



# Columbia Center on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

## **Competitive Bidding in Mining**

### **Country Index**

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## **About the Columbia Center on Sustainable Investment**

The Columbia Center on Sustainable Investment is a joint center of Columbia Law School and the Earth Institute at Columbia University and a leading applied research center and forum for the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions to maximize the impact of international investment for sustainable development. CCSI's premise is that responsible investment leads to benefits for both investors and the residents of host countries. Through research, advisory projects, multi-stakeholder dialogue and educational programs, CCSI focuses on constructing and implementing a holistic investment framework that promotes sustainable development and the mutual trust needed for long-term investments that can be practically adopted by governments, companies and civil society.

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# INTRODUCTION

Where there is sufficient interest in a particular asset to attract bids from multiple companies, competitive bidding processes may help to ensure that countries secure terms that are favorable to the national interest in the award of mineral rights. The objectives of a license allocation process from a State's perspective is to select the company with the financial and technical capacity to develop a resource, on terms that benefit the host State. Competitive bidding may help to realize some of these objectives by **reducing informational asymmetries** that may exist, such as where a producing country has less information on the value of a resource than potential industry partners; requiring companies to bid against each other may provide the government with more information on the potential value of the resource. Competitive bidding may also help to ensure that a **resource is properly developed** by deterring license idling due to the cost of participation fees that can be levied. In addition, in restricted bidding processes, where companies are assessed against pre-qualification criteria, companies that do not have **sufficient technical or financial capacity** to undertake the work can be disqualified. Lastly, a competitive bidding process that is conducted in an open and transparent manner, with clear pre-qualification and objective evaluation criteria, has the **potential to reduce corruption** in the license award process.

Given the increasing interest of mining countries in competitive bidding, CCSI undertook a comprehensive review of the legal frameworks governing the grant of mineral rights in twenty-nine (29) mineral-rich countries. Twenty (20) of the countries surveyed included competitive bidding processes for the award of mineral concessions to varying degrees; two (2) countries surveyed are, at the time of writing, are considering using competitive bidding processes for the award of mining concessions. In seven (7) of the countries surveyed, there were no competitive bidding processes in place.

Among the countries where the mining laws include competitive bidding provisions, the scope, content and availability of specific details relating to the process vary greatly. Such divergence is likely related to the political and economic characteristics of each country; certain aspects of competitive bidding regimes may correspond to context specific realities including a country's geographical features, and level of development, among other variables.

The index that follows does not highlight 'best practices' from the laws surveyed; nor does it hypothesize contextual reasons for legislative strategy, or explore outcomes of bidding processes. Rather, this index serves to elucidate the various legal provisions and public policies in place, distilled from often-intricate legislation, in order to provide the basis for further discussion and comparative analysis.

# KEY POINTS OF RESEARCH

For ease of comparison and analysis, the discussion of the bidding regimes for each country profiled will be divided into the following sections: (1) Relevant Laws; (2) Conditions for Competitive Bidding; (3) Two-Tier Bidding – Pre-Qualification Criteria; (4) Bidding Process; (5) Biddable Factors / Evaluation Criteria; (6) Bidding Fee - Revenue/Buy-In; (7) Eligibility; and (8) Other Sources (when applicable). Each of the foregoing sections is briefly described below:

## **Relevant Laws**

The ‘Relevant Laws’ section cites the sources of law reviewed for each country. This includes mining laws and regulations.

The availability of these sources and the level of specificity of the laws vary among the countries reviewed. At times, a country profile may be incomplete because the research team were unable to access relevant primary sources. In exceptional circumstances, and where primary sources were unavailable, the research includes information from secondary sources; in such cases, a description of the source is described in the ‘Relevant Laws’ or ‘Other Sources’ sections.

## **Conditions for Competitive Bidding**

This section describes the conditions that must be satisfied before a competitive bidding process can be used in each country. This includes stipulations about the areas that may be designated for competitive bidding, as well as the types of licenses or grants that may require a concession to be subject to tender. For example, the availability of geological information is a common factor that determines whether mining rights will be assigned via competitive bidding.

## **Two-Tier Bidding – Pre-Qualification Criteria**

This section describes the processes that take place once it has been determined that there will be competitive bidding with respect to a mineral concession. Two-tier bidding involves a pre-qualification round in order to make a preliminary determination of the capacity and qualification of bidders. In some countries, pre-qualification is designed as an initial round of submissions. In other cases, there are pre-qualification criteria that must be satisfied in order for a bidder to participate in competitive tender.

