

# India

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Trilegal

## MINING INDUSTRY

### Standing

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

Mining is an important economic activity in India. India is one of the largest exporters of iron ore, chromite, bauxite, mica and manganese, and it is ranked fifth among the mineral-producing countries in terms of volume of production.

While there has been private sector participation in mining, the government, through its various public-sector companies, continues to be the largest participant in the domestic mining industry.

Much of India's potential mineral resources are yet to be fully explored. Historically, government policies and legislation largely focused on regulation of mines and minerals rather than on exploration and development. Taking cognisance of the stagnation of the mineral industry, various reforms have been initiated by the Indian government allowing for greater private sector participation in mineral exploration, mine development and maintenance. However, there is much that still needs to be done. A recent study by the Confederation of Indian Industry stressed that to fuel India's economic growth, policymakers need to focus more on the mining sector with concerted efforts to regain its 3 per cent share in GDP by 2024-2025.

### Target minerals

2 | What are the target minerals?

India produces nearly 95 minerals, which include fuel, atomic, metallic and non-metallic minerals. India is a leading producer of several metallic minerals such as chromite, iron ore, zinc, bauxite, manganese, aluminium and copper.

India has set a goal to switch completely to electric vehicles by 2030. However, to achieve this goal, it needs to invest in the domestic manufacture of lithium-ion batteries (which is currently an electric vehicle's most expensive component). The NITI Aayog (an Indian government think tank) has observed that India does not have adequate reserves of some of the most important lithium-ion components including lithium, cobalt and nickel. India will need to forge international partnerships and joint ventures to secure access to key minerals to build up its domestic battery manufacturing industry.

### Regions

3 | Which regions are most active?

India's mining wealth is concentrated in Odisha, Andhra Pradesh, Rajasthan, Chhattisgarh, Jharkhand, Madhya Pradesh and Karnataka. Iron ore reserves are predominantly found in Odisha, Jharkhand, Chhattisgarh, Maharashtra, Goa and Karnataka. Maharashtra, Madhya

Pradesh, Odisha, Andhra Pradesh and Karnataka are major areas for manganese reserves. Copper reserves are available in Rajasthan, Madhya Pradesh and Jharkhand. Zinc reserves are predominantly found in Rajasthan, Andhra Pradesh, Madhya Pradesh, Bihar and Maharashtra. Chromite ore reserves are available in Odisha, Manipur, Nagaland, Karnataka, Jharkhand, Maharashtra, Tamil Nadu and Andhra Pradesh.

## LEGAL AND REGULATORY STRUCTURE

### Basis of legal system

4 | Is the legal system civil or common law-based?

The Indian legal system is common law-based.

### Regulation

5 | How is the mining industry regulated?

### Regulatory framework

The mining industry is regulated both at the central and state level. Under the Indian Constitution, the states have the power to regulate mines and mineral development. However, this power is subject to the central laws and regulations on mining.

### Mineral classification

Minerals are classified into two types – major and minor. State governments have the power to frame policy and regulate the exploration, extraction and processing of all minor minerals such as building stones, clay and sand. All minerals (other than the minor minerals) are automatically classified as major minerals. The central government has the power of revision, fixing of royalty, issuing regulations, etc, in respect of major minerals. As metallic minerals are largely classified as major minerals, we have focused on central legislation and major minerals in this chapter.

The central government also has ownership over all offshore minerals (ie, minerals extracted from the sea or ocean floor in the Indian maritime zones such as the territorial waters, continental shelf and exclusive economic zones). The central government has the right to allot concessions and collect royalties for mining offshore minerals.

6 | 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 Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) is the central legislation that regulates the mining sector and ensures that the states exercise their power within a uniform national framework. The Mines Act 1952 sets out the regulations for health and safety in mines and conduct of mining operations. The development and

regulation of offshore mineral resources is regulated by the Offshore Areas Mineral (Development & Regulation) Act 2002.

### Mining regulatory bodies

The Ministry of Mines is responsible for legislation, policy formulation and administration of mines and minerals in the country. It is principally composed of:

- the Geological Survey of India, which carries out regional exploration and mapping of mining resources;
- the Indian Bureau of Mines, which maintains the National Mineral Inventory, and is the national regulator for state governments, approving mining plans, closure operations and the conservation of mineral materials;
- the Controller of Mining Leases, which governs modification of mining leases granted before 1972; and
- the Directorate General of Mines Safety is the principle health and safety regulator for this sector.

