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Business Law Practitioners



VIETNAM

Mining Investment Guide

June 2022

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Overview

According to the statistics released by the General Statistics Office of Vietnam in 2020, mining is one of the biggest contributors to Vietnam's gross domestic product (GDP) with a contribution rate of 6.0% of total GDP. In the first half of 2021, the mining industry saw a decline in revenues of 6.61%, it still retains its potential for further growth due to a variety of unexploited mineral resources. It remains an attractive sector for foreign direct investment (FDI). The recently approved Resolution No. 02/NQ-TW of the Politburo of the Communist Party of Vietnam on the Vietnam Mining Development Strategy has set out clear objectives from 2021 to 2025 with the view to 2030 as follows:

- developing a sustainable national energy and mining industry;
- diversifying and securing energy and resource supplies;
- making refinery and downstream processing on minerals mandatory; and
- addressing political and environmental pressures to drive economic returns to the nation.

As of the end of 2020, Vietnam had discovered more than 5,000 new mineral deposits and reviewed a number of mineral and natural resources such as oil and gas, coal, titanium, bauxite, phosphate rocks, rare earth, copper, gold, iron ore, mineral construction materials, etc. Many open-cut mines are becoming depleted and trends are shifting toward more advanced technologies and investments in underground mining. This document will provide guidelines for investment in mining activities in Vietnam, excluding a few specific minerals, e.g., oil and gas.

Legal framework for mining activities

In Vietnam, mining activities are primarily regulated by Mineral Law No. 60/2010/QH12 dated 17 November 2010 (the "**Mining Law**") and its guiding regulations. Additionally, the relevant regulations can also be found in the constitution, the laws on land, environmental protection, taxation, exportation-importation, the laws on investment and the local regulations of each province and city. Specifically, the documents regulating mining activities can be categorized as follows:

- **The Constitution:** The constitution of Vietnam is the document that sets out the most basic and important principle for mining activities in Vietnam. Accordingly, it is provided that the natural resources are owned by and belong to the people of Vietnam and under the representation and management of the State. Therefore, individuals and organizations are required to conduct mining activities under the management and supervision of the State and do not have ownership rights of mineral deposits.
- **The Mining Law and its guiding regulations:** These documents provide the legal basis for the individuals and organizations in Vietnam to conduct mining activities as well as the principles for mining activities, namely, what the individuals and organizations are allowed to do and prohibited from doing. In addition, they also provide the process for issuing mining licenses and the framework to guide the competent authorities in the management of mining

activities, state which authorities and local administrations are in charge and the requirements for conducting mining activities.

- **Relevant regulations:** In addition to the Mining Law and its guiding regulations, mining activities are also regulated by other sector-specific regulations such as:
 - (i) the 2013 Land Law and its guiding rules, which control how the land clearance can be done, how the land can be leased to individuals and organizations to conduct mining activities;
 - (ii) the environmental protection regulations, which provide the requirements with which individuals and organizations must comply during and after conducting mining activities;
 - (iii) the importation-exportation regulations, which provide the types of machinery and equipment that are required and allowed to be imported to conduct mining activities, the tax and fee duties regarding the products of mining activities and related processes;
 - (iv) legal documents issued by the local / provincial governments, which provide for the royalties as well as the exploitation fees and other local requirements for mining activities; and
 - (v) other specialized laws such as the 2014 Construction Law (as amended in 2020) and its guiding rules, which provide for the requirements for building infrastructure for mining activities, or the 2020 Investment Law and its guiding rules, which provide how foreign investment in mining activities can be conducted and relevant restrictions (if any).

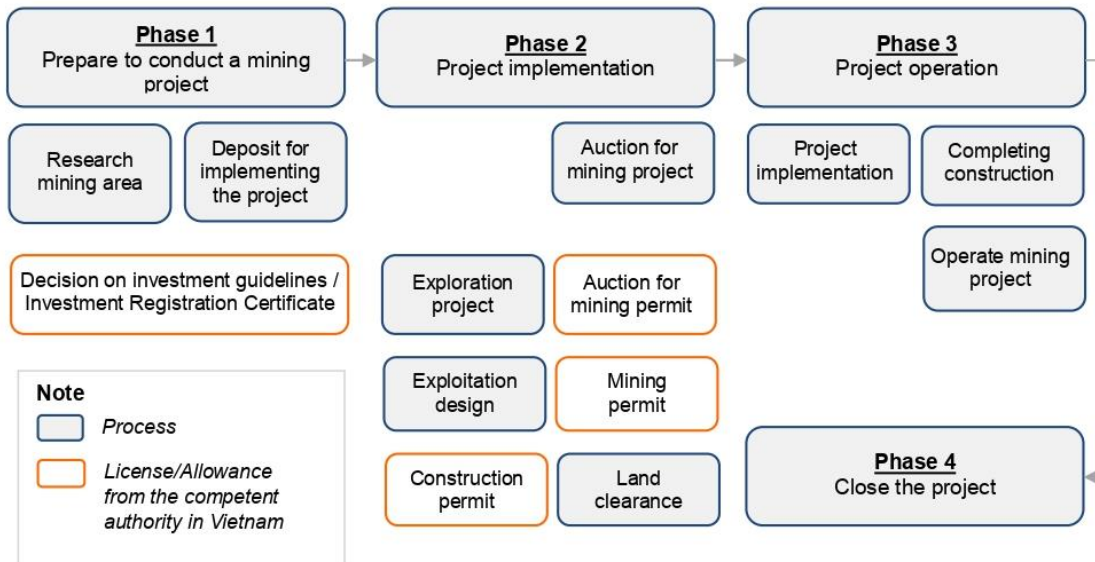
A possible form of investment in mining activities