## **Bidding Process**

This section provides information on the procedure for a competitive bid as set out in the Relevant Law(s).

## **Biddable Factors/ Evaluation Criteria**

This section includes discussion of the information that is evaluated as part of the bid. Some countries set out a clear procedure for judgment, such as weighted averages, fair market value, or highest cash bid. In other cases, the legislation gives no indication of how proposals will be judged against each other to determine a winner of the bid process.

## **Bidding Fee – Revenue/Buy-In**

This section includes information on the fees bidders are required to pay before qualifying for or participating in the competitive bidding process. Across the countries reviewed bidding fees are mentioned, but rarely specified. There is wide variation among countries as to whether the payment of an application fee, bidding fee, deposit, or other monetary charge is required as part of the bidding process, with many laws containing no express references.

## **Eligibility**

This section includes information on the criteria with which interested entities must comply in order to qualify for the award of a license granting the rights to mine minerals.

**Other Sources (when applicable)**

As noted, the information contained in the index is primarily from the examination of primary legal sources. If secondary sources were relevant in the analysis, they are listed under this section.

# EXPLANATION OF CONTENTS

## **Bidding countries**

The first section of this index reviews the laws of countries that allow or require competitive bidding processes in the award of mineral rights. The countries reviewed include the Democratic Republic of Congo, Guinea, Sierra Leone, Nigeria, Mexico, Indonesia, Afghanistan, Vietnam, Canada, Australia, Zambia, Kazakhstan, India, and the United States of America.

## **Purported bidding countries lacking information**

This section includes profiles of countries with known legal and regulatory frameworks that provide for competitive bidding processes, but for which no reliable information could be accessed. The difficulty in access may be attributed to the fact that relevant laws and secondary sources are incomplete, not publicly or easily accessible, or known secondary sources have been found to be contradictory.

## **Potentially upcoming legislation**

This section of the index reviews countries where some secondary sources reference potential upcoming legislation or regulations that have either not yet been drafted or adopted.

## **Countries with no bidding**

This section lists countries for which references to competitive bidding processes could not be found, or where other procedures were explicitly specified for the allocation of mineral rights.

The final section of the document includes a table to aid cross-country comparison.

# BIDDING COUNTRIES

## 1. Democratic Republic of Congo

### Relevant Laws

1. Democratic Republic of Congo: 2002 Mining Code – Loi N°18/001 DU 09 Mars 2018 Modifiant et complétant la Loi N°007/2002 du 11 Juillet 2002 portant code minier (« 2002 Mining Code as amended by the 2018 Law) minier
2. Democratic Republic of Congo: 2003 Mining Regulations – Decree No. 038/2003 of 26 March 2003 (2003 Mining Regulations) – The Regulations are in the process to be revised. Their current requirements are for now included.

### Conditions for Competitive Bidding

The Democratic Republic of Congo uses a bidding system for mining and quarry rights relating to a deposit that has been studied, documented or possibly worked on by the state or its entities, and which is considered an asset with considerable known value (Article 33, 2002 Mining Code as amended by the 2018 Law). This implies that a bidding process is triggered for deposits for which the government has attained a certain level of geological information. When this condition has been satisfied, the Minister in charge of Mines and Quarries shall reserve rights for auction via the entry of a Ministerial Decree. Before doing so, the Minister shall consult with the provincial Minister of Mines and the concerned local communities through a consultation commission, whose terms should be fixed by regulations. This reservation of mining rights must be confirmed by the Prime Minister within 30 days following the entry of the Ministerial Decree (Article 33, 2002 Mining Code as amended by the 2018 Law).

### Two-Tier Bidding – Pre-Qualification Criteria

The 2002 Mining Code as amended leaves open the possibility of two-tier bidding. While the law does not expressly provide for the conduct of a mandatory two-tier bidding system that entails a pre-qualification round for the preliminary selection of qualified bidders, the Congolese 2003 Mining Regulations provides that terms and conditions for a pre-qualification procedure may be set out in the *ad hoc* tender specifications drawn up for the particular mineral or quarry rights subject of the tender process (Article 48, 2003 Mining Regulations).