In 2015, the Indian government significantly amended the mining laws, through the Mines and Mineral (Development and Regulation) Amendment Act 2015 (the 2015 MMDR Amendment Act), to bring in greater accountability and transparency to the concessionary regime. Some of the key features of the 2015 MMDR Amendment Act are:

- the mining concessions are to be granted only through competitive bidding by auction;
- mining concessions are valid for 50 years. The concession is transferable, but it cannot be renewed after the expiry of the concession period;
- reconnaissance permits for exploration will be granted on a non-exclusive basis to encourage private parties to undertake exploration;
- in connection to notified minerals (ie, bauxite, iron ore, limestone and manganese ore), the state government may reserve a mine for a particular end use. In such cases, it must prescribe the end use before auction of the mining lease. The minerals extracted from a reserved mine can only be utilised for the specified end use and cannot be sold or transferred. This end use restriction was relaxed in 2017;
- district mineral foundations are to be established for the utilisation of the proceeds from mining operations to develop the local area around the mines; and
- a National Mineral Exploration Trust is to be set up to facilitate detailed mineral exploration in the country.

The recently enacted Mineral Laws (Amendment) Act 2020 has introduced key amendments to the MMDRA. It provides that upon expiry of the existing mining leases (which were issued before the 2015 MMDR Amendment Act), environment and forest clearances, along with other statutory approvals and clearances, will automatically get transferred to the new lessees of mineral blocks for a period of two years from the date the new mining lease is granted under a competitive auction regime. This will allow new lessees to continue with seamless mining operations during the transition period, and in this period they are required to apply and obtain all necessary rights, approvals, clearances and licences. Further, the amendment provides that the auction of mines can now be started before the expiry of the existing lease period (with the new lease agreement being executed immediately after the expiry of the existing lease). It will enable the state government to take advance action for the auction of mineral blocks so that the new leaseholder can be decided before the existing lease expires allowing for the seamless production of minerals.

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 (the Concession Rules) have also

been amended to include conditions for the issuance of vesting orders and for obtaining rights, approvals, clearances and licences to these new lessees in keeping with the amendments to the MMDRA. The amended Concession Rules provide that the state governments must endeavour to complete the auction process at least six months before the impending expiry of a mining lease so that there is a smooth transition from one lessee to the other. Additionally, the Mineral (Auction) Rules 2015 were amended in 2020 to reflect the changes in the MMDRA and Concession Rules and to introduce strict timelines for the execution of new mining leases following an auction of new leases and the expiry of existing leases.

### Classification system

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

The National Mineral Inventory, under the Indian Bureau of Mines has been following the UN Framework Classification for Fossil Energy and Mineral Resources (UNFC) since 2000. It is a globally recognised system that provides a method of standardisation for regulatory and statistical purposes.

The other international system for classification, the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) (which includes the Canadian Institute of Mining Standards, the Australian Joint Ore Reserves Committee (JORC) Code and the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (SAMREC) Code), is geared more for public reporting by companies to provide information to investors. UNFC classification, on the other hand, is more beneficial for government reporting of mineral resource estimates and forecasts to attract investment and exploration activities. While Indian companies are required to report to the government in the UNFC format, there is no specific system that they need to follow for their quarter or annual reports, memoranda or press releases.

Key definitions and terminology used for reporting mineral resources under these two classification systems have been aligned. However, unlike the CRIRSCO system, where there must be reasonable prospects for eventual economic extraction of mineral resources, the UNFC classification reports on undiscovered or uneconomic minerals reserves as well.

## MINING RIGHTS AND TITLE

### State control over mining rights

#### 8 | 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?

The central government regulates mining and mineral development and the state government grants concessions, collects royalty and other fees when the mineral is located in land vested in the state. While earlier concessionary rights were granted on a first come first serve basis, under the Mines and Mineral (Development and Regulation) Amendment Act 2015 (the 2015 MMDR Amendment Act), concessions to all major minerals are granted through an auction. A private party who has a mining lease for particular minerals has full title, albeit with permitted end use stipulations as may be applicable over these minerals.

There are large areas where mining rights are held by private parties and in 2015 it was estimated that there were nearly 10,621 private mines. In 2013, the Supreme Court conferred rights to mineral

wealth on owners of surface rights rather than vesting them in the state. However, the Supreme Court is yet to rule on certain aspects of ownership of minerals such as the liability of private owners to pay royalties to the state.

As part of the reforms, under the new regime, a landowner who wants to grant a prospecting licence or mining lease to a third party can do so only with state government authorisation. In cases of such private mining leases, the mining lessee must comply with the central government mining regulations as well as provide the state government with a security deposit for ensuring compliance with the mine closure regulations.

### Publicly available information and data

9 | What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency 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?

The National Mineral Inventory of the Indian Bureau of Mines provides a comprehensive overview of exploration, development and mining activities carried out in India by central and state governments, public sector utilities and private agencies. The inventory provides mineral-wise and state-wise information with regard to location, infrastructure, geology, exploration, physical and chemical properties, freehold or lease hold status, etc.

The Geological Survey of India (GSI) carries out geological mapping and acquires geoscience data for the entire country. It generates and disseminates this information to other exploration agencies for accelerating the mineral exploration process.

