

New Mining Investment Law in Saudi Arabia

As part of Saudi Vision 2030, a strategic framework aimed at reducing Saudi Arabia's dependence on oil and diversifying its economy, the Ministry of Industry and Mineral Resources developed the New Mining Investment Law (the **New Law**). One of the main goals of the New Law is to attract more local and international investors to the mining sector, and it lays the foundation for a number of interesting initiatives, including (i) the establishment of a national geological database, (ii) the establishment of a "Mining Fund" to support the mining sector, (iii) potentially streamlining the procedure for obtaining mining licenses, and (iv) introducing certain financial incentives for investors. In this article, we discuss the New Law, the notable differences between the New Law and the previous Mining Investment Law, and the potential opportunities for investors presented by the New Law and the wider sector reforms already underway.

Vision 2030 and the National Industrial Development and Logistics Program

On 25 April 2016, Crown Prince Mohammed bin Salman announced the details of Saudi Vision 2030, a strategic framework aimed at reducing Saudi Arabia's dependence on oil and diversifying its economy.

Vision 2030 aims to increase foreign direct investment to 5.7% of GDP, increase the private sector's contribution to 65% of GDP and grow non-oil government revenue to SAR 1 trillion.

Even by the most conservative estimates, the Kingdom has vast underutilized mineral reserves, so it is unsurprising the government is keenly focused on exploiting these resources and increasing the mining sector's contribution to the Kingdom's economy. However, the sector has historically faced a number of challenges, including:

1. a cumbersome and inefficient licensing procedure that discouraged private sector investors
2. difficulties accessing local financing and capital markets resulting in significant barriers to entry for Saudi companies and junior miners

3. a lack of community support because of the limited social and economic benefits for local communities and a lax attitude toward environmental protection
4. tough global competition and limited government support to level the playing field in-Kingdom (Saudi is itself a major consumer of mineral products), resulting in the Kingdom being the fourth largest net importer of mineral products globally despite its substantial reserves.

These challenges have traditionally resulted in under exploration and utilization of the Kingdom's mineral resources, limiting the sector's potential as a government revenue generator. It is clear, however, that with the proper structure and stimulus the sector represents a major opportunity for the Kingdom to attract vital foreign investment, localize mineral production and create attractive job opportunities for an increasingly youthful and ambitious Saudi population.

Recognizing both the opportunities and the challenges, the Council of Ministers approved a new mining strategy, developed as part of the National Industrial Development and Logistics Program (NIDL), one of the strategic programs under Vision 2030.¹ On a practical level the mining sector reforms proposed by the NIDL will be implemented via 42 priority initiatives designed to accelerate exploration and mine development, and fill key gaps in the midstream and downstream value chain.

¹ <https://vision2030.gov.sa/en/programs/NIDL>.

Crucially, the NIDL identifies *"transformation of the sector governance and institutional enablement through effective and efficient regulation"* as one of these priority initiatives and a vital first step in the process of unlocking the sector's potential.

Accordingly, the Ministry of Industry and Mineral Resources (the Ministry), in collaboration with other stakeholders, developed the New Law.

New Mining Investment Law

The New Law was approved by the Council of Ministers on 9 June 2020 and will come into force on 29 December 2020 (180 days after it was published in the Official Gazette), largely superseding the old law, which has been in force since 2005.

Those familiar with the old law will note that the New Law is based substantially on the previous framework and at first glance it appears there have been few substantial amendments. However, in the details lie a number of interesting updates. More importantly, the New Law lays the groundwork for many of the other priority initiatives set out in the NIDL. The Implementing Regulations for the New Law are still to be published and should provide important additional detail and clarity with respect to certain provisions.

Establishment of a National Geological Database

The Ministry is mandated to coordinate with the Saudi Geological Survey to develop an online National Geological Database as a central repository of the Kingdom's geological, geochemical, geophysical, topographic and geographic information. The intention of the database is to incentivize exploration by providing investors with easy to access information on potential deposits and reserves. The NIDL anticipates that the development of the database will be one of the world's largest pre-competitive geosciences programs.

The success of the database in increasing private sector exploration will depend on a number of factors, including the efficiency of its rollout and how accurate and comprehensive the data is, or is perceived to be. However, if implemented correctly the database may well be a key factor in enticing investors to commit funds to obtain survey and exploration licenses and undertake exploration activities.

