

NATIONAL ASSEMBLY
OF THE SOCIALIST REPUBLIC OF VIETNAM
Legislature XI, Session 7
(From 05 May to 14 June 2005)

LAW
ON AMENDMENT AND SUPPLEMENT
OF SOME ARTICLES OF THE MINERAL LAW

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam amended and supplemented by Resolution No 51/2001/QH10 dated 25 December 2001 of the National Assembly, Legislature XX, Session 10;

This law amends and supplements some articles of the Mineral Law passed by the National Assembly of the Socialist Republic of Vietnam on 20 March 1996.

Article 1

Amend and supplement some articles of the Mineral Law as follows:

1. Article 2 shall be amended and supplemented as follows:

“Article 2. Scope of regulation and objects of application

1. This law stipulates the management and protection of mineral resources, basic geological survey of mineral resources and mineral activities (comprising prospecting, exploration, exploitation and processing) of minerals in solid, gaseous state, natural mineral and thermal waters; exceptionally oil and gas and other natural waters shall be regulated by other legal documents.

2. This law applies to state agencies carrying out the task of state management in respect of minerals; organizations carrying out the task of basic geological survey of mineral resources; domestic organizations and individuals, foreign organizations and individuals, Vietnamese residing abroad engaged in mineral activities in Vietnam; other organizations and individuals related to the management and protection of mineral resources.

In case any international convention to which Vietnam is a member has any provision different from those of this Law, the provisions of such international convention shall be applied.

2. Article 3a shall be added as follows:

“Article 3a. Principle of mineral activities

Mineral prospecting, exploration, mining and processing activities shall be in compliance with the following principles:

1. Mineral resources must be protected, exploited, used in a rational, economical and efficient way, meeting the requirement for sustainable socio-economic development in the immediate and long-term periods;

2. The exploration, mining, processing and use of minerals shall be in accordance with the plans approved by the competent state authorities; ensuring occupational safety and health; closely combining with the protection of the environment and other natural resources, natural landscapes and historical - cultural vestiges; creating the conditions for infrastructural development, stabilizing and improving the living conditions of the local people in the area where the minerals are exploited or processed and ensuring national defense, security social order and safety;

3. The scale and technology of mining and mineral processing must be suitable with each kind of mineral, taking the socio-economic efficiency as the basic criterion for deciding on the investment; applying advanced mining and mineral processing technologies to maximize recovery of the main mineral, associating minerals and the value of processing products; enhancing the efficiency, quality and competitiveness of the mineral products. ”

3. Article 3b shall be added as follows:

“Article 3b. Minerals plans

1. Minerals plans prepared as per territorial areas and kinds of minerals, comprising:

- a) Plans for basic geological survey of mineral resources;
- b) Plans for exploration, mining, processing and use of minerals.

2. The competence to approve mineral master plans is stipulated as follows:

a) The Ministry of Natural Resources and Environment shall prepare and submit to the Prime Minister for approval master plans for basic geological survey of mineral resources and direct the organization for implementation thereof;

b) The Ministry of Industry shall prepare and submit to the Prime Minister for approval master plans for exploration, mining, processing and use of

minerals, except for minerals to be used as construction materials, minerals to be used as raw materials for cement production;

c) The Ministry of Construction shall prepare and submit to the Prime Minister for approval master plans for exploration, mining, processing and use of minerals to be used a construction material, minerals to be used as raw materials for cement production;

d) People's Committees of provinces and cities directly under the central authority shall prepare and submit to the People's Councils of the same level for approval master plans for exploration, mining, processing and use of minerals under the competence to grant licenses stipulated in Point b, Item 1 of Article 56 of this Law.

3. The Government shall stipulate the preparation and implementation of mineral master plans.”

4. Article 5 shall be amended and supplemented as follows:

“Article 5. *Spate's policy on minerals*

1. The state shall invest for master planning and basic geological survey of mineral resources in conformity with the strategy, master plans, plans for socio-economic development in each period; for training, human resources development, scientific research, application and development of technologies in basic geological survey of mineral resources.

2. The State shall create conditions for organizations and individuals to invest in mineral exploration, exploitation and processing.

3. The State shall adopt incentive policies and encourage investment for mining projects combined with in situ mineral processing in areas with difficult and specially difficult socio-economic conditions; projects involving the application of advanced sciences and technologies, ensuring environmental protection, maximum recovery of useful components, producing metals, alloys or products with high values and socio-economic efficiency; projects involving processing of imported minerals meeting the needs for domestic consumption and export.

