Legal/Fiscal Framework to Attract Investments: Where does Pakistan stand?

MINERAL SECTOR DEVELOPMENT WORKSHOP
...Improving The Investment Climate And Sustainability Of Mining In Pakistan

Islamabad, Pakistan
December 15-16, 2003

Peter van der Veen
Mining Policy Division
The World Bank Group
National Mining Policy

- Clarity of Policy
  - Sharing of resources generated between state and provinces
  - Non clarity between the provincial and local government

- Mitigation of conflicts of Interest
  - No more state operations in Mining

- Federal Institutions
  - MIFB
  - GSP
  - GDCP

- Provincial institutions
  - MIFA
  - Department of Mineral Resources Development
National Mining Policy

- Department of Mineral Resources Development
  - Licensing Division
    - Licensing Department
    - Mining Department
  - Exploration Division

- Environmental Impact Authority
  - Federal Environmental Protection Agency
    - In charge of monitoring the compliance
  - Input from Provincial authorities
Business Opportunities
Unlicensed Areas

- Pakistan
  - Lack of clearly identifiable, available prospects using reliable, up to date maps and register

- Successful Mining Countries
  - Publicly available computerized and continuously updated maps and registers
Business Opportunities
Secondary Market

- **Pakistan**
  - Licenses are
    - Not reliably available using up to date maps and registers
    - Conditioned transferability requiring approval from authorities

- **Successful Mining Countries**
  - Concessions are:
    - shown on maps and registries
    - Freely transferable to eligible holders (No prior approval required)
Business Opportunities
Government Holdings

- Pakistan
  - PMDC
  - Punjmin
  - FATADC
  - AKMIDC
  - BDA
  - Pakistan Steel

- Successful Mining Countries
  - Privatized
Business Opportunities
Recommendations

- Unlicensed Areas:
  - Establish a modern mining cadastre (location recording system based on standardized shape and boundary ID criteria)
  - Open public access to license records

- Secondary Market
  - Ease freedom of transfer subject to verification and registration process

- Government Holdings
  - Discontinue government involvement as an operator/owner
## Licensing Issues

<table>
<thead>
<tr>
<th>Pakistan</th>
<th>Licensor</th>
<th>Eligibility</th>
<th>Licensing criteria</th>
<th>Time</th>
<th>Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provinces Licensing Divisions</td>
<td>Tech./Financ. Requirements</td>
<td>1st come, 1st served for Punjab. Not in Balochistan &amp; Sindh</td>
<td>from 120 to 180 days</td>
<td>Administrative &amp; in Sindh judicial</td>
</tr>
<tr>
<td>Successful Mining Countries</td>
<td>Independent Authority</td>
<td>No tech./Fin. Rqmts</td>
<td>First come, First served</td>
<td>Timeframes for action</td>
<td>Administrative &amp; Judicial</td>
</tr>
</tbody>
</table>

The World Bank Group
Mining Department
Licensing Issues

- Pakistan
  - Lack of standardization in procedures, identification and terms
  - Broad, subjective & non-transparent criteria
  - Lengthy, uncertain & unrealistic requirements
  - Administrative (& judicial in Sindh) appeals

- Successful Mining Countries
  - Clear, well defined, standardized
  - Objective criteria
  - Rapid certain process
  - Administrative and Judicial appeals
Licensing Issues Recommendations

- Discharge licensing office from mining activities
- Specify, Objectify and simplify requirements
- Introduce unequivocal First come, first served principle for all provinces
- Standardize, Streamline and Speed up processes
- Provide for administrative appeal and review by court or arbitrator
Attractiveness of the Mining Sector

- What rights are granted?
- What must be done to keep rights?
- What happens when things go wrong?
- How are existing rights affected if things change?
## Rights Granting System

<table>
<thead>
<tr>
<th>Pakistan</th>
<th>Property Rights</th>
<th>Pledge or Mortgage</th>
<th>Minerals</th>
<th>Transfer from expl. to Mining</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not defined</td>
<td>Not for reconnaissance licenses; Subject to consent for others</td>
<td>Specific</td>
<td>Conditioned to best interest of the province</td>
</tr>
<tr>
<td><strong>Successful Mining Countries</strong></td>
<td>Real or Personal</td>
<td>Freedom</td>
<td>All</td>
<td>Automatic</td>
</tr>
</tbody>
</table>
Security of Tenure