### Bidding Process

In general, the bidding process may be conducted openly to all eligible bidders, through an invitation to bid published in the Official Gazette or in newspapers, or conducted on a limited basis, open only to mine or quarry operators identified by the relevant Minister and included in a short-list (Article 33, 2002 Mining Code as amended by the 2018 Law; Article 47, 2003 Mining Regulations). The bidding process over a particular set of reserved mineral or quarry rights is governed by tender specifications, drawn up on an *ad hoc* basis and approved by an inter-ministerial committee, which shall specify the following, among others: (1) the area of the reserved deposit, the nature and objects of the subject reserved rights, and the infrastructure and equipment subject to the tender process; (2) the nature and subject of the environmental rehabilitation obligations the bidder is expected to undertake; (3) the terms of access to on-site documentation and to the site proper for purposes of visits and the conduct of necessary studies; (4) the conditions of bidder eligibility and, as the case may be, the terms and conditions of a pre-qualification procedure; (5) the place and deadline for the submission of tenders; (6) the terms of admissibility and criteria for the examination of tenders; and (7) the terms and conditions for the opening of the tenders and the making of the eventual award to the successful bidder (Article 48, 2003 Mining Regulations).

Bids submitted in accordance with the terms and conditions of the invitation to tender are examined by an inter-ministerial committee in order to select the best bid on the basis of biddable factors (Article 33, 2002 Mining Code as amended by 2018 Mining Law). The call for tenders is made in accordance with the procedure laid out in the Congolese



legislation on public procurement and according to the international mining practice., within The conclusion of the bidding process needs to occur within 9 months of the entry of the Ministerial Decree reserving the deposits for mining rights subject to competitive bidding.

### **Biddable Factors/ Evaluation Criteria**

- a. Plan of work proposed and related financial costs
- b. Available financial and technical capacity of the bidder
- c. Previous experience of the bidder in carrying out the operations proposed
- d. Various other socio-economic advantages for the state, the province, and the surrounding community including the signature bonus offered (Article 33, 2002 Mining Code as amended by 2018 Law ).

### **Bidding Fee – Revenue/Buy-in**

The 2002 Mining Code as amended by the 2018 Law and 2003 Mining Regulations do not expressly provide for the payment of a fee as a requirement for the submission of tenders. However, *ad hoc* tender specifications may only be obtained upon the payment of a fee, the amount of which shall be determined by an inter-ministerial decree (Article 48, 2003 Mining Regulations). Furthermore, once a successful bidder is chosen as a result of the process, such bidder shall pay the required surface fees within 30 days from the date of the award, in addition to the required signature bonus or fee (Article 62, 2003 Mining Regulations).

### **Eligibility**

Articles 23 and 23 of the 2002 Mining Code as amended by the 2018 Law states that the following are eligible to obtain mining and quarry rights: (1) any individual of age who is a Congolese national, as well as any entity incorporated pursuant to Congolese law and which it has its registered administrative offices in the National Territory and whose corporate purpose is mining activities; (2) any individual of age of foreign nationality as well as any legal entity incorporated pursuant to foreign law; and (3) any entity carrying out a scientific activity. “In addition, legal entities wishing to invest in the mining sector are required to provide the following documents: 1) the tax certificate or equivalent, valid issued by the competent institution of the applicant's country of origin; 2) the certificate of good life and morals and the extract of the criminal record valid for the associates of the legal person, issued by the competent authorities of the country of origin; 3) the written commitment to declare in the Democratic Republic of Congo the profits and revenues realized.”

Foreign individuals and entities, and scientific entities are only eligible to obtain mineral and/or quarry prospecting rights. Natural or juridical persons who are insolvent or under receivership by virtue of a court order shall be ineligible to submit bids (Article 50, 2003 Mining Regulations).

### **Other Sources**

1. <https://iclg.com/practice-areas/mining-laws-and-regulations/congo-d-r#chaptercontent2>
2. 2002 Mining Code – Article 33 [http://mines-rdc.cd/fr/documents/codeminier\\_eng.pdf](http://mines-rdc.cd/fr/documents/codeminier_eng.pdf)

## 2. Guinea

### Relevant Laws

1. [République de Guinée – Code Minier 2011 Amendé— Mining Code 2011 \(as amended in 2013\)](#)

### Conditions for Competitive Bidding

The Guinean Mining Code 2011 (as amended in 2013) states that exploration permits should be granted through a competitive bidding process for areas that have already been prospected and for which there is sufficient geological information on the mineral deposit/reserves to generate the interest of several companies.<sup>1</sup> (Article 22, Mining Code 2011 (as amended in 2013)). Mining concessions are granted in accordance with a “competitive and transparent tender procedure” for a “discovered deposit” in the absence of an exploration permit. (Article 37, Mining Code 2011 (as amended in 2013)).

