

# Legal framework of mining industry in Malaysia

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**Mineral policy**

To enhance the contribution of the mineral sector to the development of the nation, the Malaysian Government formulated the National Mineral Policy 2 (NMP2) in January 2009. NMP2 seeks, among others things, to ensure the sustainable development and optimum utilisation of mineral resources and to enhance the nation's mineral sector competitiveness and advancement in the global arena.

The Ministry of Natural Resources and Environment (NRE) is responsible to oversee the Malaysian mining industry. However, as mining activities involve land which is a State related matter, the respective States have the power to approve mining applications in consultation with federal agencies like the Department of Minerals and Geoscience and the Department of Environment.

**Legislation**

The primary legislation that govern mining related activities are the Mineral Development Act (MDA) 1994 and the various State Mineral Enactments.

**Mineral Development Act, 1994:** The MDA delineates the powers of the Federal Government on matters pertaining to the inspection and regulation of mineral exploration, mining and other related issues. The legislation is enforced by the Department of Minerals and Geoscience of Malaysia.

**State Mineral Enactment (SME):** Each State has its own legislation to govern mining activities within its jurisdiction. Altogether, there are currently 10 states that has promulgated and gazetted their respective SMEs. These SMEs are based on a model template created pursuant to the NMP.

The SME grants the respective State with powers to issue mineral prospecting and exploration licences and mining leases. The State Director of Land and Mines (SDLM) is responsible to administer these powers. Foreign investors will have to negotiate with the SDLM for the respective State for the relevant licenses or leases.

Under the SME, a prospecting licence, exploration licence and mining lease may be granted to: (a) A natural person; (b) A company; (c) A body expressly empowered to hold mining land under any other written law of Malaysia; and (d) A foreign company as defined in the relevant legislation relating to companies registered under the said legislation and authorised by its constitution to hold mining land.

The issuance of licences and leases by the State is subject to the following conditions and restrictions as prescribed under the SME:

**i) Prospecting/Exploration Licence:**

	Prospecting Licence	Exploration Licence
Area for exploration work	25-400 hectares	400-20,000 hectares
Validity period	Maximum 2 years	Maximum 10 years
Extension period	+ 2 years	+ 5 years
Application for renewal	Not later than 6 months prior to expiry of the Prospecting Licence	Not later than 12 months prior to expiry of the Exploration Licence

**ii) Small scale mining operation/large scale mining operation:**

	Small scale operation	Large scale operation
Target for mining	Alluvial	Hard rock
Area for mining lease	Such size as reasonably required for the mine	Such size as reasonably required for the mine
Requirement for EIA	Areas more than 250 hectares	Areas more than 250 hectares
Duration of mining lease	Estimated life of the ore body to be mined or 21 years whichever is shorter	Estimated life of the ore body to be mined or 21 years whichever is shorter
Term of renewed mining lease	Estimated remaining life of the ore body or 21 years whichever is shorter	Estimated remaining life of ore body or 21 years whichever is shorter
When to apply for renewal	12 months prior to expiry of the lease	12 months prior to expiry of the lease

**Policies and incentives**

The various policies and incentives provided for or imposed on the mining industry mainly comprise as follows:

**Equity Participation:** Foreign investors are permitted to have 100 percent equity stake in local companies or form JVs with the latter.

**Incentives:** Low or zero import duties are applicable to most raw minerals. Waivers on certain import duties for minerals and equipment may be granted by the Federal Government. If minerals are to be subject to processing and manufacturing activities, further incentives may be obtained from the Malaysian Investment Development Authority.

**Taxation:** The annual revenue tax rate imposed on mining corporations having a paid-up capital of more than MYR2.5 million is 25 percent. As for corporations having a paid-up capital of less than MYR2.5 million, the revenue tax rate is 20 percent for the first MYR500,000 and 25 percent for the remaining balance.

**Royalty:** Generally, mining operators will have to pay five percent of the value of the mineral extracted to the relevant States on a monthly basis. However, such rates may vary according to the type, weight and volume of the minerals extracted and as may be assessed by the said State.

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