Under the National Mineral Exploration Policy 2016, the GSI is required to provide all pre-competitive baseline geoscience data free of cost to parties. Other than the GSI, the Directorates of Geology and Mines of certain state governments, the Mineral Exploration Corporation Limited and other government-owned companies also carry out detailed exploration of mining areas and maintain information databases.

The National Mineral Exploration Trust has also been newly created to carry out regional and detailed exploration for minerals. In addition, the Indian Bureau of Mines provides information on the number of mines in operation and their mineral quality either at a cost, or on a restricted access basis at its offices.

As regards reporting, a mineral concession holder is required to provide geophysical data relating to prospecting, mining and engineering to the GSI and the state government. All mines are also required to mandatorily file returns with Indian Bureau of Mines. With a view to encouraging private players in exploration, non-exclusive reconnaissance permits (NREP) are also issued to applicants for preliminary prospecting of minerals in various parts of the country. There are also plans to incentivise NREP holders by giving them a right to a share in the future revenues from the mineral block that they discover.

### Acquisition of rights by private parties

10 | 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? What are the requirements to convert to a mining licence?

A private party can obtain an NREP, a mining lease or a composite licence (prospecting licence-cum-mining lease).

Prior to the 2015 MMDR Amendment Act, a prospecting licence separate from the mining lease could also be granted, but this has now been subsumed under the composite licence.

Currently, mining leases and composite licences are only granted through a competitive bidding process. A composite licence holder has the right to move from prospecting to mining; however, an NREP holder is not entitled to a preferential claim for grant of a composite licence or mining lease. For those rights holders who had been granted reconnaissance or prospecting licences under the old regime prior to the 2015 MMDR Amendment Act, a right to obtain prospecting cum mining lease or mining lease, as the case may be, continues to exist.

Obligations of the rights holder include:

- obtaining all necessary permits and consents;
- operating the mine in accordance with the mining plan;
- commencing mining operations within two years of execution of mining lease;
- payment of royalty, dead rent, surface rate or other fees;
- keeping accurate accounts of minerals mined, waste material excavated, employees and all mining plans;
- allowing inspections by the authority;
- restoring the land, to the extent possible, affected by prospecting or mining activity; and
- payment of compensation for all damages, injury or disturbances caused in exercise of its rights.

### Renewal and transfer of mineral licences

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

The state government may renew a reconnaissance or prospecting licence subject to a maximum of five years. A mining lease is granted for a period of 50 years and cannot be renewed.

Other than for captive use, non-auctioned mining leases cannot be transferred by the lease holder. Captive-use mining leases not awarded through an auction can be transferred by paying an upfront fee (equal to 0.5 per cent of the value of the estimated resources) to the state government.

A mining lease or composite lease obtained through auction can be transferred to a third party. Such a transferee would be subject to all conditions and liabilities that the transferor was subject to at the time of the transfer.

### Duration of mining rights

12 | What is the typical duration of mining rights?

In 2015, the term for mining leases was increased to 50 years, at the end of which, the lease cannot be renewed and is re-auctioned. A reconnaissance permit or prospecting licence may be granted for three years and may be extended subject to a maximum period of five years.

The state or central government may terminate a lease or licence before its term on the following grounds:

- regulation of mines and mineral development;
- preservation of natural environment;
- control of floods;
- prevention of pollution;
- to avoid danger to public health or communications;
- to ensure safety of buildings, monuments or other structures;
- for conservation of mineral resources; and
- for maintaining safety in the mines.

No such order for premature termination can be made without giving the licence or lease holder a reasonable opportunity of being heard.

A mining lease lapses if an entity fails to start mining operations within two years of the date of execution of the lease or discontinues mining for a period of two years unless the state government is satisfied with the reasons for such delay.

### Acquisition by domestic parties versus acquisition by foreign parties

- 13 | 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?

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only. However, foreign parties can invest up to 100 per cent in the equity of such companies through the automatic route under Indian foreign direct investment policy.

### Protection of mining rights

- 14 | How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

There are no special courts or tribunals to adjudicate on mining rights. However, the 2015 MMDR Amendment Act provides for the establishment of special courts to deal with cases of illegal mining. Further, the National Green Tribunal may also adjudicate on disputes regarding environmental non-compliance in any mining activity. India has an independent judicial system that consists of the Supreme Court of India as the apex judicial body under which are the High Courts, subordinate courts as well as the various tribunals.

India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) as well the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (the Geneva Convention). If a party receives a binding award from a country that is a signatory to the New York Convention or the Geneva Convention and the award is made in a territory that has been notified as a convention country by India, the award would then be enforceable in India.

### Surface rights

- 15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?

A mining rights holder is required to obtain surface rights over the area or obtain the consent of the owner to start prospecting or mining operations.