In Vietnam, the Investment Law provides for the following forms of investment, including:

- Establishment of an economic organization (“**EO**”) to implement a mining investment project / to receive a transfer of the rights to mine minerals from an entity licensed to mine minerals (the “**Mine Owner**”);
- Contribution of capital, purchase of shares, or capital contribution into an EO conducting mining activities; and
- Investment by way of a contractual arrangement, including investment contracts in the form of a business co-operation contract (“**BCC**”).

Steps to be taken to conduct mining activities

The first diagram presents an overview of the implementation sequence of a mining project in Vietnam, from the first step of preparation to the end of the project life cycle (the phase of decommissioning). Typically, a mining project ranges from 30 years (equivalent to the maximum term of a mining license) up to 50 years (equivalent to the maximum extension period for a mining license).

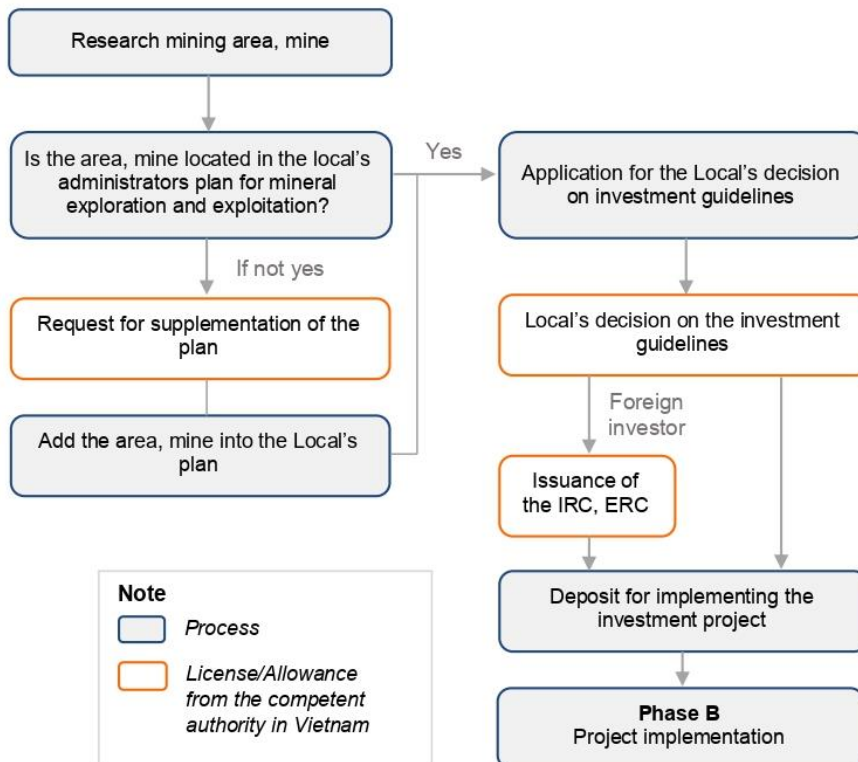


Phase 1: Prepare to conduct a mining project

The Preparation Phase begins with the identification of the potential point and ends when the project investor makes a deposit and receives the decision on the investment guidelines of the Provincial State for the mining project.