The law specifies the level of investment required for a project to qualify as a mining concession: US\$ 1 billion (bauxite, iron ore and radioactive substances) reduced to US\$ 500 million for projects covering other minerals. (Article 37, Mining Code 2011 (as amended in 2013)). Once an area meets the requisite level of investment to qualify as a mining concession, it becomes subject to being granted by competitive tender. (Article 22, Mining Code 2011 (as amended in 2013)).

For areas without geological information or for which available information does not identify a deposit, applicants are granted the exploration permit on a first-come, first-served basis and there is no competitive bidding. (Article 22, Mining Code 2011 (as amended in 2013)).

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Bidding Process

On the recommendation of the Minister in charge of Mines, a decree of the President will launch the formal call for tenders. (Article 37, Mining Code 2011 (as amended in 2013)). The tender process is carried out by the Technical Committee of Titles in partnership with the National Mining Commission. (Article 37, Mining Code 2011 (as amended in 2013)). The granting procedure “will be by competitive and transparent tender offers and transparent call for tenders in accordance with the rules to be set out in regulations, and approved by the National Mining Commission.”<sup>2</sup> (Article 22, Mining Code 2011 (as amended in 2013)). Invitation to tender will be published in at least 2 widely circulated newspapers at least 45 days before the deadline for the submission of bids. (Article 37, Mining Code 2011 (as amended in 2013)). The call for tender offers must be completed within a maximum period of 1 year from the effective date of the order of the minister reserving the deposit that is the subject of the call for tenders. (Article 22, Mining Code 2011 (as amended in 2013)).

The legislation includes a provision for a finder’s fee: If the concession is granted to someone other than the finder of the deposit, the concession holder must pay the latter fair compensation. Compensation is intended to cover the costs incurred for exploration work carried out pursuant to an exploration permit. The legislation details that the amount of fair compensation is determined by “a private commercial transaction.” (Article 38, Mining Code 2011 (as amended in 2013)). This may imply that the amount is set privately by the parties involved.

### Biddable Factors/ Evaluation Criteria

Detailed information regarding tendering procedures, including biddable factors/evaluation criteria is not available.

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<sup>1</sup> “Bidding for areas that have already been prospected, containing a known deposit, or deposit that has attracted interest of several companies.” (Article 22, Mining Code 2011 (as amended in 2013))

<sup>2</sup> We do not have access to these rules and regulations at the time of writing.

## **Bidding Fee – Revenue/Buy-In**

Information not available.

## **Eligibility**

An exploration permit for semi-industrial operations shall be granted exclusively to individuals of Guinean nationality, companies wholly owned by Guinean nationals, and to foreign nationals of countries which grant reciprocity (Article 22, Mining Code 2011 (as amended in 2013)). Reciprocity refers to allowing foreigners to participate if their country reciprocates by not denying Guinean citizens similar investment opportunities.<sup>3</sup> Further information is not available.

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<sup>3</sup> <http://www.gao.gov/assets/150/141939.pdf>

## 3. Sierra Leone

### Relevant Laws

1. [Sierra Leone Mines and Minerals Act, 2009](#) (2009 Act)

### Conditions for Competitive Bidding

The 2009 Act specifies that for geographic areas in which minerals have been discovered by a government survey, the Minister may by notice in the *Gazette* and in a local newspaper designate an “exploration area of mining area.” (Article 25 (1), 2009 Act). In Sierra Leone, discretion for competitive bidding lies in the designation of a qualifying area by the Minister. For areas with the requisite geological information designated as exploration or mining areas, bidding is mandatory. “The Minister shall not award any mineral rights to any person...except by way of public tender.” (Article 25 (2), 2009 Act). In addition to this specification, the legislation later references a first-come, first-served process in circumstances “where two or more applicants, not acting together, each make an application for the grant of any mineral right over the same area or overlapping area,” the first applicant to register is considered priority to other applicants (Article 27, 2009 Act).

### Two-Tier Bidding – Pre-Qualification Criteria

The 2009 Act does not appear to set out specific parameters regarding the structure of the tender process apart from when a tender process must be conducted (*i.e.*, after a minister designates an area with requisite geological information an exploration or mining area).

### Bidding Process

The form of bids is not specified in the legislation. There is no reference to specific criteria for evaluation of bids. (*See* Article 28, 2009 Act)

### Biddable Factors/ Evaluation Criteria

Information not available.

### Bidding Fee – Revenue/Buy-In

The 2009 Act specifies that an application for a mineral right or renewal of a mineral right shall be accompanied by a non-refundable application fee. (Article 28, 2009 Act).