4. Restrict the export of minerals in the form of crude raw materials, concentrates. The Government shall promulgate the list, conditions and standards for minerals to be exported and minerals the export of which is to be restricted.

5. The State shall adopt policies to invest in the exploration of some important minerals to serve the socio-economic plan of the country; ensure state budget for protection of mineral resources.

6. The State shall protect the legal rights and interests of organizations and individuals in mineral activities according to the provisions of the law; encourage organizations and individuals to be engaged in insurance business for exploration, mining, mineral processing activities.”

5. Article 8 shall be amended and supplemented as follows:

"Article 8. Acts to be prohibited

The State shall prohibit the following acts:

1. Illegal basic geological survey of mineral resources; prospecting, exploration, exploitation, processing, storage, transportation, buying and selling of minerals;

2. Violation of minerals master plans, areas of prohibition or temporary prohibition of mineral activities;

3. Failure to implement correctly the obligations in mineral activities stipulated in Articles 23, 27, 33, 46 and 52 of this Law;

4. Disclosure of information on mineral resources under the state confidentiality;

5. Abuse of position and power to violate the provisions of the law on minerals;

6. Other acts to be prohibited according to the provisions of the law on minerals."

6. Article 9 shall be amended and supplemented as follows:

"Article 9. Responsibility for the protection of mineral resources

1. The Ministry of Natural Resources and Environment shall determine the areas containing mineral resources already investigated and assessed notify the People's Committees of provinces and cities directly under the central authority for management and protection.

2. The People's Councils and People's Committees of all levels within their duties and powers shall have the responsibility to take measures for protection of mineral resources in their localities, including areas not yet notified by the Ministry of Natural Resources and Environment but discovered to have minerals.

3. Organizations, individuals have the right and obligation to protect mineral resources and keep the state confidentiality about mineral resources.

4. Organizations, permitted to carry out mineral activities shall have the responsibility to protect the mineral resources within the area permitted for their activities

5. Organizations, individuals preparing plans for construction of concentrated residential areas, permanent structures in an area containing mineral resources already investigated and assessed or explored with mineral reserves approved, when submitting the plans for approval must attach the statements in writing of the competent state management agency stipulated in Item 1 of Article 56 of this Law.

The Government shall stipulate the preparation and approval of plans for construction of national defense and security structures in areas containing mineral resources already investigated and assessed ”

7. Article 41 shall be amended and supplemented as follows:

“Article 41. *Exploitation and processing of minerals to be used as common construction materials*

1. Exploitation and processing of minerals to be used as common construction materials shall be in compliance with the provisions on mining of this Law.

2. Exploitation and processing of minerals to be used as common construction materials, except for river bed sand and gravel with exploitation capacity not exceeding 100,000 m³/year and the exploitation period including the extension period not exceeding 5 years shall not require to conduct mineral exploration.

3. The following cases of exploitation and processing of minerals to be used as common construction materials shall not require application for mining license:

a) Exploitation of minerals to be used as common construction materials within the land area of an investment project already approved or permitted for investment by the competent State authority, where the product of exploitation is used only for that project.

Before starting the mineral exploitation, the organization having the mining right must register the mining area, capacity, quantity, method, equipment and plan at the People's Committee of the province or city directly under the central authority. The management and use of the minerals exploited shall be in accordance with the provisions of the law;

b) Exploitation of minerals to be used as common construction materials within the residential land of a family or individual having the land use right according to the provision of the law on land where the product of exploitation serves only the construction of that family or individual.

4. The Government shall promulgate the list of minerals to be used as common construction materials.”

8. Article 43a shall be added as follows:

“Article 43a. *Exploitation of minerals in areas having investment projects for construction*

1. Exploitation of minerals in an area having investment projects for construction, except for structures stipulated in item 2 of this article shall be implemented according to the following provisions:

a) For areas already investigated and assessed in terms of mineral resources or not yet investigated or assessed but discovered to contain minerals, the competent state authority as stipulated in Item 1 of Article 56 of this Law shall decide on exploration the serve as the basis for issuing mining license before the project is approved or the investment license is issued;

b) For areas not yet investigated or assessed in terms of mineral resources which during the construction is discovered to contain minerals, the competent state authority as stipulated in Item 1 of Article 56 of this Law shall decide whether to mine or not; decide the mining schedule in the case of mining to ensure the meeting of the schedule of the construction. In this case mineral exploration is not compulsorily required

2. For areas having investment projects of national importance under the jurisdiction to decide by the National Assembly or important projects with investment decided by the Government or Prime Minister, having been investigated and assessed in terms of mineral resources or not yet investigated or assessed but having been discovered to contain minerals, the Ministry of Natural Resources and Environment shall take the lead and coordinate with related Ministries and sectors and People's Committees of provinces and cities directly under the central authority where the project is located to decide on the exploitation and issue the mining license according to the jurisdiction stipulated in Item 1, Article 56 of this Law to ensure meeting the schedule of the construction.

