



ICLG

The International Comparative Legal Guide to:

Mining Law 2019

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A practical cross-border insight into mining law

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Greenland

WSCO

Bo Sandroos



1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Mining law in Greenland is first of all governed by the Mineral Resources Act (MRA) which came into force on 1 January 2010, and which contains rules on ownership of mineral resources, licensing procedures and terms, requirements for the applicant/licensee, work programmes, taxation, environmental protection, public hearings, pre-hearings and public involvement in the approval process for projects and individual activities. The MRA also contains obligations to perform environmental impact assessments (EIAs) and social sustainability assessments (SSAs, or social impact assessments (SIAs)) and enter into impact benefit agreements (IBAs).

The MRA is to a large extent based on the Danish Subsoil Act, but with a number of specific adjustments due to the demands of operating in an Arctic environment. In addition, the Greenland Working Environment Act governs health and safety aspects of mining activities. See also the answer to question 1.3 below.

1.2 Which Government body/ies administer the mining industry?

The Mineral Licensing and Safety Authority is responsible for strategy-making, policy-making, legal and geological issues and marketing of mineral resources in Greenland. The MLSA is the overall administrative authority for licences and mineral resource activities, and is the authority for safety matters including supervision and inspections.

The Ministry of Industry, Labour and Trade is the authority for issues concerning industry and labour policy including SSAs and IBAs for mineral resources and similar related socio-economic issues.

The Environmental Agency for Mineral Resource Activities is the administrative authority for environmental matters relating to mineral resources activities, including protection of the environment and nature, environmental liability and EIAs.

1.3 Describe any other sources of law affecting the mining industry.

Sources of law other than the MRA include the Working Environment Act, the Income Tax Act, and minerals model licences and standard terms that have been issued by the authorities and which serve as models for mining licences. General Greenlandic law – the penal code, civil procedure, the Competition Act, the Act

on Processing of Personal Data, the legal principles for disclosure of misconduct through internal and external corporate whistleblowing in general, etc. – also applies. In addition, for mining operations, a number of special regulations exist regarding the use of explosives, radioactive materials, chemicals, etc.

Also, anti-corruption provisions of Danish and Greenlandic law apply (Greenland Criminal Code), as well as the anti-corruption policy of the Ministry of Mineral Resources and its subordinate institutions.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Reconnaissance (prospecting) can be carried out if the applicant obtains a prospecting licence in accordance with section 15 of the MRA. The licence is granted for periods of up to five years at a time. The granting of the non-exclusive licence does not exclude that a similar licence may be granted to others for the same area. The authorities may stipulate terms for the licence, including terms on payment of consideration. Standard terms for prospecting licences have been issued by the authorities, including fees for application, granting and transfer.

2.2 What rights are required to conduct exploration?

Under section 16 of the MRA, the authorities may, for a specific area and on specific terms, in particular a work programme, grant an exclusive licence for exploration and exploitation of one or more mineral resources. Licences may be granted separately for exploration and exploitation, respectively. Under section 29(1) of the MRA, exploration licences under section 16 are granted for a period of up to 10 years or, if special circumstances exist, for a period of up to 16 years.

A licence may be extended with a view to exploration by up to three years at a time. An extension for more than 10 years may also be granted under special circumstances. Standard terms for exploration licences have been issued by the authorities, including the condition for transitioning from exploration to exploitation/mining and the payment of fees on the basis of, among others, the size of the exploration licence acreage.

2.3 What rights are required to conduct mining?

Under section 29(2) of the MRA, a licensee who, under a licence under section 29(1), has discovered and delimited commercially

exploitable deposits that the licensee intends to exploit, and who has otherwise met the terms of the licence, is entitled to be granted an exploitation licence. The licence is granted for those parts of the area that contain commercially exploitable deposits, which the licensee intends to exploit.

The licence is granted for a period of 30 years, unless a shorter period has been laid down as a condition for granting the licence. Simultaneously with the application for exploitation licence, a closure plan must be submitted. Under section 16(3) of the MRA, for non-small-scale licences, only a limited company can be granted an exploitation licence, and certain financial conditions apply (taxation, trading, capital, etc.). See also question 3.1 below.

