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WHITE PAPER

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Saudi Arabia's New Mining Law

In recent years, Saudi Arabia has witnessed substantial growth in the production of primary, midstream, and downstream mineral and metals products catering to both local and export markets. Currently, as a part of the Kingdom's Vision 2030 program, Saudi Arabia is working to increase the mining sector's contribution to the Saudi economy with the objective of making the mining sector the third pillar of Saudi industry, alongside the oil and gas and petrochemical sectors.

To assist in achieving this goal, Saudi Arabia announced on June 9, 2020, the issuance of a new Mining Law, which offers certain changes and incentives not found in the previous Mining Law. In this *White Paper*, we will examine some of the more substantial amendments introduced by the New Law.

In early June 2020, Saudi Arabia issued a new Mining Law aimed at promoting mining in Saudi Arabia. The new Mining Law establishes a new fund to provide sustainable finance for the development of the mining sector as well as to support geological survey and exploration programs. The initial value and scope of the fund will be clarified when the law's implementing regulations are issued. However, we expect that the fund will provide financial support in the form of medium- and long-term soft loans to businesses operating in the mining sector. Other amendments introduced by the new Mining Law include: (i) an increase in the types of land on which mining activities may be undertaken; (ii) an effective extension of the duration of exploration licenses; (iii) the ability to mortgage mining licenses; and (iv) the creation of a mineral zones register. The new Mining Law is the first of many steps that can be expected to implement Saudi Vision 2030's goals for the Saudi mining industry.

In recent years, Saudi Arabia has witnessed substantial growth in the production of primary, midstream, and downstream mineral and metals products catering to both local and export markets. Currently, as a part of the Kingdom's Vision 2030 program, Saudi Arabia is working to increase the mining sector's contribution to the Saudi economy with the objective of making the mining sector the third pillar of Saudi industry, alongside the oil and gas and petrochemical sectors.

To assist in achieving this goal, Saudi Arabia announced on June 9, 2020, the issuance of a new Mining Law¹ ("New Law"), which offers certain changes and incentives not found in the previous Mining Law² ("Old Law"). In this *White Paper*, we will examine some of the more substantial amendments introduced by the New Law.

PRELIMINARY COMMENTS

As of September 10, 2020, the New Mining Law has not yet been published in the Saudi Arabian Official Gazette and will not come into force until 180 days after the date of publication. The New Law provides that the Ministry of Industry and Mineral Resources ("Ministry") will have the authority to issue the regulations, forms, procedures, and instructions necessary to implement the New Law.

MINING FUND

The New Law provides for the creation of a new mining fund ("Fund") to provide sustainable finance for the development of the mining sector as well as to support geological survey and exploration programs. The Fund is to be financed by fees for licenses and other services provided by the Ministry, fines imposed under the New Law, surface rents, financial returns from competitive bids, and gifts, donations, and endowments.

Until the publication of the New Law's implementing regulations and any additional regulations governing the Fund, the nature and mechanics of the Fund remain undefined. We can speculate that the Fund will serve the Saudi mining sector much as the Saudi Industrial Development Fund serves Saudi industry: by providing financial support in the form of medium- and long-term soft loans to businesses operating in the targeted sectors.

EXCLUDED LANDS

The Old Law

The Old Law provided that mining licenses could not be issued in respect of:

- Lands occupied by Holy Places (e.g., Makkah and Medina);
- Lands officially designated as historical or archaeological sites;
- Lands specified by a Council of Ministers resolution;
- Lands on which were located cities, streets, airports, railways, pipelines, public roads, or other infrastructure; and/or
- Lands designated for water projects, public facilities, military installations, or agricultural projects.

The New Law

The New Law largely tracks the Old Law's prohibition of mining licenses for:

- Lands occupied by Holy Places or military establishments;
- Lands specified by a Council of Ministers resolution; and
- Lands reserved for hydrocarbon³ operations or as hydrocarbon exploration areas.

