

To the Ministry of Industry, Trade, Mineral Resources, Justice and Gender Equality

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Ref. 231044/HK  
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## **Consultation response - Greenland Parliament Act on local mineral activities**

We hereby submit a consultation response in relation to the Bill on local mineral activities.

### **1 INTRODUCTORY GENERAL REMARKS**

According to the general comments of the Bill, it is desired to continue to develop the mineral resources area so that it becomes an even more important area of activity in Greenland, where more jobs can be created for companies in the mineral resources area and revenue for the Greenlandic society.

It is also stated that the purpose of the Bill is to maintain and further develop local mineral activities and to ensure the population's rights to exploit their own natural resources, both in relation to traditional exploitation of minerals and commercial exploitation.

The purpose of the proposal is to create an updated and more simple, clear, appropriate and user-friendly regulation.

In some respects, the Bill contains a simplification of the framework conditions for local mineral activities - in particular the expanded access to conduct commercial mineral activities without a licence, cf. section 6 of the Bill. But in other respects and in relation to the Act on Mineral Activities ("the Mining Act"), it entails a high degree of regulatory complexity, uncertainty and lack of clarity about the framework conditions in the mineral resource area, which in itself could be detrimental to the development of the entire mineral resources industry due to the consequent lack of investment and financing. This will affect jobs and development in the mining industry as well as the ancillary industry of local Greenlandic companies.

In order to continue to attract investment to the mining industry in Greenland, it is crucial that there is a clear legal framework for mineral activities, which of

course must benefit both the mineral resources industry and local mineral activities.

Finally, it is initially noted that according to the preparatory works of the Bill, there are no financial and administrative consequences for the business community. However, it appears that there could be major financial consequences associated with the implementation of the Bill for licensees with existing exploration licences issued under the Mineral Resources Act as well as future licensees, see below.

## 2 COMMENTS ON THE INDIVIDUAL PROVISIONS

### ***Re section 1(3) - authority***

It has been noted that the proposal does not contain provisions on a mineral resources agency, and that the organizational placement will be determined by the Government of Greenland. We have also noted that the regulatory processing must be organized as a unified and integrated regulatory processing.

We suggest that the regulatory processing is placed with or in connection with the Mineral Resources Agency in line with the regulatory processing for the rest of the mineral area, as similar consideration for regulatory approvals and expertise in relation to mineral activities is necessary for the case processing in relation to local mineral activities.

### ***Re section 5(2) - definition of "local mineral activities"***

The provision defines the concept of "*local mineral activities*" by a limit of the estimated cost [DKK 250,000] for a third party to carry out the decommissioning plan.

This definition appears to be intended solely for locals carrying out mineral activities under a licence, cf. also the reference in section 5(2) to section 24, and thus does not appear to include local mineral activities without a licence, cf. section 6.

### ***Re section 6(1) - mining of minerals by permanent residents without permission, etc.***

The provision stipulates a new extended access for locals to mine minerals for commercial purposes without a licence in areas for which a mineral exploration licence has already been granted to a licensee under section 16 of the Mineral Resources Act with exclusive rights to explore all mineral resources in the area, except for hydrocarbons and radioactive elements.

According to the current Mineral Resources Act, minerals may only be collected and mined in the licence areas of others using non-mechanical hand-held means for non-commercial purposes with an annual DKK 100,000 limit. According to the Bill, there is no restriction on the volume and type of minerals that local commercial activities may include within the exploration licence area. The only restriction is that it can only be done with hand-held mechanical means.

### **Interference with exclusive rights**

It is in itself detrimental to a licensee of a mineral exploration licence that a formal encroachment on the exclusive right is made, which provides for unidentified unnamed third parties' right to carry out commercial mineral activities in the exclusive area and export to an unlimited and unrestricted extent - which is neither subject to supervision nor reporting obligations. This creates both legal and real uncertainty about the scope and value of the exclusive rights, which is problematic in terms of investors and financing for projects.

In this connection, it is very important to note that the fact that the local mineral activities may be of limited scope (or non-existent) in a given licence area does not mean that the licensee under an exploration license does not suffer any losses. Thus, it is the damaging effect of the uncertain legal status of the exclusive rights created by the new rules that is the main problem. Therefore, the damaging effect will be huge and will apply to both existing and future exploration licenses.

The Bill thus entails an encroachment on exclusive rights granted under mineral exploration licenses according to the Mineral Resources Act and may thus constitute partial expropriation of already existing mineral exploration licenses according to section 73 of the Danish Constitutional Act. Expropriation can only be made according to law and against full compensation.

We must therefore urge that the Bill's model for local mineral activities without permission in areas covered by mineral exploration licenses be reconsidered and adjusted.

### **Transitional provisions**

In order to avoid loss of rights for existing licensees of exploration permits, it is proposed that transitional provisions be made in the Bill, according to which existing mineral exploration permits are exempted from the scope of section 6 of the Bill, but that the current access for local mineral activities according to section 45 of the Mineral Resources Act may be continued for these. This also avoids problems in relation to encroachment on existing rights (and the detrimental

effect in relation to failing investments and financing), expropriation and resulting potential compensation cases against the Government of Greenland.

As a minimum, the exploration licenses for which a public pre-consultation of the project description has already been carried out according to section 87a of the Mineral Resources Act should be exempted from the scope of section 6 by transitional provisions.