In relation to government-owned land, the selected bidder is granted surface rights by the government authorities. During prospecting, the approval of the government authority, such as the deputy collector, needs to be taken to clear vegetation to construct drains or use any underground water. The rights holder is liable to pay surface rent and water cess for the surface area used for the purposes of mining operations. The mining lease holder must prior to using any land for new surface operations give written notice to the government authority, which has a right to raise objections and restrict the rights holder's use of the surface.

When private landowners grant prospecting licences or mining leases, they may grant surface rights to such third parties according to the terms of their agreement.

Further, the government exercising the power of eminent domain can acquire land for public purposes such as mining under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. However, this is subject to consent requirements from the surface rights holders and such acquisitions can be opposed.

### Participation of government and state agencies

- 16 | 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?

Yes. The government and state agencies have a right to participate in mining projects and the public sector companies tend to dominate the mining sector. All companies undertaking mining activity must be incorporated in India.

### Government expropriation of licences

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

While there is no formal ability for expropriation, the government has the right to prematurely terminate a prospecting licence or a mining lease.

### Protected areas

- 18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

Under the Indian Constitution, the Indian President may notify certain lands as 'scheduled areas' that have a special governance mechanism. Scheduled areas are tribal dominated areas that are underdeveloped and show marked economic disparity. Laws formulated in relation to scheduled areas typically have more restrictions on land acquisitions and transfers. Further, the central or state government may also reserve certain areas (that are not already held under lease or licence) with a view to conserving any mineral. Any mining activity in such reserved areas is only done by government companies.

## DUTIES, ROYALTIES AND TAXES

### Duties, royalties and taxes payable by private parties

- 19 | What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

#### Royalty

The central government specifies the royalty payments for each mineral and the state government collects the royalty on mining. Royalty in most cases is charged on an ad valorem basis as a percentage of the price notified by the government. Any enhancement to the royalty can only be made once every three years.

#### Dead rent

A mining rights holder is liable to pay either royalty or dead rent in respect of a mining area, whichever is higher. Dead rent is, therefore, meant to be paid when the mine is closed or is being under exploited. Dead rent is fixed by the central government and is collected by the state. Any enhancement to the dead rent can only be done once in three years.

#### NMET/DMF contributions

A rights holder has to pay a sum equal to 2 per cent of the royalty as a contribution to the National Mineral Exploration Trust. Contributions to the district mineral foundations are to be fixed by the central government but cannot exceed one-third of the royalty specified.

#### Other payments

The rights holder may also have to pay, where applicable, surface rent to the surface rights owners or application fees for the licence or lease that are fixed by the central government and collected by the state.

## Taxes

The taxes or levies differ in quantum and nature depending on the states. Principal taxes and duties applicable to mining industry are:

- direct taxes, such as corporate tax or minimum alternative tax;
- indirect taxes, such as custom duty, and goods and services tax;
- stamp duty;
- water tax;
- forest-related taxes, such as forest tax (levied on forest produce removed from forest areas), compensatory afforestation charges (levied to promote afforestation and compensate for deforestation), net present value payments of forest land diverted for mining; and
- cess is also levied on mineral ores under various legislations.

## Tax advantages and incentives

20 | What tax advantages and incentives are available to private parties carrying on mining activities?

Special deductions under Income Tax Act 1961 are allowed for prospecting of minerals. One-tenth of the expenditure on prospecting, extraction and production of certain minerals over five years ending with the first year of commercial production is allowed as a deduction from the total income (subject to the timelines provided in the law). Export profits from specified minerals and ores are eligible for certain concessions.

## Tax stabilisation

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

No. There is no legislation providing for tax stabilisation in India.

## Carried interest

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

No. However, it collects royalty, dead rent, tax and other fees from the licence holder.

## Transfer taxes and capital gains

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

Yes. Capital gains tax is applicable on transfer of licences or lease.

## Distinction between domestic parties and foreign parties

24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

As the mines will be owned and controlled by an Indian entity, no such differentiation exists.

## BUSINESS STRUCTURES

### Principal business structures

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

The principal business structure is usually a limited liability company. Private parties when working together may opt for a joint venture company or a special purpose vehicle.

## Local entity requirement

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

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only.

## Bilateral investment and tax treaties

27 | 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?

Mauritius and Singapore have been popular destinations for foreign investments in India, especially owing to their low rate of taxation and specific benefits under the double tax avoidance agreements (DTAA) with India. However, amendments to the India–Mauritius DTAA in 2016 now require Mauritian companies to pay capital gains tax arising out of a sale of shares in India. This has a knock-on effect on the taxation of transactions structured out of Singapore, because the India–Singapore DTAA is co-terminus with the benefits available under provisions on capital gains contained under the India–Mauritius treaty. Further, the India–Singapore DTAA has also been amended, on the lines of the amended India–Mauritius DTAA, such that India can tax capital gains that arise from sale of shares of an Indian company owned by a Singapore tax resident.