However, reconnaissance⁴ licenses can now be issued in respect of all lands other than those listed above, and exploration⁵ and exploitation⁶ licenses can now be issued, with the necessary approvals and permits from the relevant government agencies,⁷ in respect of:

- Lands occupied by public utilities;⁸
- Lands specified as tourist, historical, or archaeological sites;
- Land specified as wildlife, rangeland, or forest reserves; and
- National parks and geological parks.

RECONNAISSANCE LICENSE

The Old Law

Under the Old Law, a reconnaissance license:

- Had a term of two years, which could be extended for a single additional two-year period;
- Did not grant the licensee any right to undertake any type of excavation, to construct any permanent installation, or to produce minerals for use or sale, nor did it grant the licensee any preferential right to an exploration or an exploitation license for the licensed area;
- Did not grant the licensee an exclusive right to conduct reconnaissance activities in the licensed area during the term of the license; and
- Did not impose a limit on the maximum size of the licensed area.

The New Law

The provisions of the New Law governing reconnaissance licenses are substantially the same as the provisions of the Old Law. However, it is worth noting that the New Law provides expressly that under a reconnaissance license, access to private lands must be negotiated with the landowner.

EXPLORATION LICENSE

The Old Law

Under the Old Law, an exploration license had a term of five years, with the option to renew the license's term for a single additional five-year period. Moreover, the size of the licensed area was limited to 100 km².

The New Law

The New Law provides that exploration licenses for Class A⁹ and Class B¹⁰ minerals shall have a term of five years, which may be renewed for additional five-year periods provided that the exploration license's total duration does not exceed 15 years. As with the Old Law, the New Law provides that the size of the licensed area for an exploration license for Class A and Class B minerals shall not exceed 100 km². However, the New Law limits the term of an exploration license for Class C¹¹ minerals to one year, which term cannot be renewed or extended, and the size of the licensed area for an exploration license for Class C minerals is limited to not more than five km².¹²

MINING LICENSE

The Old Law

The Old Law provided that a mining license had a term of 30 years, which term could be renewed or extended for an additional 30 years. The maximum licensed area was limited to 50 km².

The New Law

The New Law also limits the duration of a mining license (inclusive of renewals and/or extensions) to 60 years total and limits the licensed area to not more than 50 km². However, the New Law limits mining licenses to Class A and Class B minerals only. If the licensee wishes to exploit Class C minerals within the licensed area, he must apply to the Ministry and pay the prescribed additional financial fee.¹³

MORTGAGES

The Old Law

The Old Law provided expressly that a licensee could not mortgage the rights granted by the license or transfer to a third party the obligations imposed by the license without the prior written approval of the Ministry.

The New Law

The New Law provides¹⁴ that (subject to Islamic law as enforced in Saudi Arabia and other applicable laws) a licensee may mortgage the rights granted by an exploration license or an exploitation license, but not those granted by a reconnaissance license. The mortgage will be effective only after the licensee (i.e., the mortgagor) has registered the mortgage in

the Ministry's license register. The mortgagee shall thereafter have the right to implement any mortgaged right under the license and to transfer any such rights, provided that:

- The mortgagee and/or any person to whom the mortgagee wishes to transfer any mortgaged right must have the technical competence and financial ability to exercise the mortgaged right;
- No mortgaged right may be transferred, directly or indirectly, during the first year of the license; and
- The transfer of any mortgaged right shall be effective as from the date of a decision from the Ministry approving the transfer.

REGISTERS

The Old Law

The Old Law obliged the Ministry to maintain:

- An applications register, in which all license applications would be recorded; and
- A license register, in which the details of all licenses granted under the Old Law would be recorded.

The registers were open to inspection by investors and other concerned parties. However:

- Information and data provided by an unsuccessful applicant would not be available until after 180 days from the date of the application's rejection; and
- A licensee could request that all geological reports required from the licensee under the Old Law remain confidential until the expiry of 180 days from the date of the license's expiration or termination.

The New Law

Under the New Law, the Ministry is required to maintain:

- An applications register, wherein all license applications submitted to the Ministry shall be recorded;
- A license register, wherein all issued licenses shall be recorded, as well as any renewal, amendment, transfer, extension, mortgage, termination, expiry, or other circumstance relevant to the license; and

- A mineral zones register, wherein the details of the mineral zones shall be recorded, including: mineral formations and mineral reserve areas.