### Eligibility

1. No mineral right may be granted to an individual who:
  - a. Is under 18 years old
  - b. Is not a citizen of Sierra Leone or has not been ordinarily resident in Sierra Leone for a period of ten years immediately preceding his application for a mineral right
  - c. Is an un-discharged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into an arrangement or scheme of composition with his creditors
  - d. Has been convicted of an offense involving fraud or dishonesty
2. A co-operative society which is not registered in accordance with the laws of Sierra Leone
3. A body corporate
  - a. Which is not registered or incorporated under the Companies Act
  - b. Which is in liquidation other than which forms a part of the scheme for the reconstruction or amalgamation of such a body corporate
  - c. In respect of which an order has been made by a court of competent jurisdiction for its winding up or dissolution

- d. Which has made a composition or arrangement with its creditors
- e. Which has among its shareholders any shareholders who holds at least 10% share of the company or a director, who would be disqualified in terms individual requirements (Article 26, 2009 Act)

### **Other Sources**

1. [Herbert Smith Freehills, Mining in Sierra Leone: an overview of the current legal framework](#)

## 4. Nigeria

### Relevant Laws

1. [Nigerian Minerals and Mining Act, 2007 \(2007 Mining Act\)](#)
2. [Nigerian Minerals and Mining Regulations, 2011 \(2011 Regulations\)](#)

### Conditions for Competitive Bidding

Nigeria uses discretionary bidding. The 2007 Mining Act provides that the Minister has the discretion to determine the geographic areas in which an exploration license or mining lease shall be granted on the basis of competitive bidding requirements (Article 9, 2007 Mining Act). “Pursuant to the power conferred under Section 9 of the [2007] Act, the minister may, by notice in the Gazette and in any widely read national newspaper, designate any vacant area in respect of which exploration license and mining lease shall be granted based on competitive bidding.” (Article 24(1)(a), 2011 Regulations). Areas in respect of which mineral titles may be granted by competitive bidding shall include:

1. Areas free of any valid existing mineral titles
2. Areas in which minerals classified by the act as “security” minerals have been found and those areas the minister may declare as security minerals from time to time<sup>4</sup>
3. Areas which the committee for any other reason deems fit to recommend to the minister (Article 4, 2011 Regulations)

### Two-Tier Bidding – Pre-Qualification Criteria

The 2011 Regulations specify that applicants will be pre-qualified “in accordance with the guidelines to be prescribed by the Minister.”<sup>5</sup> (Article 24(3), 2011 Regulations).

### Bidding Process

The procedure and guidelines for the grant of a license or lease in areas so designated shall be determined by the minister and be advertised when invitations are made for bidding. (Article 24(2)(b), 2011 Regulations). After the publication of a notification, interested applicants (who must be limited liability companies) obtain a bid application form at a fee determined by the Minister. (Article 24(2)(a), 2011 Regulations). Applicants will be prequalified according to the guidelines prescribed by the Minister. (Article 24(3), 2011 Regulations). “The Minister may set up a bid Committee to conduct the bidding and the Committee when constituted, shall be guided by the provisions of the Public Procurement Act, adopt and apply the guidelines and criteria stipulated by the Minister which shall be made known to participating companies and must be such that can reasonably guarantee the transparency and integrity of the process” (Article 24(6), 2011 Regulations).

“The Bid Committee shall comprise of experts from the Ministry, or such of its agencies and such other persons outside the Ministry with qualification and experience in the relevant fields.” (Article 24(6-7), 2011 Regulations). The final analysis and evaluation of the bids shall be done by the bid committee which shall recommend to the minister the bids which are most likely to promote the expeditious and profitable development of the mineral resources of the area with regard to biddable factors/evaluation criteria listed below. (Article 24(8), 2011 Regulations). The bid committee determines the modalities for the announcement of bid results. (Article 24(9), 2011 Regulations).

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<sup>4</sup> The Act defines the term “Security Minerals” to mean any radioactive mineral which contains by weight at least one twentieth of one percent (0.05%) of uranium, thorium, or any combination thereof including but not limited to monazite, sand and mineral ores containing thorium, caronite, pitch blend and other ores containing uranium. (p. 9, NO. 8: MINERAL RESOURCES LAW AND POLICY IN NIGERIA PROF. LADAN’S LAW AND POLICY REVIEW RESEARCH WORKING PAPERS BY Prof. Muhammed Tawfiq Ladan (PhD) Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, Kaduna State, Nigeria

<sup>5</sup> We do not have access to these guidelines.