Interestingly, the NIDL notes that the Kingdom will co-fund exploration in partnership with private sector investors until 2025 to catalyze exploration activity, although the New Law does not specifically provide for any such co-funding arrangements at this stage.

Establishment of a Mining Fund

The Ministry is to establish a "Mining Fund". It appears this 'fund' will simply be a bank account (rather than an investment vehicle as the term might imply), into which will be deposited the various financial considerations paid for Licenses or services provided by the Ministry, fines imposed and site rentals levied under the New Law, financial returns from tenders, and any gifts, donations and endowments. The funds will be earmarked to develop and support the mining sector, and the Ministry will issue regulations detailing how the funds are to be allocated.

The NIDL notes that thirty-nine value chains comprising more than a thousand projects (mining, midstream and downstream), have been prioritized as part of the new mining strategy (the list does not appear to have been publicized yet). At this stage we can only speculate about exactly how the funds will be allocated, however companies and investors looking to be at the front of the queue for funding would be well advised to target under-developed segments of those priority value chains, as well as considering the 42 priority initiatives referred to earlier.

The Ministry is also mandated to establish special entities to provide services to the sector, with the capital for these entities to be provided by the fund. The NIDL refers to the establishment of a mining excellence center and a metal alloy development center, to foster the development and usage of new technologies in the sector.

Licenses and Licensing procedure

The New Law retains the three-tier classification of minerals from the old law, albeit with slightly different terminology.

Class A (previously Class 3) covers metallic minerals, precious and semi-precious stones and ores requiring advanced processing. Class B (previously Class 2) covers non-metallic and industrial minerals and raw materials. Class C (previously Class 1) covers construction materials.

The classes of licenses are also broadly similar. However, it is worth noting the following amendments:

1. Mining Licenses will now be issued for both Class A and B minerals. The old law had a separate class of mining license just for Class B (known as a Raw Materials Quarry License), which has been removed.
2. Small Mine Licenses will be issued for Class A and B minerals. Previously Small Mine Licenses were only issued for Class B and C minerals.
3. Building Materials Quarry Licenses will now only cover Class C minerals. Previously they covered both Class B and Class C.
4. A new class of license known as a General Purpose License has been added. This is a license to establish facilities or use lands outside of the relevant license site to achieve the purpose of a Utilization/Exploitation License. We expect this type of License will cover areas adjacent to mine sites used for processing facilities, laydown areas, solar PV arrays etc.
5. The concept of a Materials Collection License has been deleted in its entirety.

Exploration Licenses can now be issued for up to 15 years in total (maximum 5 year initial term plus one or more renewal periods of not more than 5 years each). Under the old law Exploration Licenses were limited to 10 years.

As under the old law, Mining Licenses for utilization and exploitation have a maximum licensed area of 50 km² and the duration of such Mining Licenses (inclusive of renewals and/or extensions) is limited to 60 years in total.

The detailed procedures for the issuing of licenses will be included in the regulations; however, we can expect aggressive new timelines for the Ministry and other stakeholders to adhere to when processing and approving applications. This will be of comfort to mining companies and investors who have previously been discouraged from exploring opportunities in Saudi due to the uncertainties around licensing and lengthy processing periods.

Crucially, the New Law continues to grant the holder of an Exploration License the exclusive right to obtain a Utilization/Exploitation License for the relevant License Site.

The New Law also provides that where the Ministry receives an application for an Exploration or Exploitation/Utilization License that meets all the requirements, the onus is on the Ministry to write to any relevant government authorities to

obtain the necessary approvals and permits. If no objections are received within 30 days then the application will be deemed to be approved. If objections are raised, applicants will be provided the opportunity to amend their application to remove areas relevant to the objections.

Mining companies and investors should note that where the Ministry receives multiple compliant applications for licenses for the same site, the priority will be simply based on the date of application.

In line with the old law, any data and information provided by an applicant is required to be kept confidential and may not be disclosed before 180 days have elapsed from the date the application is refused. Similarly, the New Law has retained the specific requirement for geological reports submitted by a Licensee to be kept confidential if the Licensee so requests. However, in addition to the right to disclose such reports 180 days after the expiry or termination of the relevant License, the New Law also permits disclosure without approval (i) if the Licensee abandons part of the License Site or (ii) "five years after receiving reports of the valid Licenses". The language of both of these exceptions lacks clarity. For example, it is unclear what would constitute abandonment, or whether "reports of the valid Licenses" is intended to refer to the geological reports themselves or some other report. We are hopeful that the regulations may provide additional clarity here.

