that dumping tailings or allowing others to take tailings out of the mining area requires prior approval from the local mineral industry official with further rules and conditions provided in the Department of Primary Industries and Mine's notification.

For waste dams, there are no specific regulations on the operation and management of waste dams. However, further details as to the operation, management, inspection and alarm systems in regard to the management of waste as a result of the mining operation, including tailings and waste dams, must be included in the environmental impact assessment report conducted by the mining operator.

Law stated - 22 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 principal health and safety laws are the National Environment Protection and Promotion Act, BE 2535 (1992), as amended and administered by the Office of Natural Resources and Environmental Policy and Planning and the Public Health Act, BE 2535 (1992) as amended, administered by the Public Health Commission. General labour laws are applicable to the mining industry and are administered by the Ministry of Labour (eg, the Labour Protection Act, BE 2541 (1998), the CCC, the Social Security Act, BE 2533 (1990) and the Compensation Fund Act, BE 2537 (1994)).

The Minerals Act, BE 2560 (2017) (Minerals Act) provides more comprehensive oversight of health and safety applicable to the mining industry.

Law stated - 22 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?

Under the Environmental Act, the municipality where a mine is located is given the responsibility of managing solid waste disposal generated by mining activities or, alternatively, contracting out such services to the private sector. The rights to explore and exploit other mining waste products in tailings and waste piles belong to the mining leaseholder or a sub-lessor that has the requisite licence to perform such activities under the Minerals Act or supporting regulations.

Law stated - 22 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?

All mining activities are subject to the labour laws of general application. The employment of foreign individuals is subject to the laws and procedures regarding visas and work permits.

The Emergency Decree on Administration of Alien Working, BE 2560 (2017), and its amendments, require that every foreign national working in Thailand obtain a work permit, with certain exceptions.

Law stated - 22 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?

Thailand does not have CSR laws. However, the Constitution provides that an environmental impact assessment or environmental and health impact assessment report must be undertaken for the operation of any activity that might affect the community. A hearing involving the public and interested persons is to be conducted, and the opinions of environmental non-governmental organisations and higher education institutions providing studies in the field of the environment are to be obtained. In addition, the mining lease holders must pay a special contribution to the state and this contribution can be used for local development, and research regarding minerals. Apart from that, the mining lease holders must offer special benefits to the state for use in development, training, site visits, research projects, scholarship of state officers and general government benefits.

Furthermore, Thailand is actively developing more environmental laws aimed at addressing environmental and public health concerns, including emissions of pollutants, greenhouse gases, and other environmental impacts. These developments may impose additional obligations on mining operators.

Law stated - 22 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?

This issue is not applicable in Thailand.

Law stated - 22 March 2024

International law

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

The ASEAN Minerals Cooperation Action Plan 2016–2025 (AMC AP-111) promotes environmentally and socially sustainable mineral development.

Law stated - 22 March 2024

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

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

Thailand's primary legislation covering anti-bribery and corrupt practices is the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption,

BE 2561 (2018). Thailand has continued to refine other laws, such as the Anti-Money Laundering Act, BE 2542 (1999), to encourage transparency and fulfil obligations under the UN Convention against Corruption (ratified in 2011). The National Anti-Corruption Commission, the Public Sector on Anti-Corruption and the Attorney General's Office are all empowered to investigate and prosecute possible cases of corrupt practices.

Law stated - 22 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 in Thailand pay great attention to bribery and corruption issues. Many companies issued internal rules for employees to follow, such as the announcement of the Anti-Bribery and Corruption Policy of the Thai Companies, which is in accordance with the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption, BE 2561 (2018) and the Anti-Money Laundering Act, BE 2542 (1999), these internal policies may also include the laws of other countries (eg, the US Foreign Corrupt Practices Act and UK Bribery Act).

Law stated - 22 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?

Thailand has initiated steps to become a candidate and become compliant with the EITI but has not yet acceded to it.

Law stated - 22 March 2024

FOREIGN INVESTMENT

Foreign ownership restrictions

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

Foreign majority-owned wishing to operate a mining business must obtain a foreign business licence under the Foreign Business Operation Act. Under the law, it is possible to grant mineral rights to a foreign company under a special agreement. The majority foreign-owned company can operate a mining business only if at least 40 per cent, or (with approval of the Cabinet) 25 per cent, of the capital is held by Thai nationals or Thai entities and at least two-fifths of the directors are Thai nationals. However, government policy is not to

grant mineral rights to foreign nationals (including companies in which ownership is majority owned by foreign nationals).

The Land Code, BE 2497 (1954) prescribes a restriction on ownership of land by foreigners (including Thai entities with foreign shareholders holding more than 49 per cent or more than half of the shareholders are foreigners). There is no foreign restriction on leasing land. If the land is forest land, more than two-thirds of the shareholders or partners must be Thai nationals holding more than half of the total number of shares, and its authorised person must be Thai.

Law stated - 22 March 2024

INTERNATIONAL TREATIES

Applicable international treaties

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

Investment in a mining project may qualify for investment protection under a bilateral investment treaty. Thailand is currently a party to 36 bilateral investment treaties. Thailand is also party to the 2009 ASEAN Comprehensive Investment Agreement. Mining and quarrying, and services incidental to them, are listed as one of the designated sectors to which the 2009 agreement applies.

Law stated - 22 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)?

Thailand has recently discovered a reserve of lithium-sodium ores with significant mineral resources in the southern area, which serves as the primary material for the production of electric vehicle batteries. This discovery aligns with Thailand's objective to establish itself as a central hub and production base for electric vehicle batteries within the region.

Law stated - 22 March 2024