## **Biddable Factors/ Evaluation Criteria**

1. The program of the exploration and mining operations which the applicant proposes to carry out and the commitments with regard to expenditure which the applicant is prepared to make.
2. The financial and technical resources of the applicant
3. The previous experience of the applicant in the conduct of reconnaissance and mining operations.
4. Other factors which the committee may consider (Article 9(2), 2007 Mining Act; Article 24(8)(a-d), 2011 Regulations)

## **Bidding Fee – Revenue/Buy-In**

The bid application form may only be obtained upon the payment of a fee to be determined by the minister. (Article 24(2)(a), 2011 Regulations). Furthermore, applicants shall pay a bid-processing fee to be determined by the minister at the time bidding is advertised. (Article 24(4), 2011 Regulations)

## **Eligibility**

The only reference to eligibility in the 2011 Regulations is to “Limited Liability Companies” (Article 24(2)(a), 2011 Regulations). Further information is not available.

## **Other Sources**

1. Minerals and Mining Regulations, 2010 (not referenced)

## 5. Liberia

### Relevant Laws

1. [Minerals and Mining Law, 2000 \(2000 Mining Law\)](#)
2. [2010 Amendment and Restatement of the Public Procurements and Concessions Act, 2005 \(2010 Amended PPCA\)](#)

### Conditions for Competitive Bidding

The 2010 Mineral Policy states that pursuant to the direction of the 2010 Amended PPCA, there will be “an open, transparent and competitive auction procedure for known mineral deposits” (Article 4, 2010 Mineral Policy). In Liberia, bidding is the standard unless the minister or ministry exercises discretion to opt out under certain specified circumstances. However, bidding procedures shall not be mandatory under the following circumstances: (1) for the grant of a concession in the form of a reconnaissance license, prospecting license, or an exploration license if the commission determines that there is insufficient information for a viable bidding process relating to the mineral in respect of the area over which the concession is to be granted; (2) for the issue of a mining license to the holder of an exploration license thus issued; and (3) for the grant of a class B or class C mining license where the commission, “upon the recommendation of the Minister responsible for mines and for stated reasons, so determines,” as well as for certain other reasons under law. (Section 95 (2-3), 2010 Amended PPCA).

Liberia makes a distinction between national and international competitive bidding. International competitive bidding must be used when one or more of the following conditions exist:

1. The project requires international expertise
2. The project requires technology not available in Liberia
3. The project requires capital outlay not ordinarily available in Liberia

In international competitive bidding, technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade and in particular shall conform to the provisions of the 2010 Amended PPCA. General and special conditions of contract, if specified, shall be of a kind internationally accepted in the relevant industry. (Section 97, 2010 Amended PPCA).

On the other hand, national competitive bidding may be used when conditions requiring international competitive bidding are not met and the inter-ministerial concessions committee has reasonably concluded that the project is so limited in scope that it is unlikely to be of interest to foreign investors. National competitive bidding must be used when it is concluded that the concession falls within an area of the economy that is by law restricted to Liberians, in which case only Liberian businesses may bid or participate in a bidding consortium (Section 96, 2010 Amended PPCA).

If the cabinet determines through consultation with the commission that sole source procurement is the only reasonable way of obtaining the resource controlled by the bidder and certain conditions apply, a concession may be granted on a sole source basis. These conditions include: (1) the concession requires specialized expertise that is available only to one specific bidder; (2) the concession involves an innovation the patent for which is held by one particular bidder; (3) the concession requires specialized research or experiment that only one person is prepared to undertake; or (4) the concession is in respect of strategic national interest or national defense or security and it is not in the national interest to have more than one bidder. (Section 101, 2010 Amended PPCA).

### Two-Tier Bidding – Pre-Qualification Criteria

Concession bidding shall entail a pre-qualification round unless it is determined by the relevant inter-ministerial concessions committee that it is highly likely only a small number of bidders will be interested. (Section 95(1), 2010 Amended PPCA).



Should pre-qualification be conducted, only bidders that have been pre-qualified shall be entitled to receive the invitation to bid and to submit bids. The concession entity may require prospective bidders to submit documentation verifying their qualification. All applicants who meet the minimum criteria for pre-qualification shall be invited to bid. (Section 102, 2010 Amended PPCA). Pre-qualification requirements shall be set forth either in specified documents or in the invitation to bid, request for quotation, request for proposal or related bidding documents. Only criteria stated in such documents shall be considered and will be applied equally to all bidders without discrimination. (Section 32, 2010 Amended PPCA).

Where pre-qualification proceedings are not conducted, post-qualification shall be used, in which the concession bid evaluation panel verifies the qualifications of the bidder selected for award against the criteria stated in the bid documents. (Section 102(5), 2010 Amended PPCA).