This should be seen in the context that according to the Mining Act, a licensee of a mineral exploration licence is entitled to be granted an exploitation licence when the licensee has proven and delineated an exploitable deposit of minerals that the licensee intends to exploit and has fulfilled all obligations regarding the exploration licence and activities under the license. This only provided that the project description has been subject to public pre-consultation (35 days), cf. also the transitional provision in section 143 of the Mining Act.

### **"Competing rights"**

We are concerned that the proposed model may give rise to disputes about, for example, "competing" rights to identified deposits and the performance of activities in the same parts of the licence area, which is not regulated in the Bill or mentioned in the explanatory notes. The problem of "competing" rights is of course greatest when the licensee and the local are going after the same target minerals in a given area. But the exploration licence applies to all minerals except hydrocarbons and radioactive elements.

### **Liability issues**

We are concerned about liability issues related to human safety and environmental damage - and the resulting liability disputes.

We propose that clear rules are set out on safety distances between mining companies and local mineral activities, the local's obligation to follow the mining company's safety instructions related to its activities, clean-up obligations, etc.

In this context, it is a problem in itself that the local mineral activities (primarily the commercial ones, in relation to which the activity level is presumably the most important) are carried out without a license, which means that the persons in question are unidentified/unnamed, i.e. the licensee has no way of contacting them and notifying them of blasting etc.

### **Contract model as a legal framework for local activities**

We agree with the idea expressed by several parties during the consultation period that a contract model can instead create good and clear framework

conditions that can facilitate the development of local mineral activities and that are in line with recognized international standards, such as the "IFC performance standards" developed under the auspices of the World Bank. We encourage the exploration and consideration of such a model as a good alternative. In this connection, reference is also made to section 8(2) of the Bill regarding an agreement model that may be considered and further developed.

An agreement model can also help create the necessary predictability and certainty around the scope of local mineral activities in mutual interest.

If the current model in the Bill is to be retained, it should at least be adjusted with delimitation in relation to mineral types, distance requirements in relation to the licensee's mineral activities, cf. above, and a value limit similar to the current DKK 100,000 limit. It is also suggested that there could be some kind of registration/notification obligation (possibly to the licensee) of who is conducting local mineral activities in a given licence area.

***Re section 13(4) - number of licenses per licensee***

According to the explanatory notes, the same licensee cannot be granted more than 5 licences in the same calendar year. Please clarify whether "granted" means that no more than 5 licences can be issued in the same calendar year (which would mean that you can get 5 new licences every year and thereby accumulate a large number of licenses).

***Re section 14(3) - extension of authorization for local mineral activities***

According to the explanatory notes, if the licensee has fulfilled all obligations relating to the licence and post-licence activities during the original licence period and has "commenced" the performance of mineral exploitation activities or other commercial activities, the licensee is entitled to an extension of the licence period. Other commercial activities can for example be activities related to geotourism. The requirement for commenced activity is very vaguely qualified in the provision, including where the lower limit is for what is required to fulfill the provision, and thus there is a risk of "area reservations" to the effect that other (also other local) mineral activities in the area are also blocked.

In comparison, exploration licenses under the Mineral Resources Act are subject to annual exploration obligations (fixed amounts).

***Re section 26(1) - Rights holders' obligation to clean up and restore***

The provision deals with the obligation of "licensees" to clean up and restore. Thus, the provision appears to apply only to locals who carry out mineral activi-

ties under a licence - and not to locals who, according to section 6 of the Bill, carry out mineral activities without a license. The latter should be subject to similar obligations to ensure that activities are carried out in a sound manner with regard to the environment, cf. also section 1(2).

***Re: section 57(1) - transfers***

As a licensee of a licence under the Act may be either a person or a company, it is proposed, in line with the Mineral Resources Act, to clarify that the requirement for approval by the Government of Greenland applies to both direct and indirect assignment or transfer of a licence, cf. also the rules in section 88 of the Mineral Resources Act.

***Re section 59(1) - expropriation***

Section 59 states that "to the extent necessary" expropriation of "property" may be permitted in order to carry out activities under the new Act. However, according to the wording and the explanatory notes, it is completely open what is meant by "property" and thus the scope of this access. This therefore leads to great uncertainty for mining companies about the framework conditions, which may harm the ability to attract investments and obtain financing. It should be further clarified what the purpose of the provision is and what "property" can consist of, including whether it can be anything from buildings to other licensees' exploration and exploitation licenses - and if so, for what purposes expropriation can take place.

***Re section 61(1) and (3) - liability for damages and insurance/security***

The provision only regulates liability for "a licensee under a licence or an approval", but not locals operating mineral activities without a license, cf. section 6 of the Bill. All locals carrying out local mineral activities (in particular for commercial purposes) should also be covered by the provision on strict liability and insurance/security.

***Re section 64(1) - responsible for environmental damage***

The provision seems to be built around an environmental liability provision for licensees and their co-contractors, but not locals who operate mineral activities without a license, cf. section 6 of the Bill. It should be clarified that such locals are also liable under the provision - especially according to the current wording of the Bill, where local may carry out commercial mineral activities without a licence in areas covered by another's mineral exploration license, where there is thus a particular risk of liability issues, including disputes about environmental liability.

***Re chapter 15 - transitional provisions***

Please see our comments above regarding section 6 and the transitional provisions related thereto.

Sincerely yours

Peter Schriver

Helen Kibsgaard