

NEWSLETTER – A NEW MINING ACT IN THE PIPE LINE

27 February 2023

A bill for a new Mining Act in Greenland (the "Mining Act") has been put out in public consultation and is set to come into force as of 1 July 2023. It is expected to be presented to the Greenland Parliament during the spring session 2023. Thus, changes to the bill may still occur.

In this newsletter we will highlight some of the new regulation which the new Mining Act will bring.

You can see the bill and explanatory notes for the new Mining Act here: <https://www.nuna-law.com/2022/11/24/public-consultation-on-bill-for-a-new-mining-act-in-greenland/?lang=en>. Below, we also give reference to the relevant provisions which we mention.

1 FIRST GLANCE ON THE NEW MINING ACT

Overall, the existing legal framework and licence system for mining is maintained, and the main part of the regulation on mining activities is also re-enacted. No major changes in the legal framework are envisaged by the Government.

The Government of Greenland wishes to make the regulatory environment for mining activities clearer and thereby also more investor friendly.

The new Mining Act will only include provisions on mining activities (and not hydrocarbons and small-scale activities).

Some provisions have been updated based on the Government's administrative practice and experience in relation to the application of the current Mineral Resources Act.

The new Mining Act also includes a much more detailed regulation in order to further clarify various requirements, terms and conditions for the licensees as well as the procedures, among other things in relation to preparation of mining and closure plans, EIA, SIA and publication of information.

The bill also includes new regulation in various respects in relation which are important and relevant for current as well as new licensees and their investors, which will be further described below (including references to the relevant provisions).

The number of sections in the Act is expanded from 98 to 144 sections.

2 NEW REQUIREMENTS TO LICENSEES

The new Mining Act provides for new requirements to licensees.

Prospecting and exploration licences

A licensee for prospecting and exploration licences must be registered as either

- a) a Greenlandic public limited company (“A/S”) or a private limited company (“ApS”)¹, or
- b) a similar type of foreign limited liability company, provided such company is registered with a CVR no. in Greenland (e.g. a taxable entity).

In case of doubt as to whether a foreign company is equivalent to a Greenland A/S or ApS, the matter will be decided by the Government of Greenland. It is not clear from the explanatory notes, but similar minimum capital requirements as applies for ApS- and A/S-companies must be expected to new foreign licensees (The minimum capital requirement for an ApS is DKK 40,000 and for an A/S it is DKK 400,000) (sec. 29 and 36).

Exploitation licences

As under the current legal regime, the licensee for an exploitation licence must be registered as a Greenlandic public limited company (“A/S”).

As a new requirement under the new Mining Act, the de facto head office of the licence company from where it is managed must be in Greenland. The Government of Greenland may approve that a licensee is exempted from fulfilling this requirement for a period of up to six months after the grant of an exploitation licence (sec. 45).

According to the explanatory notes, the new requirement is intended to ensure, among other things, that through its business operations, the company has a de facto connection to Greenland and that the taxes payable on revenue from mineral activities in Greenland accrue to Greenland.

New general requirements to all licensees

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However not an “IVS” (an entrepreneur company), which is a special type of private limited company having a minimum capital requirement of only DKK 1. As from the beginning of 2022, it is not possible anymore to establish new IVS-companies in Greenland.

No debt in excess of DKK 100,000 to the authorities in Greenland

A licensee must not have outstanding debt to public authorities in Greenland in excess of DKK 100,000, unless the licensee provides security for payment for debt exceeding DKK 100,000 or has entered into and complied with an agreement to pay the debt (sec. 66).

In this respect, the new Mining Act also provides for that if a licensee fails to pay an amount of DKK 100,000 or more when due to cover the authorities' processing and other administrative costs under the new Mining Act, the Government of Greenland may suspend its processing activities and its decision in all matters concerning the licensee or issue an enforcement notice to the licensee to suspend activities under the licence pending the licensee's payment.

No criminal offences

A licensee or individuals owning or exerting decisive influence over the licensee and members of the licensee's management must not have been convicted of or accepted a fine or sanction during the last 4 years for bribery, fraud or cartel operation, participation in a criminal organisation, acts of terrorism or terrorism-related criminal offences, money laundering or terrorism financing and child labour or human trafficking (sec. 67).²

Reporting on and payment of taxes

The Government of Greenland may decide that a licensee must provide information on the enterprises and persons performing or contributing to the performance activities under a licence (contracting parties), and that such contracting parties must provide information/documentation to the authorities regarding their direct and indirect taxes (sec. 68).

This is a change, as under the current Mineral Resources Act the licensee itself is obliged to provide the relevant tax information on their contractors to the authorities. Still, the Government of Greenland may issue an enforcement notice requiring a licensee not to use contracting parties which have not provided such information/documentation to the authorities or failed to pay taxes (new), as well as decide that a licensee must suspend its activities, until the licensee has provided information identifying the contracting parties or complied with an enforcement notice regarding use of such contracting parties.

Thus, it will still be relevant to include wording regarding these obligations under contractor agreements, including provisions on breach entitling the licensee to terminate the contract.

² To a wide extent, the new sec. 66 and 67 corresponds to regulation applicable under the Greenlandic Public Procurement Act.

3 PROCEDURES AND CRITERIA FOR THE GRANT OF LICENCES

3.1 Batch-periods

The existing system with a “batch-period” is carried on, provided a new 90-calendar days’ batch period will apply, if an application is received from someone who, within a period of 90 calendar days, has been the licensee under an exploration licence in the same area (sec. 58).