Pre-qualification criteria set by the procuring entity will normally include evidence of:

1. Professional and technical qualifications
2. Equipment availability where applicable
3. Past performance
4. After-sales service, where applicable
5. Spare-parts availability
6. Legal capacity
7. Financial resources and condition
8. Verification by internal revenue authority of payments of tax and social security contributions (Section 32(1), 2010 Amended PPCA)

## **Bidding Process**

A concession entity shall undertake public stakeholder consultation with respect to each proposed concession prior to the finalization of the bid documents to be included in the invitation to bid. (Section 90, 2010 Amended PPCA). In international competitive bidding, the concession entity shall publish a general notice of investment opportunity, a request for expressions of interest (unless pre-qualification is not required in the specific case) and the invitation to bid. Bidders shall be given at least 4 weeks to respond to the request for expressions of interest, and at least 6 weeks to respond to the invitation to bid. (Section 106, 2010 Amended PPCA). A pre-bid meeting may be organized to give prospective bidders the opportunity to clarify certain matters. All clarifications made during such pre-bid meeting shall be published. (Section 108, 2010 Amended PPCA). “In the case of two envelope bidding, the bid documents shall specify procedure for opening of the technical and financial envelopes.” (Section 110, 2010 Amended PPCA).

Evaluation of responses to pre-qualification requests or invitations to bid shall be undertaken by a concession bid evaluation panel that is appointed for each concession by the relevant inter-ministerial concessions committee. A concession bid evaluation panel shall establish its own rules of procedure, and shall act only through a majority vote of all its members. (Section 111, 2010 Amended PPCA). The concession bid evaluation panel shall seek to conclude evaluation and submit its report to the inter-ministerial concessions committee within the period set forth in bid documents. The period may be extended as necessary to enable a fair and comprehensive evaluation of the bids submitted, with notice to all bidders. (Section 115, 2010 Amended PPCA). The evaluation report shall include a recommendation that the bidder with the highest overall score (above any minimum level required to qualify) be invited for negotiations. (Section 115, 2010 Amended PPCA). A due diligence evaluation is then performed within fourteen (14) days after notice of approval of the evaluation report by the inter-ministerial concessions committee. Thereafter, the president shall appoint a negotiation team for the conduct of the negotiations with the highest ranked bidder. (Section 118(5), 2010 Amended PPCA).

The law prefers concession bids to be structured in such a way that the terms of the bids: (1) include a definitive agreement; and (2) require the successful bidder to enter into a definitive agreement following the identification of a successful bidder. The concession entity may give pre-qualified bidders the opportunity to comment on the proposed form of agreement before the bid documents are finalized and released to the bidders. (Section 75(4), 2010 Amended PPCA).

A concession bidder, by its bid, is deemed to have accepted the terms and conditions expressly set forth in the bid documents. A bidder shall be disqualified if, when invited to negotiations, it seeks changes in terms and conditions expressly set forth. In such a case, the government may seek to enter into an agreement with the next highest evaluated bidder or may cancel the bid or postpone the project altogether. (Section 75(5), 2010 Amended PPCA).

## **Biddable Factors/ Evaluation Criteria**

Minimum contents of evaluation criteria:

1. Pre-qualification evaluation criteria take into consideration the particular requirements of the proposed concession and the nature of the expertise required for the efficient and effective implementation of the concession
2. Evaluation criteria for invitation to bid:
  - a. Compliance of the bidder with any specific technical and financial requirements stated in the bid documents (including bid security)
  - b. Technical and financial capacity of the bidder to carry out all phases of the proposed project
  - c. Technical feasibility of the proposal
  - d. Effectiveness of the methods and resources to be deployed
  - e. Extent to which the proposed concession contributes to the realization of the National Development Plan
  - f. Technology transfer
  - g. Impact on the environment and compliance with environmental laws and regulations
  - h. Expected effect of the concession on national income, employment of Liberians, the communities affected by concessions (social impact considerations), industries and other sectors of the economy
  - i. Direct financial benefits flowing to the government from the award of the concession
  - j. Negative impacts on Government revenues of any financial concessions proposed to be granted.
  - k. Any margin of preference applicable in accordance with Section 99 of PPCA (Section 113, 2010 Amended PPCA)
    - i. The bidding documents shall require bidders to present the financial components of their bids in the currency specified in the bid documents. (Section 95, 2010 Amended PPCA)

