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## A Review on the Framework for Mineral Exploitation In the Area

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Development of Regulations of Mineral Resources Exploitation in the Area has been initiated. For this, a framework has been provided by ISA that includes a wide range of points which should be important for develop an applicative mining code. However, some points in this framework would be arguable.

### 1. Framework

In my understanding from most of in-land mining codes, two kernel components should be included and stressed: ① mining rights related to issues of property ownership and occupation of mineral properties; ② supervision of mining activities. These two components are the goals of legislation of mineral resources, while the other components include operational provisions for achieve the goals. But, in this framework, I could not clearly see a mining code structure showing this kernel components that would deviate the general principals of legislation of mineral resources.

## 2. Mining right

(1) Mining right is the most important component of a mining code

Mining right is the most important issue of a mining code. Many term are used for represent mining right (right, title, tenement, tenure, concession, etc.). We may say that no mining rights, no mining code. So, for any mining law or act, the terms of mining rights which are used by the law or act should be selected and defined clearly. For example, a mining law may use “mining tenement” as the term representing the total name of all mining rights, use “exploration license” as the term representing the right granted for mineral resource exploration, use “mining lease” as the term representing the right granted for mineral resource exploitation, and use “retention license” as the term representing the right granted for exploration license retention. For

each of these concrete mining rights, the definition, the procedures of application and approval, and the rights, obligations, conditions and payments of the mining right holder, should be clearly stipulated.

Mineral resources in The Area are real estate properties which is common heritage of Mankind. Mankind is the owner of the properties and ISA is the representative of Mankind for managing the property. On the other hand, contractors are occupiers of the property through a mining lease or license, so called usufructuary right, which should be granted by ISA.

As a result of mining right grant, ISA will have the ownership right of a property, while the contractor will have the mining right of a property so that both rights of the property will be protected.

To guarantee protection of the property rights of both sides, the rights and obligations of both sides, should be stipulated in great detail.

In fact, what the chapter of mining right deals with are property issues between ISA as an owner of the property and the contractor as an occupier of the property, rather than ISA as an administrative entity and a contractor as an entity of mining activities.

(2) Corrected phrase should be used for dealing with application of mining right

The framework uses phrase “approval of a plan of work” that seems

ignore the property nature. In my point of view, “approval of a plan of work” is a technical description rather than a legal description. I could not imagine that “approval of a plan of work” would protect the mining right of a contractor, although an exclusive mining right is mentioned in the contract. If we look at mining laws and acts of all countries, a phrase is used for “application of mining right” rather than “approval of a plan of work”. There is do “have a plan of work”, but it is a work plan for administrative supervision, not for application usufructuary right of a property.

I am aware that “approval of a plan of work” is from the Law of The Sea, but we should understand that no mining right, no mining law. Efforts of harmonization between “a plan of work” and “mining right” should be made.

At last, I use a few word to express my point of view: mining right is the most important component of a mining code, a mining right other than “a plan of work” should be applied and approved, a mining right should have a form of mining lease or mining license other than a contract which has no enough legal effect to guarantee mining right of the contractor, rights and obligations should be described in great detail in mining lease or mining license.

### 3. Supervision of mining activities

Supervision of mining activities is the other important function of a

mining code. This is an administrative function rather than a function dealing with property issues. In this case, the position of ISA is an administrative entity, a government, rather than an entity of a property owner. The contractor is a entity conducting mining activities rather than an entity of a property occupier.

The purpose of supervision is for environment protection, rehabilitation, social development, miner's healthy and mining security, ect. To meet requirements of supervision, the mining company (also the holder of a mining right) must submit mining work plan, rehabilitation work plan, social development work plan, miner's healthy and mining security work plan, etc.. I think most of the supervision tasks have been included in the framework already which would be a good base for developing mining regulations in this administrative aspect.

One problem is who is the administrative entity responsible for approval of environment issues that should be stated in the mining code. The mining code should include some coordination provisions of environment protection and rehabilitation, but has no power for approving any evaluation reports and work pans in this aspect.

Who is or are the international entities responsible for marine environment administration that should be clarified in the mining code.

4. It is noted that the coordination of surface land use is usually included

in in-land mining code. The similar problem would exist for seabed mining. Use of sea surface and sea water should not be regulated by mining code. Who is or are the international entities responsible for sea water administration should be clarified in the mining code.

#### 5. ISA Revenue from seabed mineral development

There are four types of payments by holders of mining rights which would be taken into account by the framework: fees, annual rent, royalty and interests of state share.

To explain these payments, two cases must be identified:

Case 1: for a mining lease contractor, the holder of mining rights should pay fees for mining right registration and/or other administrative issues, annual rent for use of seabed and pay royalty for use of mineral resources.

Case 2: for a MPSC (Mineral Production Sharing Contract which is a version of PSC for petroleum resources) contractor. In this case, the contractor has no mining rights, as he (or she) is just a risky investor. When a mineral deposit is discovered and developed, the state revenue from mineral production includes fees, royalty and interests of state shares. A MPSC contract starts from exploration. If a mineral seabed was explored by another system (for instance, by an exploration right system, the license holder or contractor has priority to be granted mining rights), MPSC would not be applicable and practical.

Besides, if select production sharing contract, ISA needs create the Enterprise that is something like a state oil company for a oil PSC.

#### 6. About tax

The purpose of tax collection is for government operation. This is not the case of Seabed Authority. However, in consideration of that seabed mineral resources is the common heritage of mankind, the royalty should be some what higher than that in a country.