

IN-DEPTH

# Mining Law

JAPAN



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# Mining Law

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*In-Depth: Mining Law* (formerly The Mining Law Review) is a practical, business-focused overview of the legal and regulatory regimes governing the mining sector in key jurisdictions worldwide. It also provides a 'year in review' analysis of recent changes, developments and their effects, and looks forward to expected future trends.

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# Japan

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## Introduction

Because Japan is located in a subduction zone where there are frequent tectonic movements, mineral production in Japan is relatively minimal compared with other countries. Nonetheless, until the 1970s, mines in Japan produced minerals such as coal, gold, silver, copper, iron and zinc on a large scale, while production of oil and natural gas has been very small. With regard to gold and silver, the Japanese government has continuously conducted exploration, some of which led to commercial discoveries; for example, the famous 'Hishikari' gold mine in southern Kyushu. In addition, other minerals such as sulphur, iodine, limestone and silica stone are still mined in Japan.

The main law governing mining rights is the Mining Act (Act No. 289 of 1950). The Ministry of Economy, Trade and Industry (METI) is the main government body responsible for the administration of the Mining Act and grant of mining rights thereunder. Every mineral subject to the Mining Act cannot be developed, excavated or extracted without obtaining a mining right (i.e., a prospecting right or a digging right) in advance of the excavation (details below).

The minerals that are subject to the Mining Act are currently as follows: gold ore, silver ore, copper ore, lead ore, bismuth ore, tin ore, antimony ore, mercury ore, zinc ore, iron ore, iron sulphide ore, chrome iron ore, manganese ore, tungsten ore, molybdenum ore, arsenic ore, nickel ore, cobalt ore, uranium ore, thorium ore, phosphate ore, graphite, coal, lignite, oil, asphalt, combustible natural gas, sulphur, gypsum, barites, alunite, fluorine, asbestos, limestone, dolomite, silica, feldspar, agalmatolite, talc, fireclay (limited to those that have fire resistance of Seger cone number 31 or higher) and placer (alluvial gold, iron sand, stream tin and other metallic ores that constitute alluvial deposits).

## Year in review

During the year of 2023 and until the date of this article, there has been no substantial amendment to the Mining Act of Japan. As such, please find below a summary of the amendment to the Mining Act made during the year of 2022.

On 20 May 2022, a new cross-sectoral act was enacted, with the aim of establishing a stable energy supply–demand structure. The Mining Act has been amended by this cross-sectoral act so that rare-earth minerals have been added to the minerals subject to the Mining Act. This amendment to the Mining Act came into effect as of 1 April 2023.<sup>[1]</sup> Accordingly, as of the date of writing, anyone who intends to mine rare-earth minerals within the exclusive economic zone of Japan must obtain a mining right under the Mining Act.

In addition, the public announcement by the Japanese government about adding rare-earth minerals to the Mining Act referred to 'carbon-neutral in 2050' as a goal to which Japanese society is currently aiming. The concept of 'economic security' is often used by the government to explain this addition of rare-earth into the target minerals under the Mining Act.

## Legal framework

As a basic concept for the tenement of a private person to develop underground minerals in Japan, Article 11 of the Mining Act provides the following two types of mining rights:

1. prospecting right: a right that authorises boring or drilling to investigate a particular area of land for the purpose of identifying mineral deposits; and
2. digging right: a permit that authorises digging and extracting the target minerals identified under a prospecting right.

Unlike a digging right, a prospecting right has a limited duration. The initial period is two years, and it can be extended twice for two years, with a maximum duration of six consecutive years. To extend the two-year prospecting right, the holder must demonstrate to The Ministry of Economy, Trade and Industry (METI) that:

1. the holder has diligently conducted exploration activities for the subject mineral;
2. the holder needs to continue the exploration activities to confirm the status of the deposits of the mineral; and
3. all the applicable taxes have been paid in respect of the prospecting right.

There is no limitation of tenure for a digging right under the Mining Act. A digging right remains indefinitely once the right is registered in the official mining registry. Nonetheless, if the holder of a digging right discontinues all digging activity for more than one year, then the digging right may be revoked at METI's discretion.

There is no procedure under the Mining Act to automatically convert a prospecting right into a digging right even upon completion of the prospecting. As such, the holder of a prospecting right must submit a separate application to METI to obtain a digging right. The application for a digging right must include an explanatory document that outlines the location, strike, depth, thickness and other relevant information regarding the status of the mineral deposits identified during the prospecting period. Otherwise, the application process for a digging right is essentially identical to that of prospecting right.