- Pakistan
  - No distinction between maintenance and operating obligations
  - Too broad ground for cancellation
  - Discharge all obligations

- Successful Mining Countries
  - Pay annual fees
  - Meet production requirements (Peru) or discharge work requirements (Mex.)
  - Distinction between maintenance and operating obligations
Rights and Their Maintenance
Recommendations

- Clarify legal rights and make them real property
- Allow mortgage, transfer and pledge, subject to objective requirements and registration
- Eliminate overlapping rights for different minerals
- Allow longer terms and renewal periods for reconnaissance and exploration licenses. Review the terms of MDRL
- Guarantee transfer of rights subject to feasibility study. No subjective provisions
Rights and Their Maintenance Recommendations

- Distinguish obligations:
  - Maintenance of license
    - Financial obligations (fees, investment)
    - Penalty: cancellation
  - Operating obligations
    - Compliance (e.g. health, safety, environment)
    - Penalty: suspension and/or fine
- Cancellation should be limited to compliance with financial title maintenance obligations
Changing the Rules

- **Pakistan**
  - Existing licenses
    - ?
  - Stability of terms
    - Enabled through individually negotiated agreements (time & resources consuming)

- **Successful Mining Countries**
  - Existing licenses
  - Reconfirmation
  - Boundaries conformed
  - New obligations apply prospectively

- **Stability of terms**
  - Guaranteed by standard contract or law
Changing the Rules Recommendations

- Existing licenses
  - Implement reconfirmation process prior to accepting new applications
  - Require shape and boundaries to conform to new cadastral requirements
  - Apply new obligations prospectively
Changing the Rules Recommendations

- Stability of terms
  - Provide a non-negotiable standard stability agreement
  - Respect commitments
  - Provide guarantees in the law
Key Features of Fiscal Framework of the NMP

- 30% or 35% corporate income tax
- 5% import duties
- Export zero-rated for GST
- Royalty rates
  - Precious stones – 10%
  - Precious metal – 3%
  - Base metal – 2%
  - Others – 1%
Hypothetical Base Metal Mine Indicators in Various Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>IRR</th>
<th>Government share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chile</td>
<td>18.36%</td>
<td>16.67%</td>
</tr>
<tr>
<td>Lao PDR (Scenario 1)</td>
<td>17.23%</td>
<td>35.28%</td>
</tr>
<tr>
<td>Lao PDR (scenario 2)</td>
<td>17.08%</td>
<td>31.92%</td>
</tr>
<tr>
<td>Papua New Guinea (PNG)</td>
<td>16.87%</td>
<td>38.55%</td>
</tr>
<tr>
<td>Mongolia</td>
<td>16.83%</td>
<td>34.52%</td>
</tr>
<tr>
<td>Canada (Ontario)</td>
<td>16.37%</td>
<td>41.68%</td>
</tr>
<tr>
<td>Pakistan (30% tax rate)</td>
<td>15.54%</td>
<td>43.31%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15.00%</td>
<td>39.45%</td>
</tr>
<tr>
<td>Pakistan (35% tax rate)</td>
<td>14.89%</td>
<td>43.31%</td>
</tr>
</tbody>
</table>
Reasons for Lack of Competitiveness

- The combination of
  - Income Tax rate
  - Royalty rates
  - Customs duty
- is at the high end of the range
Other Possible Constraints to Investment

- National Mineral Policy
  - Minimum corporate tax
    - 0.5% of turnover
    - Not internationally competitive
  - Additional Profit Tax (APT)
    - “Excess Profits” tax?
    - Not internationally competitive
  - “Enhanced royalty”
    - Royalty on “excess profits”? 
    - Not internationally competitive
Other Possible Constraints to Investment

- Sundry Issues
  - Central excise duty (1%)  
    - If not enforced, then repeal.
  - Federal/Provincial Relations
    - Potential for conflicting and/or overlapping policies and laws.
    - Inter jurisdictional coordination is important
    - Formalize a process for on-going dialogue
Pakistan has contemporary and complete set of tax, royalty, and customs laws

Reaching consensus on National Mineral Policy is a significant achievement

However there is room for improvement through:
  - Repealing redundant and non competitive legislation
  - Clarifying policy and legislation
  - Moderating income tax, royalty, and/or custom duty rates