## FINANCING

### Principal sources of financing

28 | 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?

Private parties typically finance mining activities through domestic and foreign debt or equity. India has a mature domestic equity capital market, and large mining companies such as NMDC, Rohit Ferrotec, Vedanta Limited are listed on major stock exchanges in India. Privately owned companies also rely on issuing foreign currency bonds or listing equity on foreign exchanges.

### Direct financing from government or major pension funds

29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

No. However, public sector banks, in addition to private commercial banks and non-banking financial companies, provide debt financing for mining projects in India.

### Security regime

30 | Please describe the regime for taking security over mining interests.

A concession holder is free to create encumbrances over the concession obtained through the auction process. The mineral concession is also assignable to a transferee that meets the eligibility conditions. However, no encumbrances can be created over non-transferable mineral concessions.

## RESTRICTIONS

### Importation restrictions

#### 31 | What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions on the importation of machinery and equipment required for mining activities. However, customs duty and other duties or cess may be applicable on imports. The government, however, is keen to promote mining and exploration and, therefore, provides certain incentives. For example, capital goods imported for mining under the Export Promotion Capital Goods scheme qualify for concessionary customs duty subject to certain export obligations. Further, low customs duty is applied on capital equipment used for minerals such as nickel, tin, pig iron and unwrought aluminium.

### Standard conditions and agreements

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

The FIDIC standard agreements have been commonly used for equipment supply agreements in India.

### Mineral restrictions

#### 33 | 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?

Certain forms of iron ore, manganese and chrome (set out in schedule 2 of the Indian Trade Classification Harmonised System) can only be exported through identified government-owned entities. Additionally, special chemicals, organisms, materials, equipment and technology items such as titanium alloys can only be exported under a licence from the Directorate General for Foreign Trade. Further, if a mine has been reserved for a particular end use, the minerals from it cannot be exported.

Further, to ensure that the minerals are available domestically and to reduce exports, the government may impose high export taxes, which can be revised annually during its annual budget sessions.

### Import of funds restrictions

#### 34 | 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?

Indian fiscal policy provides for capital control restrictions, which prevents free convertibility between the Indian rupee and foreign currencies. However, there have been several steps taken to liberalise both foreign equity and debt recently. While previously, investments in the mining sector beyond 74 per cent required prior government approval, the government now allows up to 100 per cent foreign direct investment in Indian companies engaged in the mining business (exploration and extraction).

Indian mining companies can also use up to US\$750 million in foreign debt from recognised lenders or shareholders without Reserve Bank of India (RBI) approval. However, any such debt cannot be used for the following:

- real estate activities;
- investment in capital markets;
- equity investment;
- working capital, except for foreign equity holders;

- general corporate purposes, except for foreign equity holders;
- repayment of rupee loans, except for foreign equity holders; and
- onward lending to entities for the above activities.

There are typically no requirements to use proceeds domestically and Indian companies can repatriate monies by declaring them as profits, dividends or royalty income. However, in certain cases of repatriation, such as acceleration of loans, or repatriation of court awards, prior RBI approval may be required. There are also no export performance parameters for access to foreign exchange.

## ENVIRONMENT

### Principal applicable environmental laws

#### 35 | What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental laws applicable to the mining industry include:

- the Environment (Protection) Act 1986 (EPA);
- the Forest (Conservation) Act 1980;
- the Water (Prevention and Control of Pollution) Act 1974; and
- the Air (Prevention and Control of Pollution) Act 1981.

Further, Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) empowers the central government to frame rules for conservation and sustainable development of minerals and for the protection of environment by preventing or controlling pollution that may be caused by prospecting or mining operations. The Mineral Conservation and Development Rules 2017 (MCDR) regulate environmental aspects of mining and provides for sustainable mining.

The principal regulatory bodies are the Ministry of Environment Forest and Climate Change (MoEF) and the Central and State Pollution Control Board. Specifically, in relation to mining, the Indian Bureau of Mines and the state government also regulate mining.

### Environmental review and permitting process

#### 36 | What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The Environment Impact Assessment (EIA) Notification 2006 notified by the MoEF under the EPA provisions regulates the grant of environment clearances. The impact on the environment resulting from a mining project is assessed by an EIA study. Consequently, an environmental management plan is prepared and the environment clearance is granted stipulating conditions to minimise impact on the environment from the project.

Further, in the case of mining projects on forest land, the central government may stipulate mitigative measures for diversion of forest land, such as creation and maintenance of compensatory afforestation.