Upon the grant of a mining right by METI, whether prospecting right or digging right, the holder is required under the Mining Act to commence the mining work within six months of the permit's being granted, unless METI approves postponement of the deadline for starting mining work. If the holder of a mining right breaches this obligation, the mining right may be revoked. The Mining Act does not specifically define what kind and level of activity constitutes 'commencement of mining work'. Furthermore, the Mining Act does not prescribe any minimum work obligations or expenditure that must be met or expended by the holder of the mining right. As such, METI will assess the conduct of each mining right holder on a case-by-case basis. However, in practice, a standard benchmark for the criteria of commencement of mining work is whether any drill work has been started (mere surface exploration work is insufficient, generally speaking).

## Mining rights and required licences and permits

### Title

Grant of a mining right, whether prospecting right or digging right, authorises the holder to enjoy the exclusive right to mine and acquire the subject minerals within the area. The ownership of any mineral registered under a mining right will belong to the holder of the mining right without any procedures of transfer of ownership, once it is extracted above the ground. In addition, the Mining Act provides that a mining right is regarded as real property. This means that the holder of a mining right (regarded as real property) is entitled to exclude anyone who interferes with the mining activity by the holder. Even the landowner of the mining area is not allowed to mine the underground mineral unless the landowner obtains a mining right, the ownership of which is generally reserved by the government until excavated.

Conversely, an applicant for a mining right that has yet to be granted is not entitled to such an exclusive right to mine and acquire the minerals. An applicant may not conduct any mining activity, nor acquire the mineral mined within the area of application unless and until a mining right has been duly granted. An applicant for a mining right may not seek any relief even if anyone conducts a mining activity or any other activities within the area of application. However, an applicant for a mining right is entitled to enter into the land owned by another, and cut down trees, if so approved by The Ministry of Economy, Trade and Industry (METI), to the extent necessary for the applicant to measure or survey the land. No other entitlement or authority will be given to an applicant for a mining right (not yet granted). The position as applicant for a mining right may be transferred to someone else while the application is pending with METI (i.e., while the mining right has not yet been granted).

### Surface and mining rights

When a mining right has been granted, the surface rights of the land shall still be kept by the landowner. In contrast, minerals are deemed to belong to the state before they are excavated. However, once the minerals are extracted, they become the property of the holder of the relevant mining right, regardless of the ownership of the surface land.

The application and review process for mining rights is as follows:

1. Upon lodgement of an application for a mining right, METI will examine the application and issue an acceptance notice to the applicant if there is no clerical error in the application. In this case, a formal application number will be assigned to the application. At this stage no mining right is regarded as being granted.
2. Next, METI will confirm whether there is any prior application over the subject area and, more broadly, METI will check and review whether the requirements for grant of the mining right have been met.
3. If METI determines that all the relevant requirements have been met (see below), METI will grant the mining right. METI has the sole discretion and control over the review process regarding a mining right.

4. The applicant must pay a registration licence tax in order to duly receive the mining right; and accordingly failure to submit a certificate of payment of the registration licence tax by the relevant deadline will result in the mining right becoming null and void.
5. If the certificate of payment of registration licence tax has been submitted to METI, the relevant mining right will be registered in the mining registry, which is kept by the relevant bureau of METI.
6. Any subsequent amendments to the conditions of a mining right, such as a change of holder, or the extension of its tenure (in case of a prospecting right only), and termination of the mining right, shall be registered and recorded in the mining registry.

As summarised above, METI's review process begins once the application is duly accepted by METI. There is no statutory deadline by which METI must complete its review. The timeline for the completion of the review process by METI will depend on, among other things, METI's capacity (i.e., manpower of METI, etc.), complexity of the proposed mining project, existing interests over the relevant area, type of mineral and any other factors. In this respect, there is a practice whereby an applicant for a mining right may submit a request to facilitate the review process by METI. Such a facilitation request may, in some cases, speed up the review process if accepted by METI. However, the submission of a facilitation request is not a statutory process under the Mining Act, but rather, is an informal (and non-binding) request to METI. Accordingly, METI shall not be bound by such facilitation request.

There is also 'preservation' of preferred status given to a pending application over other (competing) application(s). As a starting point in this respect, the Mining Act distinguishes between general minerals and the other minerals that are deemed especially important to the Japanese economy.

The latter type of minerals are called 'specified minerals' as essential to the economy of Japan. The preservation issue of a preferred status to be given to a pending application differs whether it targets a 'specified mineral' or not. In respect of minerals other than 'specified minerals', a first-to-file principle applies, whereby the applicant who first files the application for a mining right is given precedence over any other persons in respect of the area subject to the application.