2.4 Are different procedures applicable to different minerals and on different types of land?

As a starting point, no; however, the royalty/tax and financial terms are different for rare earth elements, uranium, gemstones, and other minerals, respectively. Specifically for uranium, the Greenlandic and the Danish governments have, in January 2016, signed a number of agreements that will ensure that Greenland can proceed with plans to build its mining industry and prepare future exports of uranium while Denmark can live up to its international obligations and the highest standards in the uranium area on behalf of Greenland. Whenever uranium may be explored for or occur as a by-product to eventual exploitation, the rules and procedures contained therein should be carefully examined.

2.5 Are different procedures applicable to natural oil and gas?

Mining licences do not cover oil or natural gas that is discovered in the area covered by the licence. Exploration and production of oil and natural gas are, however, governed by the MRA under different terms and conditions, which are not detailed here.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 What types of entity can own reconnaissance, exploration and mining rights?

Under the MRA, an exploitation (mining) licence can only be granted to limited companies. As an exploitation rights holder, the company may only perform activities covered by licences granted under the MRA and must not be taxed jointly with other companies, unless joint taxation is compulsory.

It should be noted that as a main rule, the company must have its registered office in Greenland. There are also financial and operational covenants: the company must not be more thinly capitalised than the group of which the company forms a part of, but the company's loan capital may always exceed the shareholders' equity up to a ratio of 2:1. The company must generally trade at arm's-length prices and on arm's-length terms.

The licensee must have the mining expertise and financial background required for the exploitation activities in question. As a main rule only Greenland domiciled companies will be considered for exploitation licences.

3.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

Yes; however, see the answer to question 3.5 below. In addition, under section 18 of the MRA, a licensee must use Greenlandic labour and use Greenlandic enterprises for its supplies and contract work unless such enterprises are not technically or economically competitive. It is also the main rule that enterprises working under the MRA and which are holders of an exploitation licence must be registered as Greenlandic enterprises.

3.3 Are there any change of control restrictions applicable?

Under section 88 of the MRA, direct or indirect transfer of a licence under the MRA to a third party requires approval by the authorities, and the authorities may set forth conditions for their approval.

3.4 Are there requirements for ownership by indigenous persons or entities?

No, there are no such requirements.

3.5 Does the State have free carry rights or options to acquire shareholdings?

As a starting point, no; however, under the MRA, the Greenland Government may require that a government-controlled entity join as a participant in the licence. The Government may specify further terms for such participation. No such government-controlled entity is currently in existence to participate in mining activities.

4 Processing, Refining, Beneficiation and Export

4.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

A licence holder may expect specific conditions to be set forth in individual licences. Processing and further beneficiation of mined minerals require the approval of the authorities which may set forth conditions for the approval. Specifically, the authorities may require in concrete licences where processing, etc. takes place in Greenland, unless such processing would result in significantly higher costs or will be impractical.

A licence may stipulate the extent to which the licensee must keep exploited mineral resources in Greenland and sell them to natural persons who are permanently residing and fully liable to pay tax in Greenland.

A licence may also determine the extent to which the licensee must conduct surveys and prepare and implement plans to ensure that exploration or exploitation of mineral resources is socially sustainable and the authorities must approve such surveys and plans.

4.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

Export of production may only take place with the approval of the Greenland Government – see the MRA section 2(2). Further terms may be set forth in the individual licence or the individual permit. See also the answer to question 4.1 above.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Under section 88 of the MRA, direct or indirect transfer of a licence under the MRA to a third party requires approval by the authorities, which may reject or set forth conditions for the approval. Typically, a transfer requires that the new owner can demonstrate technical and financial capability to meet commitments and potential liabilities. As a main rule, only Greenland domiciled companies will be considered for exploitation licences.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Licences granted under the MRA cannot be the subject of prosecution and can therefore principally not be pledged for security according to section 88(2) of the MRA. In any event, any mortgage will require the approval of the authorities.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

Yes, provided a direct or indirect transfer of a licence or a licence right to a third party is carried out and has been approved by the authorities. The authorities may, however, reject a transfer where conditions are not met. A subdivision may also require amendments to other permits and may require additional consultations with the public.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

As a starting point, the answer is yes. The concept of undivided shares is considered a common law concept which does not apply in Greenland; however, under Greenlandic law, rights can be held in undivided shares (a corporation).