The EIA process for mining takes a year, if not longer, as the EIA study has to be conducted over three seasons along with public consultations, followed by review by the appraisal committee. If forest land is involved, then the clearance for diverting the forest land also needs to be obtained in parallel. While previously the process of getting environmental clearance was known to stretch for two years or more, under the present policy to encourage industry and development, clearances are granted in less time. The government has launched a single-window integrated environmental management system called Pro-Active and Responsive facilitation by Interactive, Virtuous and Environmental Single-window Hub, where a project developer can apply for environmental clearances.

Following the Mineral Laws (Amendment) Act 2020, the EIA Notification 2006 was also amended to reflect that any new lessee successful in an auction for a mineral block (for which the earlier lease granted before the Mines and Mineral (Development and Regulation) Amendment Act 2015 will expire) will be deemed to have acquired valid prior environmental clearance vested with the previous lessee. It will be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee for a period of two years from the date of commencement of the new lease or until the new lessee obtains a new environmental clearance.

### Sustainability

**37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?**

The Ministry of Corporate Affairs issued the National Guidelines on Responsible Business Conduct in December 2018, which have as a core principle that businesses should make efforts to protect and restore the environment. There are several mechanisms to promote environmentally sustainable mining in India, which include a mandatory EIA, forest clearance provisions, air and water pollution prevention acts and adherence to the sustainable development framework under the MMDRA. In addition, the MMDRA and associated rules prescribe detailed mining standards (specifically with regard to carrying out scientific and environmentally friendly mining) by mining companies. Accordingly, the Ministry has launched a star rating system through the Indian Bureau of Mines, which awards a star rating to mining companies for their efforts and the initiatives taken for implementation of the sustainable development framework in mining.

### Closure and remediation process

**38 | What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?**

A mining rights holder has to prepare two mine closure plans – a progressive mine closure plan and a final mine closure plan. The progressive mine closure plan is submitted with the mining plan while the final closure plan is submitted for approval two years prior to the proposed closure. The rights holder has to ensure that the protective measures including reclamation and rehabilitation works are carried out according to the approved mine closure plan. The government authority must certify that all protective works in accordance with the final mine closure plan have been carried out.

Further, for concessions granted other than by auction, a financial assurance in the form of bank guarantee has to be furnished for proper implementation of the mine closure plan, failing which the state government may realise this bank guarantee. For concessions granted by auction, if proper closure and remediation according to the mine closure plan is not followed, the performance security can be realised as per the provisions of the mine development and production agreement signed between the parties.

### Restrictions on building tailings or waste dams

**39 | What are the restrictions for building tailings or waste dams?**

Under the MCDR, the rights holder must ensure that:

- overburden, waste rock, tailings and slimes are stored in separate dumps;
- the waste dams are properly secured to prevent floods and escape of material in quantities that may cause degradation of environment;

- the site for waste dams, tailings or slimes is as far as possible on impervious ground to ensure minimum leaching; and
- the waste dumps are to be suitably terraced and stabilised through vegetation or otherwise.

Inspection of mines is carried out by the Indian Bureau of Mines in an order of priority. For example, fully mechanised large mines are to be inspected at least twice a year. Mines, where approved mining plans are modified, have to be inspected based on the increase in production; for example, a mine where production is increased by more than 50 per cent has to be inspected every three months.

While no specific qualifications are detailed for persons in charge of operation and management of dam waste, qualified and experienced mining engineers and geologists need to be employed by mining companies for conducting prospecting and mining works. There are no requirements for mandatory alarm systems or emergency drills with local communities. The government has the primary responsibility for the rescue of people in event of a dam failure; however, under the doctrine of absolute liability in India, the mining companies would be liable for the dam failure or loss of life or injury caused by the dam failure.

## HEALTH AND SAFETY, AND LABOUR ISSUES

### Principal health and safety, and labour laws

**40 | 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 Mines Act 1952 sets out provisions regulating mining, health and safety of labour, employment terms, inspection of mines, etc. The Mines Rules 1955 set out the framework for medical examination of labour, basic health and sanitation provisions and welfare amenities for the miners and their families. The Directorate General of Mines Safety is the Indian government agency regulating safety in mines.

### Management and recycling of mining waste

**41 | 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?**

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016 (the Hazardous Waste Rules 2016) is the primary legislation relating to management and recycling of mining waste products. The Ministry of Environment Forest and Climate Change, in granting environmental clearance for mining operations, specifies conditions and restrictions for management and recycling of waste. The State Pollution Control Board in issuing consent to operate also specifies conditions. The lease holder has the right to explore and exploit mining waste products in tailing ponds and waste piles subject to any restrictions under Hazardous Waste Rules 2016.

### Use of domestic and foreign employees

**42 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?**

Under the Mines Rules 1955, women are restricted from being employed in underground mines and in any above-ground mine except between the hours of 6am and 7pm. Further restrictions can also be imposed by the central government.