3. In case of finding out that the exploitation of minerals stipulated in Items 1 and 2 of this article is not efficient or no organizations or individuals apply for mining license, the competent state authority as stipulated in Item 1 of Article 56 of this Law shall decide not to mine and shall answer in writing to the investment deciding agency, the investment license issuing agency or the investor.

4. Exploitation of minerals stipulated in Items 1 and 2 of this article, where the organizations or individuals permitted to mine the minerals are not the investor of the project to whom the land has been allocated or leased out by the State, the use of land for mineral exploitation shall be agreed by the two parties according to the provisions of the Law on Land.”

9. Article 49 shall be amended and supplemented as follows:

“Article 49. Artisanal mining

1. Artisanal mining shall be conducted for remaining minerals in mines already decided to be closed for liquidation or waste dumps or tailing dumps of mines already decided to be closed.

2. Legitimate artisanal mining licenses issued before the effective date of this Law shall be used until their date of expiry. ”

10. Article 55 shall be amended and supplemented as follows:

“Article 55. Responsibility for state management of minerals

1. The Government shall carry out uniform state management of minerals.
2. The Ministry of Natural Resources and Environment shall be responsible before the Government for the implementation of the State Management of minerals throughout the country.
3. The Ministry of Industry shall be responsible for the State management of mining, mineral processing industry, except for minerals to be used as construction materials and minerals to be used as raw materials for cement production.
4. The Ministry of Construction shall implement the State management of exploitation and processing of minerals to be used as construction materials and raw materials for cement production.
5. The People's Committees of all levels shall implement the State management of minerals within their localities according to their jurisdiction.
6. Ministries and Ministerial level bodies, within their duties and powers, shall have the responsibility to coordinate with the Ministry of Natural Resources and Environment, Ministry of Industry, Ministry of Construction and the People's Committees of provinces and cities directly under the central authority in State management of minerals.
7. The Mineral Reserve Assessment Council shall have the responsibility to assist the Government in appraisal and examination of mineral reserves in mineral exploration reports for approval, except minerals to be used as common construction materials and peat.
8. The Government shall stipulate concretely the competence and responsibilities in state management of minerals of the Ministry of Natural Resources and Environment, the Ministry of Industry, the Ministry of Construction and the People's Committees of different levels; the organization and activities of the Mineral Reserve Assessment Council.”

11. Article 56 shall be amended and supplemented as follows:

“Article 56. Competence, procedures for issuing, extending, withdrawing mineral licenses

1. The competence for issuing, extending and withdrawing mineral licenses, permitting transfer of mineral rights is stipulated as follows:
 - a) The Ministry of Natural Resources and Environment shall issue prospecting permits, exploration license, mining license and mineral processing licenses, except the cases stipulated in Point b of this Item;

b) The People's Committees of provinces and cities directly under the central authority shall issue m artisanal mining licenses as stipulated in Articles 49 and 50 of this Law; prospecting permits, exploration licenses, mining licenses, mineral processing licenses for minerals to be used as common construction materials and peat; mining licenses, mineral processing licenses for areas already investigated and assessed or where the minerals have been explored and the mineral reserves have been approved, which are not included in the master plan for mining and mineral processing of the whole country approved by the competent authority, or not belong to the national mineral reserve stock;

c) The State management agency which has the competence to issue a kind mineral license shall have the competence to extend, withdraw, allow the surrender of the same kind of mineral license and allow the transfer of the same mineral right according to the provisions of the law.

2. The Government shall stipulate the conditions and procedures of issuing, extending, withdrawing and permitting the surrender of mineral licenses, permitting the transfer and bequest of mineral rights, and registering mineral activities.”

Article 2

1. Article 48 of the Mineral Law shall be repealed.

2. The expression “Items 1 and 2 of Article 5” in Item 1 of Article 21, Item 1 of Article 25 and Item 2 of Article 31 shall be replaced by the expression “Item 3 of Article 5”.

Article 3

1. This Law shall be in force from 01 October 2005.

2. The Government shall stipulate in detail the guideline for implementation of this Law.

This Law has been passed by the 7th Session of 11th Legislature of the National Assembly of the Socialist Republic of Vietnam.

CHAIRMAN
OF THE NATIONAL ASSEMBLY
Signed
Nguyen Van An