In contrast, for 'specified minerals', the first-to-file principle does not apply, and mining rights for 'specified minerals' shall be granted only to the applicant with sufficient capacity to fully develop such 'specified mineral'. In other words, in respect of 'specified minerals', METI will select a suitable developer via a tender bid, and the first-to-file principle shall not apply.<sup>[2]</sup>

The relevant requirements and criteria for grant of a mining right are as follows:

1. the applicant has sufficient financial capacity and technical expertise;
2. the applicant is of good standing, and is not disqualified due to any historical violations of Japanese law;
3. the subject area does not conflict with any other existing mining rights (if relevant);

4. the contemplated mining activity anticipates a certain level of economic value, where the economic value will involve the value of the relevant mineral and the estimated quantity of the deposit;
5. the contemplated mining activity is not contrary to the general interests of the public, provided that METI will consider, among other things, whether the contemplated mining activity will result in any irreparable harm to the environment, public health or public facilities, including cultural assets, public parks or hot springs; and
6. the contemplated mining activity is consistent with the economic and public interests of Japan. In this regard, METI will consider whether the contemplated mining activity is likely to have a negative impact on the economy or social well-being of Japan. For instance, if the contemplated mining activity gives rise to a pricing manipulation of the subject mineral or it harms the relevant supply chains around the subject mineral within Japan, then this criterion would not be satisfied.

In parallel with the review process over the pending application as outlined above, Article 24 of the Mining Act requires METI to coordinate with the applicable prefectural government, which acts on behalf of the relevant local stakeholders. METI takes the initiative and is primarily responsible for such coordination process under Article 24; nonetheless, the applicant will be required to support the feasibility of its application by preparing and submitting a 'Document of Facility Design'. The specific requirements of this document will depend on the area of the application and the type and status of the mine, and the matters will be specified in the order to be issued by METI addressed to the applicant.<sup>[3]</sup>

If an order to submit a document of facility design is issued by METI to the applicant for the mining right, the applicant must submit it within the deadline designated by that order. If the applicant fails to submit the document by the deadline designated by METI, the application must be rejected as per Article 139, Subsection 2 of the Mining Act.

### Additional permits and licences

There are various additional permits and licences other than a mining right that are required for mining activities. Such additional permits and licences would include, for instance, permits for occupancy of a particular road or river and approval for development of a forestry area, to the extent relevant. Normally, the issue of these kinds of additional permits and licences will be addressed in the course of the coordination process under Article 24 of the Mining Act as described above.

### Closure and remediation of mining projects

There is no general requirement under the Mining Act related to closure and remediation of mining projects. Nonetheless, if a document of facility design has been submitted to METI in the course of coordination process under Article 24 of the Mining Act, the document of facility design may contain the matters related to closure and remediation of mining projects.<sup>[4]</sup>



On the other hand, pursuant to Article 117 of the Mining Act, METI may require a mining right holder to provide a cash deposit of up to one per cent of the price of the mineral, so that indemnification for potential liability for mine pollution (if any) is secured.

## Environmental, social and governance considerations

### Sustainable development

At present there is no particular regulation or initiative relating to sustainable development directly affecting the mining business in Japan.

### Environmental compliance

Certain kinds of business operators doing business in Japan must conduct environmental assessments if their business falls under the Environmental Impact Assessment Act. However, the Environmental Impact Assessment Act does not require an environmental assessment for the development and production of minerals. Nonetheless, the environmental requirements under the Mine Safety Act must be met (see the next sections).

### Indigenous and third-party rights

Normally, the issue of indigenous and third-party rights and licences will be addressed in the course of the coordination process under Article 24 of the Mining Act as described above.

## Operations, processing and sale of minerals

### Employment, health and safety

The Occupational Safety and Health Act, which is the general regulation concerning workers' safety and health, does not apply to workers engaged in mining activities. Instead, the Mine Safety Act covers the relevant matters for mining projects, under which a mining right holder must do the following, among others:

1. take necessary measures for important matters regarding mine safety, such as preventing cave-ins and collapses;
2. provide safety training to workers;
  - obtain approval from the director or department manager of the relevant bureau of Mine Security for the mine facility plan; and
  - conduct a performance inspection of the mine facility.

## Processing and operations

There are no import regulations on equipment and machinery that are specific to mining activity in Japan. Likewise, there is no specific regulation on the use of foreign labour and services applicable to mining project in Japan and, in fact, there are many cases where experts working in a mining project come from foreign countries.

## Sale, import and export of extracted or processed minerals

There are no import or export restrictions that are specific to extracted minerals from mining activity. The general rule regarding restrictions on export of goods would apply instead, such as the export regulations of certain types of goods to North Korea and some other specific countries.