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 specify that the rights holder cannot

employ a foreign national in the mining operations without the prior approval of the central government. There are also standalone legislations that govern employment of foreign persons. A foreign employee must have a valid employment visa and be registered under the Registration of Foreigners Act 1939 if the visa duration is for more than 180 days.

## SOCIAL AND COMMUNITY ISSUES

### Community engagement and CSR

**43** | What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Companies Act 2013 and the Companies (Corporate Social Responsibility) Rules 2014 contain the primary CSR obligations of companies in India. The CSR provisions are applicable to companies with an annual turnover of 10 billion rupees and more, or a net worth of 5 billion rupees and more, or a net profit of 50 million rupees. These companies must spend 2 per cent of their average profit in the past three years on CSR activities. The Companies Act 2013 lists an indicative set of CSR activities such as environmental sustainability, education, sanitation, enhancing vocational skills, etc. Companies may implement these activities, taking into account the local conditions after seeking board approval. A report on the CSR policy must be published by the company on its website and if the company fails to spend the prescribed amount, the report should specify the reasons. The Ministry of Corporate Affairs is the principal regulatory body for the Companies Act 2013.

Specifically, in relation to mining, the Mines and Mineral (Development and Regulation) Amendment Act 2015 provides for setting up of the district mineral foundations (DMFs) in all districts affected by mining-related operations. A rights holder is required to contribute to the DMF at rates specified by the central government that cannot exceed one-third of the royalty. The state governments have administrative jurisdiction over the DMFs in their region. In 2015, a scheme was also launched to provide for the welfare of areas and people affected by mining related operations, using the funds generated by DMFs.

### Rights of aboriginal, indigenous or disadvantaged peoples

**44** | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Much of India's mining resources are largely based in underdeveloped tribal areas. One of the major sources of conflict is land acquisition in such tribal areas for mining. The governor of the state is vested with the power to make regulations pertaining to scheduled areas, including the power to 'prohibit or restrict transfer of land by or among scheduled tribes in such areas'.

Various states have enacted their own legislation to deal with issues of land acquisition specific to certain tribal regions. These legislations govern the land rights of the tribes, including the transfer and utilisation of Scheduled Areas in the states, and incidence of tenancy. The major thrust is to define various categories of landholdings among the tribal classes, protect the land rights of the tribes against high rents or transfer of land, regulate the transfer of such lands and make provisions for the restoration of illegally alienated land.

The state government is also required to ensure that the *panchayats* at the appropriate level and the *gram sabha* have the power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a scheduled tribe. Tribal rights must be settled and the tribes must agree through the *gram sabha* before industry or mining companies can get clearance to use tribal land.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (the LARR Act) is the overarching legislation that governs land acquisition in the country. The LARR Act recognises the special status of tribal lands in the scheduled areas. It provides that acquisition of land must not be made in the scheduled areas as far as possible and when the acquisition does take place, it must be done as a demonstrable last resort. The state government can impose rehabilitation and settlement obligations on the sale and purchase of land acquired through private negotiations and prescribe the limits and ceilings for this purpose.

The Supreme Court has also upheld the cultural and religious rights of tribes over tribal areas. In the 2013 *Vedanta* case, the Supreme Court refused to allow Vedanta, a mining company, from sourcing bauxite from the Niyamgiri Hills, Odisha, which are held sacred by the local Dongria Kondh tribe.

### International law

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

India is party to many international treaties, conventions or protocols that relate to CSR issues in a general manner. However, there is no mandatory application of these in India in relation to CSR issues. Various global guidelines such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the International Labour Organization's Indigenous and Tribal Peoples Convention Tripartite Declaration of Principles on Multinational Enterprises and Social Policy can be voluntarily applied in India.

## ANTI-BRIBERY AND CORRUPT PRACTICES

### Local legislation

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

The Prevention of Corruption Act 1988 (PCA) is the principal legislation for prevention of corruption and bribery in India. The PCA criminalises receipt of illegal gratification by public servants and its payment. Such illegal gratification can be pecuniary or non-pecuniary in nature. It is not necessary for there to be an actual payment of bribes; even an attempt to bribe attracts liability under the PCA. The Central Bureau of Investigation is the central agency that undertakes investigation and prosecution of offences pertaining to bribery and corruption and the states have their own anti-corruption wings. The Central Vigilance Commission, established by the Central Vigilance Act 2003, is the primary agency for monitoring all vigilance activity under the central government. It exercises superintendence over inquiries into offences under the PCA. The central government has also enacted the Whistle Blowers Protection Act 2011 to protect anyone who exposes wrongdoing in government bodies or projects.

Public officials are further governed by specific service rules that prohibit such officials from receiving gifts, lavish hospitality and other perks beyond certain threshold levels. It also prevents public officials from engaging in other trade or business and employment. The Foreign Contribution Regulation Act 2010 restricts acceptance of foreign contributions or hospitality by government servants, legislature members, political party candidates, government corporation employees without permission of the central government. The Lokpal and Lokayuktas Act 2013 provides for an ombudsman body called the Lokpal at the central level, and Lokayukta, at the state level, to inquire into allegations of corruption against public functionaries.