The Ministry, in coordination with the Saudi Geological Survey, shall provide public access to all such registers.

CONCLUSION

Vision 2030 envisages structural reforms driven by the private sector to intensify exploration, the development of an exhaustive database of the Kingdom's natural resources, improved licensing for extraction, capital injections into infrastructure-related projects, and the creation of numerous funding mechanisms to assist in the development of the sector.¹⁵ Saudi Arabia's new Mining Law is the first of many steps that can be expected to implement Vision 2030's goals for the Saudi mining industry. The issuing of the implementing regulations of the New Law will be the next step.

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ENDNOTES

- 1 The Saudi Arabian Mining Law, as enacted by Royal Decree No. M/140 dated 19/10/1441 H / June 11, 2020.
- 2 The Saudi Arabian Mining Law (repealed), as enacted by Royal Decree No. M/47 dated 20/08/1425 H.
- 3 Article 1 of the New Law defines “hydrocarbons” as hydrogen and carbon compounds in their liquid or gaseous state, whether conventional or nonconventional, such as: crude oil, trapped oil, shale oil, condensate, natural gas, shale gas, methane hydrates, natural tar, and bitumen, which are extracted from underground or the surface.
- 4 Article 1 of the New Law defines “reconnaissance” as preliminary geological prospecting to identify the geological environment of surface evidence of the presence of minerals and ores in general. Generally, Article 39 of the New Law provides that a reconnaissance license gives the licensee the nonexclusive right (within the area specified by the license) to: examine deposits covered by the license and collect samples; examine the area covered by the license; use geophysical, geochemical, and other scientific methods in the context of such examinations; conduct a preliminary examination of the lands that might contain minerals or ores; and view maps and other nonconfidential information at the Ministry of Industry and Mineral Resources.
- 5 Article 1 of the New Law defines “exploration” as a detailed activity leading to the discovery of useful natural deposits, using geological, geophysical, or geochemical methods, excavation, or any other appropriate method in any location for the purpose of determining the presence, extent, quantity, quality, and mining viability of deposits. Generally, Article 41 of the New Law provides that an exploration license confers upon the licensee the exclusive right (within the area specified by the license) to: search for all licensed minerals; take samples to determine the presence of the licensed minerals, provided that the licensee does not sell or otherwise commercially exploit such samples; determine the feasibility of the deposits and the appropriate methods of processing and manufacturing; establish camps and facilities for storing samples, machinery, and equipment necessary for the purpose of exploration; and use sand, gravel, and similar materials as required to achieve the objectives of the license.
- 6 Article 1 of the New Law defines “exploitation” as any means or method for the extraction of minerals and ores by mining or quarrying, including any direct or indirect activity required to achieve such purpose. Article 14 of the New Law provides that there are four types of exploitation licenses: a mining license, a small mine license, a construction materials quarry license, and a general purpose license.
- 7 See Articles 7(2) of the New Law.
- 8 Article 1 of the New Law defines “Public Utilities” as lands: (i) on which road networks, streets, public railways, airports, ports, oil and gas pipelines, or power projects are based or (ii) designated for approved water projects.
- 9 Article 1 of the New Law defines “Class A Minerals” to include metallic minerals, precious and semiprecious stones, and ores that require advanced operations and concentrations as to be classified in the New Law’s implementing regulations.
- 10 Article 1 of the New Law defines “Class B Minerals” to include non-metallic minerals, industrial minerals, and raw materials as to be classified in the New LAW’s implementing regulations.
- 11 Article 1 of the New LAW defines “Class C Minerals” to include materials used for construction purposes as to be classified in the New LAW’s implementing regulations.
- 12 See Article 40(2) of the New LAW.
- 13 See Article 42 of the New LAW.
- 14 See Article 22 of the New LAW.
- 15 See Albara’a Alwazir, “The Saudi Arabian Mining Sector: Ongoing Investments Propel Long-Term Growth,” US–Saudi Arabian Business Council, 2019.

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