6.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

An exploration licence will cover all mineral resources except hydrocarbons and radioactive elements, unless otherwise stipulated in the licence.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

The MRA or the standard terms do not address the issue of residue ownership directly. Under Greenlandic law, a licensee holding exploration or mining rights will have no rights over residue deposits which existed in the area covered by his licence.

6.5 Are there any special rules relating to offshore exploration and mining?

Offshore exploration and mining for minerals are also governed by the MRA. Offshore activities, however, principally only relate to hydrocarbons, and the rules governing hydrocarbons are different from the mining regulations and are not covered here.

7 Rights to Use Surface of Land

7.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

Reconnaissance (prospecting) rights are non-exclusive, whereas exploration or mining (exploitation) rights are exclusive to the rights holder. The following activities may be carried out without prior approval from the authorities: geological and geochemical investigations, as well as sampling using handheld equipment, provided samples from each location do not exceed three tonnes and provided the total weight of the samples does not exceed 10 tonnes per year; drilling with handheld equipment; and geophysical investigations carried out without the use of explosive materials.

Activities other than those indicated in the foregoing may be carried out, provided that they have been approved by the authorities. Such activities include: use of explosive materials; drilling excluding drilling as indicated previously; sampling exceeding what is indicated previously; use of equipment containing radioactive sources; use of vehicles, bulldozers, etc.; levelling of the terrain; construction of installations, buildings, etc.; and construction of shafts, drifts, ramps, etc.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have *vis-à-vis* the landowner or lawful occupier?

Activities other than those indicated in the foregoing may be carried out, provided that they have been approved by the authorities. Such activities include use of explosive materials, drilling excluding drilling as indicated previously, sampling exceeding what is indicated previously, use of equipment containing radioactive sources, use of vehicles, bulldozers, etc., levelling of the terrain, construction of installations, buildings, etc., and construction of shafts, drifts, ramps, etc.

7.3 What rights of expropriation exist?

Under section 93 of the MRA, the authorities have powers of compulsory acquisition of real property with a view to activities under the MRA.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

The Greenland Government places a large emphasis on environmental protection and environmental requirements are prominent in both the MRA and the standard terms, both in terms of nature protection, the environment and the climate. Best environmental practices (BEP) and best available technologies/techniques (BAT) must be employed. In addition, the licence holder must prepare an EIA and an SSA/SIA. These will contain a baseline study and the expected impact of the activities on the environment and the social sustainability in the areas affected.

8.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

Please see the answer to question 8.3 below.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

In the MRA, specific provisions are laid down in licences regarding the licensee's obligations on the termination of activities to remove facilities, etc. established by the licensee and to clean up, monitor, etc. the affected areas. More detailed rules are contained in the standard terms, according to which all facilities, etc. must be removed unless non-removal has been approved by the authorities. A dedicated closure plan and special provisions for financial security may also be required. In the event of non-compliance, the authorities may clean up the site, etc. at the licensee's cost, e.g., by drawing on the financial security provided.

8.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Zoning plans must be observed and special zoning permits may apply depending on where the mining activities are carried out.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

The MRA contains rules on the pre-hearing of projects as well as other public hearings as described under question 7.2 above. In addition, small-scale mining of surface materials and collection of loose minerals are allowed for the local population and others within certain thresholds. Otherwise, there are no special native title or statutory surface use rights.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

The Greenland Working Environment Act governs health and safety in minerals prospecting, exploration and mining activities. The act contains rules on the health and safety aspects of planning and execution of work in Greenland, including workplace layout, bringing the level of risk at work to a level as low as reasonably practicable, the protection against noise, emissions and hazardous substances and the use of personal protective equipment.

10.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

The Working Environment Act imposes health and safety obligations on owners, employers, managers and employees. For owners and employers, there are strict requirements for planning and supervision, whereas employees' obligations are reporting and the implementation of management's plans in the health and safety area.

11 Administrative Aspects

11.1 Is there a central titles registration office?

A list of all valid licences can be obtained from the authorities at www.govmin.gl. This website is generally a good source of information regarding Greenland's mining sector and contains copies of all applicable legislation, standards and guidelines for mining in Greenland.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is no special system of appeals in terms of the relevant mining legislation. Beyond the normal administrative recourse through the Ministries, a party will, as in other mining jurisdictions, have to resort to the Greenlandic courts and ultimately the Danish Supreme Court.