## Foreign legislation

- 47 | Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Companies are vigilant of the US Foreign Corrupt Practices Act 1977, which prohibits bribing of foreign officials for the purpose of business. It is important because it applies not only to US entities and persons in the United States but also persons abroad working for US entities. This could affect Indian companies that are in partnership with US-based companies or have an international footprint in the United States. The UK Bribery Act 2010 is also relevant to Indian companies because it imposes corporate criminal liability on United Kingdom and non-UK based companies having business in the United Kingdom, equally, irrespective of whether any part of the offence of giving bribes took place in the United Kingdom or not. Companies with ties to France are also likely to pay attention to the French anti-bribery law Loi Sapin II, which came into force in 2017.

## Disclosure of payments by resource companies

- 48 | 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?

No. India has not adopted the EITI Standard.

## FOREIGN INVESTMENT

### Foreign ownership restrictions

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

Mineral concessions are granted to Indian nationals or entities incorporated in India only. However, 100 per cent foreign direct investment (FDI) is allowed in exploration and mining of all metallic minerals as well as diamonds and precious stones through the automatic route, by way of equity participation in a company incorporated in India. With prior central government approval, 100 per cent foreign direct investment is allowed in connection with mining and mineral separation of titanium-bearing minerals, subject to certain restrictions.

## INTERNATIONAL TREATIES

### Applicable international treaties

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

While there is no comprehensive international law on mining, a number of treaties, conventions and declarations have provisions for protecting the environment and sustainable development that are relevant to the mining industry in India. These include:

- the Stockholm Declaration 1972, which declares that nations have the right to exploit their own resources pursuant to their own environmental policies but they also have the responsibility to ensure that such activities do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction;
- the UN Convention on the Law of the Sea 1982, which regulates deep seabed exploration and mining;
- the Convention on Biological Diversity 1992, which calls on states to promote environmentally sound and sustainable development in areas adjacent to protected areas;

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- the UN Framework Convention on Climate Change 1992 and Kyoto Protocol 1997 in relation to the decrease of emission of greenhouse gases;
- the Rio Declaration 1992 and Johannesburg Declaration 2002 concerning sustainable development; and
- the Minamata Convention 2013 to protect human beings from harmful mercury emissions.

India is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which relate to foreign arbitration.

## UPDATE AND TRENDS

### Recent developments

- 51 | 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)?

With the impact of the covid-19 pandemic on mining and the reduced demand for minerals, many stakeholders have asked for tax rationalisation and changes to the duty structure to protect the mining industry. On 16 May 2020, the central government announced measures under the 'Aatmanirbhar Bharat Abhiyaan' to support the Indian economy in the fight against covid-19. These measures include structural reforms to boost growth and employment, and introduce state-of-the-art technology, especially in mineral exploration by:

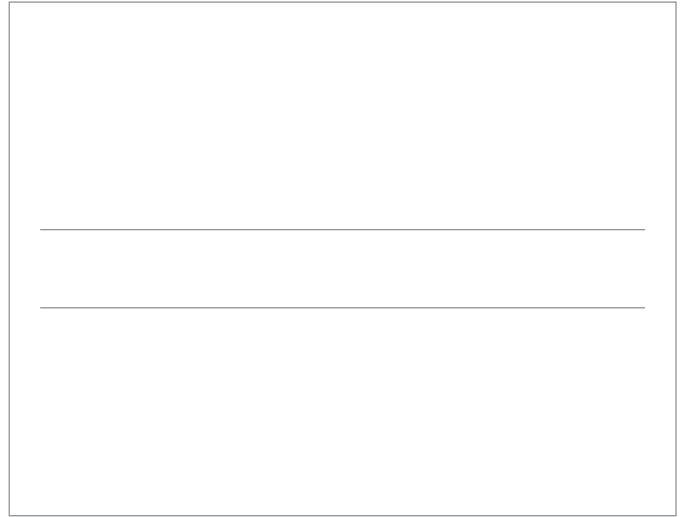
- introducing a seamless composite exploration-cum-mining-cum-production regime;
- offering 500 mining blocks through an open and transparent auction process;
- introducing a joint auction of bauxite and coal mineral blocks to enhance the aluminium industry's competitiveness (as it will help the industry to reduce electricity costs);
- removing the distinction between captive and non-captive mines to allow the transfer of mining leases and the sale of surplus unused minerals, leading to more efficiency in mining and production;

- rationalising stamp duty payable at the time of awarding mining leases; and
- through the Ministry of Mines, developing a Mineral Index for different minerals.

Further details on these reforms are expected to be released in the coming months.







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