## Foreign investment

There is no specific regulation of foreign investment in respect of mining business in Japan. The requirement under the Mining Act is that the holder of a mining right must be a citizen of Japan (if a natural person) or a Japanese corporation (if a legal entity). As such, a foreign company may invest in, and become a shareholder of, a Japanese corporation that has a mining right.

On the other hand, the Foreign Exchange Control Act requires a post-transaction report of an investment by a foreigner into a mining business in Japan. Therefore, if a foreigner or a foreign company acquires a share in a mining right holder, the foreigner or the foreign company must report to the Ministry of Finance upon completing the transaction.

# Financing

## Overview

There are no unique financing methods or structures particular to mining projects in Japan, but project financing is generally available insofar as a proper lender is located. As noted above, an applicant for a mining right must demonstrate sufficient financial capacity to carry out the mining business, as one of the requirements and criteria for grant of a mining right. The financial capacity of the applicant can be demonstrated via submission of financial transaction documents such as loan agreement, letter of intent issued by the potential lender, etc.

## Capital raising

See above.

## Royalties, taxes and duties

### Royalties

Every mining right comes into effect when registered in the mining registry. The mining right holder must pay a registration licence tax to register a mining right in the mining registry. As of the date of this chapter, the registration licence tax is:

1. ¥90,000 for a prospecting right; and
2. ¥180,000 for a digging right.

### Taxes

Although there is no tax on mining activities at the national level in Japan, there are two types of local tax, as follows:

1. mining lot tax: in proportion to the size of the mining area; and
2. mineral product tax: in proportion to the amount of minerals produced; if it is product from the mine, mineral product tax shall be imposed even if the mining right is only a prospecting right.

### Other fees

An applicant must pay a commission fee to METI at the time of submitting the application for a mining right. As of the date of this chapter, the commission fee is:

1. ¥71,800 for a prospecting right; and
2. ¥112,600 for a digging right.<sup>[5]</sup>

## Outlook and conclusions

For several years now, the international environment around the security of natural resources has been becoming more stringent, as exemplified by the recent embargo of rare earth minerals by China. In this tough environment, every industry must be boosted in order to reinforce the international competitiveness of Japan, where mining is one of the most promising industries, with high potential.

The Mining Act and other legal regimes will have to be adjusted to the development of the relevant industry and to any other economic security interests of the country overall. We shall carefully monitor both government and commercial trends and arguments in respect of the mining business of Japan.

## Endnotes

- 1 There is no definition of the term 'rare-earth minerals' under the Mining Act, but it is generally regarded as including the following 17 elements, which are generally used for motor vehicles and electronics: cerium; dysprosium; erbium; europium; gadolinium; holmium; lanthanum; lutetium; neodymium; praseodymium; promethium; samarium; scandium; terbium; thulium; ytterbium; and yttrium. ^ [Back to section](#)
- 2 Currently the following minerals are designated as 'specified minerals': (1) oil and combustible natural gas; (2) hydrothermal deposits located on or under the seabed of gold ore, silver ore, copper ore, lead ore, bismuth ore, tin ore, antimony ore, mercury ore, zinc ore, iron ore, iron sulphide ore, manganese ore, tungsten ore, molybdenum ore, nickel ore, cobalt ore, uranium ore, thorium ore and barites; (3) sedimentary deposits located on or under the seabed of copper ore, lead ore, zinc ore, iron ore, manganese ore, tungsten ore, molybdenum ore, nickel ore and cobalt ore; and (4) asphalt. ^ [Back to section](#)
- 3 Generally, a document of facility design contains the following matters: (1) geological condition of the area and condition of the deposit of targeted mineral, including the geographical aspects, geological era, and geological structure, as well as the actual status of the mineral deposit or the reason why such mineral deposit is prospected; (2) method to prospect the subject mineral; whether it will be a test boring or drifting prospect; (3) if there are any special areas or facilities such as dams, irrigation and drainage facilities, parks, cemeteries, schools, hospitals, libraries or any facilities or buildings for public use, then the document of facility design will contain the method to prevent mine pollution to such facilities or buildings; (4) if the applicant plans to use a drifting prospect, the method to transport the minerals from the mine will be described; (5) the disposal method of waste rocks discharged by a drifting prospect, such as method of sedimentation of the waste rocks, and location, structure, scale and protection facility of such sedimentation of waste rocks; (6) measures to dispose of wastewater, including the facility to dispose of wastewater such as sedimentation pond, and method to dispose of mud water for a test boring; (7) measurements to prevent noise and powder dust; and (8) treatment of the land upon completing the prospecting activity, such as method of closure of the mine mouth and method of readjustment of land after prospecting. ^ [Back to section](#)
- 4 *ibid.* ^ [Back to section](#)
- 5 With online applications, these commission fees are slightly less. ^ [Back to section](#)

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