12 Constitutional Law

12.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

The Danish constitution of 1953 applies in Greenland; however, beyond provisions for the protection of private property, the Danish constitution has no direct bearing on the rights to conduct reconnaissance, exploration and/or mining.

12.2 Are there any State investment treaties which are applicable?

Greenland is a part of the Danish Unity of the Realm and holds only a limited foreign policy capacity. Foreign policy for Greenland is principally carried out by the Danish Government in consultation with the Greenland Government. As such, a number of treaties and conventions signed and ratified by Denmark also become relevant for, and applicable to, Greenland.

For instance, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) both apply to Greenland. In addition, protocols and recommendations adopted in the Arctic Council, in which Greenland/Denmark is a member, may also apply in Greenland. The Arctic Council is a means for promoting co-operation and interaction among the Arctic states, in particular within sustainable development and environmental protection in the Arctic.

Greenland is not a member of the European Union (EU) but has the status of an associated territory in the EU. Therefore, EU rules do not apply to Greenland apart from the special rules on association of overseas countries and territories (OCT) of the EC Treaty.

13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Taxation of income from minerals exploration and extraction is governed by the Greenlandic Income Tax Act and the minerals model licence which contain rules on royalties, the payment of fees for the granting of licences, etc., and the reimbursement of the Authorities' expenses in connection with the licensee's activities. Taxation of mining companies is 30%, which is slightly lower than other companies. In addition, dividends tax is 36%, whereas other companies will pay 42–44%, and mining companies can carry forward losses without the time limit of five years that applies to other companies.

13.2 Are there royalties payable to the State over and above any taxes?

A sales royalty was introduced in 2014 for new licences. For minerals other than rare earth elements (REE), uranium or gemstones, the sales/turnover royalty will be 2.5%. For REE and uranium, the rate is 5%, and for gemstones, 5.5%.

14 Regional and Local Rules and Laws

14.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, except that local zoning regulations may apply. In addition, the MRA's rules on public involvement and consultation will impact exploration and mining activities.

14.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

Generally, in the Arctic – as opposed to Antarctica – there is not a single regulatory treaty, convention or international agreement governing the Arctic, as the Arctic consists of states where national laws apply. International public law, however, applies to the relations between Denmark/Greenland and the other states in the Arctic. Bilateral agreements have been entered into, and as stated under question 12.2 above, co-operation also takes place in international fora such as the Arctic Council and the UN.

15 Cancellation, Abandonment and Relinquishment

15.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

A licence must stipulate the extent to which the licensee's obligations remain upon termination of the licence, according to section 91 of the MRA, which includes termination by expiry, abandonment and lapse of withdrawal. This section must be read in conjunction with the Minerals Model Licence regarding obligations at termination of the activities and obligations at termination of the licence.

Further, section 88 of the MRA contains a provision for the transfer of a licence. A licence can only be transferred with the approval of the Greenland Government. The approval will in most circumstances not be unreasonably withheld, unless the basis for meeting the obligations under the licence will be weakened by the transfer.

15.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

Please see questions 2.2 and 2.3 above for duration and approval of extensions. Further, please see question 15.3 below on revocation.

15.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Section 89 of the MRA states that licences must stipulate under which circumstances a licence is forfeited or may be revoked by the Greenland Government. This section must be read in conjunction with § 16 in the Minerals Model Licence, which contains regulations regarding revocation. Revocation of a licence will often be the case of failure to fulfil exploration commitments, a breach in the terms of the licence, fraud, or bankruptcy.



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In April 2015, he published the book *The Law and Practice of Oil, Gas and Minerals in Greenland – the Greenland Mineral Resources Act with Comments* (DJØF Publishing 2015), which can be of great service to those interested in gaining further knowledge of Greenlandic Mining Law.

From 2012–15, he was an external lecturer at the University of Southern Denmark. He is also the author of the book *Undergrundsloven med Kommentarer* (DJØF Publishing 2012), which is the leading Danish treatise on Danish oil and gas law.

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