Financial provisions

Holders of Exploitation/Utilization Licenses for Class A Minerals which are not subject to income tax in the Kingdom will be required to pay a financial consideration on their net annual income equivalent to what they would pay were they subject to income tax. Any Zakat (alms-giving) due will be debited from this amount.

All Holders of Exploitation/Utilization Licenses for Class A Minerals, regardless of whether they are subject to income tax, will be required to pay either: (i) a financial consideration for each ton of ore produced; or (ii) a percentage of their net revenues from the licensed activity, as determined by the Regulations and "following agreement with the Ministry of Finance." This reference to the Ministry of Finance suggests it will have an oversight role in approving the financial terms of each Exploitation / Utilization License. It is unclear at this stage what impact the Ministry of Finance's involvement will have on the application process.

Holders of Exploitation/Utilization Licenses for Class B and C Minerals will be required to pay a financial consideration as set out in the regulations (likely based on a specified rate per ton of ore produced), in addition to any income



tax, Zakat or other fees to relevant authorities. Class B and C Licensee holders who are not subject to income tax are not required to pay an 'income tax equivalent' financial consideration (unlike Class A License holders, as discussed above), incentivizing local investment and exploration in these areas.

Positively, holders of Exploitation/Utilization Licenses for Class A Minerals will be exempt from paying either (i) the financial consideration or (ii) a percentage of their net revenues, for the first five years after a license is issued, which will provide valuable relief during the early stages of a project when capital costs and risks are at their highest. It appears this relief will not be offered to Class B or C Licensees.

The New Law continues to provide for customs duties exemptions for imported equipment and spare parts required for carrying out any licensed Mining Activity.

Financing & mortgaging

As previously discussed, obtaining finance for exploration in the Kingdom has traditionally been challenging, particularly for Saudi companies. Exploration is a capital-intensive exercise, for which there is no readily available capital market in-Kingdom.

We understand the Ministry has held meetings with the Capital Markets Authority to discuss the development of a capital market for junior mining companies looking to raise money for exploration, and with the Saudi Industrial Development Fund, which has the potential to be an important source of funds for mining companies during

the utilization/exploitation stage. This proactive approach to the identification and development of attractive sources of financing for the sector is reason for cautious optimism and is something we will be following closely over the coming months.

Under the New Law, licensees are permitted to mortgage/ pledge their rights under both Exploitation/Utilization Licenses and Exploration Licenses without obtaining the prior written approval of the Ministry, and the New Law specifically provides for mortgagees/pledgees to transfer licenses to eligible persons.

The Ministry will still need to be notified of mortgages/pledges of licenses for registration in the Licenses Register in order to be valid. The ability to take and enforce security over a Exploitation/Utilization License will be a major comfort for potential lenders whose ability to salvage value from a distressed project or structure a workout, will require the ability to transfer the license to a new operator/developer.

Further, the Ministry is required to publish the full text of any notices related to mortgaged/pledged licenses. Again, this will be a comfort to financiers that previously had to rely on the honesty of their borrowers (that may be less than forthcoming) and their loan covenants to obtain copies of these types of notices.

Site rehabilitation and closure – Environmental and social impact assessments

Utilization/Exploitation License holders now need to provide a financial guarantee for Rehabilitation and Closure of the License Site. The detailed requirements for these guarantees will be set out in the regulations.

Applications now require the submission of both environmental and social impact studies — the old law only required an environmental study. In addition to proving the economic feasibility of a project and compliance with relevant environmental regulations, applicants will need to demonstrate how they intend to contribute to the development of local communities and support local content.

Interestingly, the New Law provides for a deadline of 60 days for the competent authority to approve the environmental and social impact studies. While positive from an applicant's perspective, the New Law is silent on the consequences of an authority missing the deadline, and we anticipate that in practice, holding the relevant authorities to these types of deadlines may prove difficult.

Other notable amendments

Certain other provisions of the old law have been amended or deleted to appeal to potential private sector investors.

- There are no change of control restrictions for licensees. Licensees are simply required to notify the Ministry of a change of control within 30 days.
- Licensees now have 180 days to remedy issues with respect to the environment, wildlife, archaeological sites or tourist attractions. Previously, licensees were required to remedy within 60 days or risk termination.
- If an event of force majeure affects a licensee, the New Law states that the Ministry may "wherever possible," provide the licensee with a substitute site.
- The government no longer has a priority right to purchase minerals extracted by licensees.

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