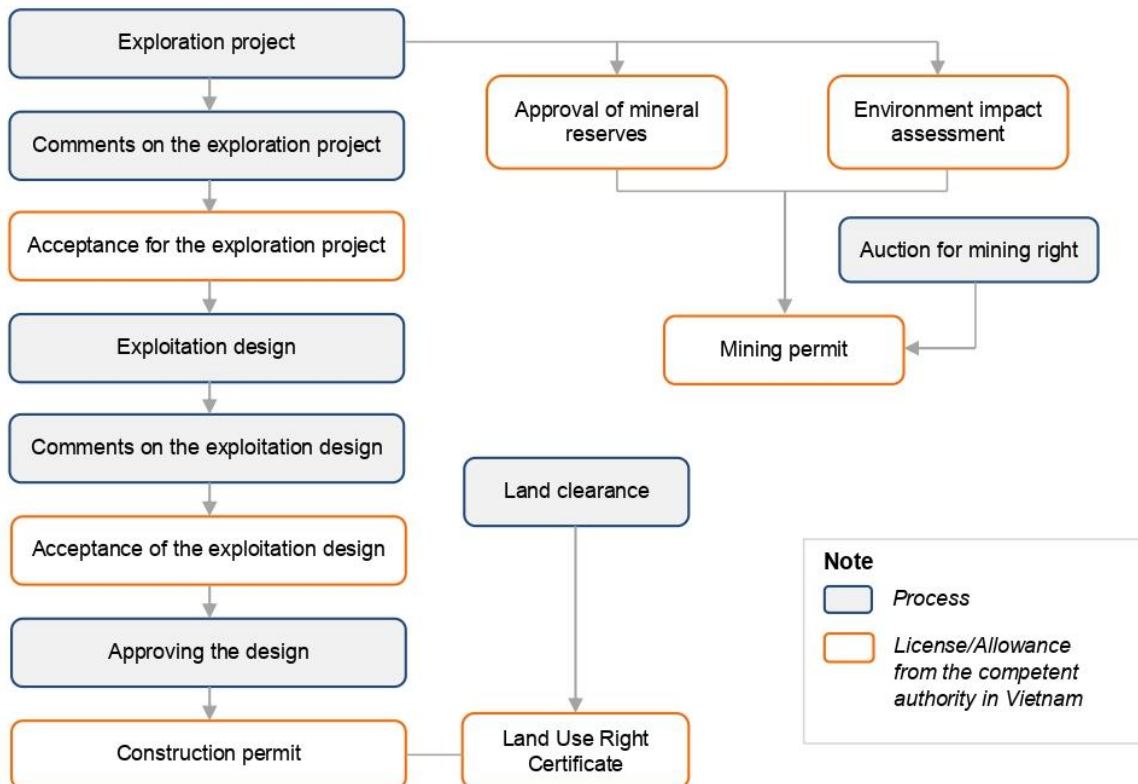
The core issue at this stage is to clarify whether the project site has been included in the local planning for mineral exploration and exploitation. This is the deciding factor for the next project development steps.

The diagram below shows the full steps and permits required during this phase.



Phase 2: Implementing the Project

This phase begins from the point that the enterprise implementing the investment project has been established. During this stage, the investor must obtain certain licenses and permits to continue the project. In order to obtain these licenses/permits, certain conditions must be met in accordance with the laws of Vietnam.



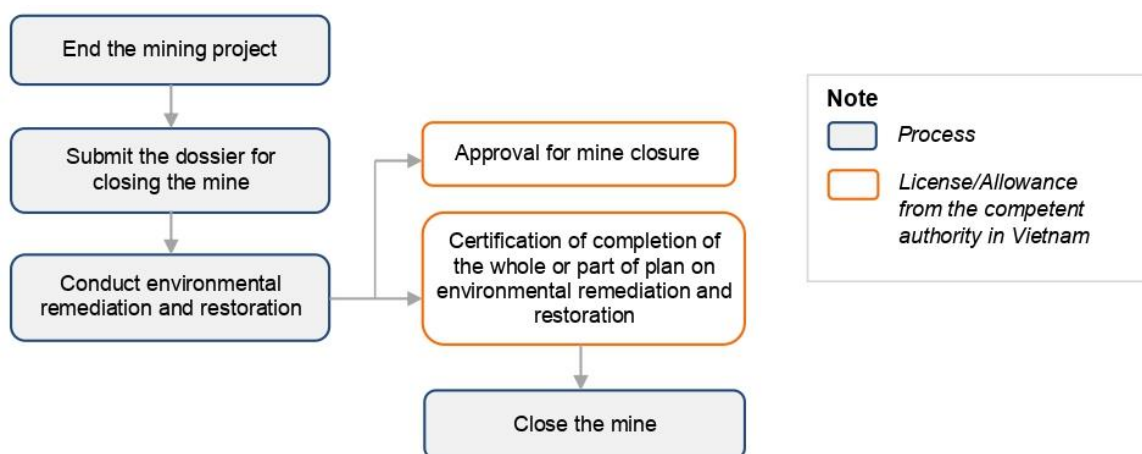
Phase 3: Project operation

This phase is to operate the mining projects. Upon completion of this phase, the Mine Owner is allowed to transfer the rights to mine minerals.



Phase 4: Close the mining project

In this phase, the key point is to close the mine, the investors are required to conduct the environmental remediation and restoration. When it is done successfully, the investors can receive their initial deposit for environmental protection from the environmental protection fund.