3.2 Selection criteria

It is now specified in the new Mining Act that mandatory and indispensable selection criteria must be included and used in the assessment involved in the grant of a licence (sec. 61), i.e.:

- 1) the applicant's overall technical and professional capabilities;
- 2) the applicant's economic and financial capability; and
- 3) any non-efficiency or non-performance by the applicant of its obligations in connection with other existing or previous licences in Greenland.

In relation to 3), it is now explicitly stipulated in the new Mining Act that in its evaluation of an applicant, the Government of Greenland will also have regard to any non-efficiency or non-performance by the applicant of its obligations under other existing or previous licences in Greenland which have also been operated under leadership of the members of the applicant's current management (board of directors and executive board etc.) or under ownership or decisive influence of the same persons or companies.

4 PROSPECTING LICENCES

4.1 New possibility to extend the licence period

Under the current licence system, a prospecting licence has a duration of 5 years and cannot be renewed.

The new Mining Act provides for that a prospecting licence is granted for a licence period of up to five years, and that the licence period may be extended for one or more periods of up to five years. The Government of Greenland may set changed licence terms where the licence period is extended to a total licence period exceeding 10 years. The total licence period of a prospecting licence cannot be longer than 15 years (sec. 30).

5 EXPLORATION LICENCES

5.1 New requirement for public consultation during application process

Before an exploration licence is granted, the Government of Greenland will carry out a public consultation on the application for at least 21 calendar days (sec. 35).

The public consultation is intended to ensure that all interested parties, such as NGOs, municipalities, or citizens, holding rights under other legislation over the same area, will be entitled to object to the grant of the licence. Objections may result in the licence not being granted or the licence being granted on special terms. It is important that other interested parties have an opportunity to object at this stage in the process as a licensee under an exploration licence is entitled to be granted a mineral exploitation licence if the requirements under the mining act are satisfied.

6 EXPLOITATION LICENCES

6.1 New conditions for extensions during licence period

An exploitation licence will still be granted for a licence period of 30 years unless a shorter licence period has been set for the licence (sec. 47).

If the licensee has performed all of its obligations under the licence and performed all activities under the licence during the initial licence period and carried out exploitation activities as assumed in the mining plan approved by the Government of Greenland, the licensee will be entitled to an extension of the licence period, if the licensee has substantiated and delineated a viable mineral deposit which the licensee intends to exploit during an extended licence period.

The licence period may extend one or more times, however maximum of up to 20 years at a time (new). The Government of Greenland may set changed licence terms where the licence period is extended to a total licence period exceeding 40 years (new).

As under the current regime, the total licence period for an exploitation licence cannot be longer than 50 years.

6.2 Time limits for “milestones” during the licence period

Pursuant to the current Mineral Resources Act and the new Mining Act, the Government of Greenland may set provisions and terms for all relevant matters concerning the licence and the related activities. Until now, it has been

administrative practice, that time limits have been included in exploitation licences for various activities.

It is now explicitly clarified in the new Mining Act that the Government of Greenland is authorized and obliged to set time limits in an exploitation licence to the effect that failure to observe the time limit may result in lapse or revocation of the licence, unless the licensee has been granted an extension of time before such date (sec. 49).

Among other things, the grant and maintenance of the exploitation licence is now conditional on the licensee having submitted within a reasonable time limit a mining plan and closure plan to the authorities. Such time limit may not be more than four years after the grant of the exploitation licence.

The Government of Greenland may also set terms on time limits for matters of material importance to the performance of the exploitation activities and other activities under the licence, e.g. establishment of facilities or commencement of production.

With regard to time limits, it should also be noted that before an exploitation is granted, a project terms of reference document must be submitted to the Government of Greenland, which shall go out for public consultation for a period of at least 35 calendar days. The new thing is that such consultation on the terms of reference must be completed no earlier than 24 months before the grant of an exploitation licence, and only in special cases an exemption from the time limit may be granted (in the explanatory notes the example given is long processing time with the authorities).

7 CONSERVATION OF SPECIFIC SITES AND ESTABLISHMENT OF ZONES

The Government of Greenland may decide on the conservation of one or more specific sites in the interest of safeguarding geological conditions and their protection. On a geological conservation site, no activities of any kind may be performed, unless certain specific activities are permitted. The Government of Greenland may also prohibit or restrict activities in one or more areas in order to protect the public interest (sec. 129).

Pursuant to the explanatory notes the Government of Greenland may set provisions under an executive order to the effect that activities are prohibited/ restricted in one or more areas. For example it may be decided that mining activities must not be performed within specified zones, in semiurban areas or in specified zones where, for example, mineral activities are likely to have adverse effects on existing industries or the local population, safeguarding the interests of

the local population's possibility to exercise a profession or the local population's possibility to use an area for recreational activities.

Prohibitions or restrictions can only be set with prospective effect, i.e. such executive order will only apply to licences granted subsequent to the publication of the executive order and not to licences already granted.

8 COMING INTO FORCE

The new Mining Act is expected to be set into force as of 1 July 2023 (sec. 144).

Prospecting, exploration or exploitation licences for minerals in Greenland granted before the date when the new Mining Act enters into force will remain in full force and effect.

But, the new Mining Act also applies to existing licensees, existing licences, and activities performed under such licences before the date when then new act enters into force.

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If you have questions to our highlight or the new Mining Act, feel free to contact us:



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