Taxes, fees, and other financial duties for mining activities

Other than the Corporate Income Tax (“**CIT**”) which is equal to 20% of the taxable income and the Value Added Tax (“**VAT**”) which is equal to 10% of the product’s price, the miners are subject to the following taxes, fees and financial duties as follow:

- **Natural resources tax (“**NRT**”)**: NRT is an indirect tax that is incorporated in the selling price of a resource, where the consumer of the resource or the product generated from the resource is the taxable person. NRT covers products extracted from natural resources within the scope of Vietnam's jurisdiction such as metallic minerals, non-metallic minerals, crude oil, natural gas, coal, products of natural forests, and marine products, natural products, natural water, bird's nest, and other natural resources. For different types of resources, the applicable tax rates will vary, ranging from 1% to 40%. The natural resource tax payable is equal to the tax rate multiplied (x) by the actual commercial resource output in the period multiplied (x) by the taxable price of the resource unit. There are different methods for determining the taxable price, including cases where the commercial value of the resource cannot be determined.
- **Export duties**: The export duties are applicable when the natural resources or the products made from natural resources are exported into a foreign market from Vietnam. The tax rates for natural resources range from 5% to 20%. However, it is notable that the export tax rates are usually changed and updated at the end of each calendar year and are also subject to the international treaties of which Vietnam is a member state (e.g., ASEAN – Japan Free Trade Agreement, ASEAN – China Free Trade Agreement).
- **Fees for the issuance of exploitation licenses**: the mining enterprises are bound to pay fees to

the local administrator for the exploitation license when it is issued. The current fees for the issuance of exploitation range from 1 million Vietnamese Dong (about US\$44) to 100 million Vietnamese Dong (about US\$4,400).

- *Reimbursement of the mineral exploration costs:* the mining enterprises are required to reimburse the mineral exploration costs to the local budget before submitting the dossier for the application of the issuance of the exploitation license. The reimbursement amount is subject to the licensed area and mineral reserves.
- *Fees for environmental protection:* The environmental protection fee on mineral extraction payable within a period shall be calculated upon the volume of soil/stone excavated in the calculation period per cubic meter and the volume of the crude ores extracted in the period per tons or cubic meter. The detailed fees for environmental protection will be provided in the local regulations of each province or city.
- *Deposit to environmental protection fund:* The miners are required to pay the deposit into the environmental protection fund of each province or city where the mine is located. The amount of deposit will depend upon the estimated expenses for the environmental remediation and restoration under the plan proposed by the miners.
- *Land rental:* In case the miners lease land from the State, they must pay the rental rate subject to the local regulations in each province or city.
- *Other fees:* In addition, miners are also subject to several other fees such as participating fee for the mineral exploitation right auction or the fee for using geology and mining documents of the General Department of Geology and Minerals of Vietnam.

Environmental protection requirements

Requirements for conducting reconnaissance, exploration, and mining activities: Any entity that conducts exploration or exploitation activities is required to submit an environmental impact assessment (“**EIA**”) report as well as a plan on environmental protection to the competent authority for its consideration. These plans or reports are required to be approved by the local environmental protection authority.

Requirements for the miners when operating the mines: Waste management and treatment must be conducted appropriately in a way that the environment will not be adversely affected. Solid waste extracted when operating must be under the treatment of an appropriately licensed entity in Vietnam. Hazardous waste and industrial solid waste must be segregated from each other. Waste collection, storage, and transportation must be performed in a way that no leaks into the outside environment will occur.

The closure obligations of the holder of a reconnaissance right, exploration right, or mining right: When a mine is closed, the miners are required to:

- submit a plan for the closure of the mine to the competent authority;
- remove all equipment, machinery, and other assets from the mining area within a period of time (regularly, it will be six months from the official closing date); and
- conduct site leveling, environmental and/or land reclamation.

In addition to the responsibilities outlined above, prior to decommissioning, the decommissioning party must implement an environmental monitoring plan, submit a report to the MONRE (Ministry of Natural Resources and Environment), and submit specific papers to the MOIT (Ministry of Industry and Trade) in compliance with the safety regulations for oil and gas operations. The decommissioning party must provide a report to the MOIT on the decommissioning within nine months after completion, as well as execute a post-decommissioning environmental monitoring plan and submit a post-decommissioning environmental report to the MONRE.

Contact Us

For more information or assistance, please contact us:



Dang Hoan My

Senior Associate | Co-Head of Projects
& Infrastructure

E my.dang@indochinecounsel.com



Dang The Duc

Managing Partner

E duc.dang@indochinecounsel.com



Trinh Ngoc Ly

Associate

E ly.trinh@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam

T +84 28 3823 9640

F +84 28 3823 9641

E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam

T +84 24 3795 5261

F +84 24 3795 5262

E hanoi@indochinecounsel.com

www.indochinecounsel.com

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The content of this Mining Investment guide is current as at June 2022.

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