### *Margin of Preference:*

The Liberian legislation refers to a “margin of preference” that the concession bid evaluation panel may grant to an otherwise technically and financially qualified domestic business or Liberian business. ( Section 99, 2010 Amended PPCA). The margin of preference would give that bidder an edge over others with similar specifications. A margin of preference for concessions may also be granted to the bidder who (1) commits in its bid to utilize the highest percentage of goods manufactured in Liberia and services delivered by persons resident in Liberia in excess of a threshold that may vary by industry, and (2) sets forth in its bid reasonable ways for assuring performance of its commitment. Any such regulation shall set forth a realistic program for policing such commitments, and shall provide appropriate penalties for non-compliance, including, in severe cases, an obligation to rebate to the government the amount of the price preference granted. Such preference must be approved by committee of the statutory members of each inter-ministerial concessions committee. (Section 99, 2010 Amended PPCA).

### *Prohibited Criteria in Evaluation:*

The criteria for the selection of responsive bidders shall not at any stage include any of the following (provided that criteria (b) and (c) stated below shall not be applied to limit the ability of the concession bid evaluation panel to apply in good faith criteria reasonably designed to require actions by concession holders to minimize adverse environmental impacts of proposed concessions, to mitigate the adverse social impact of concessions, and to improve the quality of life in the communities affected by their operations):

- a. Criteria that cannot be reasonably interpreted as a condition meant to elicit the attainment of any of the principles provided for under the 2010 Amended PPCA;

- b. Criteria that are non-commercial in character and which will not lead to the attainment of the objectives of the concession arrangement;
- c. Ambiguous criteria the interpretation of which can be subjective;
- d. A criterion or condition that leads to the grant of the concession to particular persons or group of persons;
- e. A criterion or condition designed to facilitate the selection of a known bidder in contravention of the competitive process; and
- f. A criterion or condition that will promote the corruption of the entire or part of the concession procurement process (Section 114, 2010 Amended PPCA).

### **Bidding Fee – Revenue/Buy-In**

The Liberian legislation refers to fees collected from prospective bidders in connection with a request of expressions of interest or invitation to bid as going towards the cost of due diligence “to the extent not borne by the bidders. (Section 116 (8), 2010 Amended PPCA). There is no further information available on fees related to bidding.

### **Eligibility**

The holder of a concession must be a corporation organized under the Business Corporation Act, Part I of Title 5 of the Liberian Codes Revised, Vol. II or under any successor Liberian law providing for the organization of for-profit corporations, provided that a concession with respect to mineral or agricultural natural resources may be held by a cooperative association of individuals if: (1) the association is organized under law or regulations providing that the association has continuity of life independent of changes in its membership; (2) at least 80% of the voting and economic interests in the association are legally and beneficially owned by citizens of Liberia; and (3) such form of ownership is otherwise permitted by applicable law and regulations. (Section 86, 2010 Amended PPCA).

### **Other Sources**

1. [Mineral Policy of Liberia March 2010 \(2010 Mineral Policy\)](#)

## 6. Mexico

### Relevant Laws

1. [Mexican Mining Law 2006 \(2006 Mining Law\)](#)

### Conditions for Competitive Bidding

Mexican mining concessions may be obtained either through a public bid or by application filed by the interested party. Public bids may apply only when the government considers it necessary to exploit certain mining reserve areas or as a result of the cancellation of mining allotments granted to the Mexican Geological Services, which had carried out prior exploration works.

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Bidding Process

The Ministry will make public the invitation to bid at least in Mexico's Official Newspaper. The rules for the bidding procedure require the bidder to submit as a minimum the following:

1. A description of the lands or zones in question, the studies conducted thereupon, as well as their location, geological and sampling maps
2. Evidence of the bidder's legal, technical, and financial capabilities
3. Adherence to the system for filing the economic proposal and payment of a "finder's fee" which may be in a closed envelope or otherwise as determined (Article 13, 2006 Mining Law)

Furthermore, "[t]he clauses of the contract, if that should be the case, should be granted in order to guarantee compliance with the economic payment and the premium for discovery that is offered." (Article 13, 2006 Mining Law)

When the land is located in an area inhabited or occupied by an indigenous people or community and said indigenous people or community participates in the tender, the indigenous people or community will have the right to match the best economic proposal that is presented by another bidder and, in the case they do, shall have preferential right with their bid.

### Biddable Factors/ Evaluation Criteria

1. Evidence of legal, technical and economic capacity
2. Economic proposal / finder's fee

Concessions will be granted to the person who or which evidences compliance with the requirements established in the rules and who or which presents the best economic bid, or that bid that presents the best economic conditions for the State. For this purpose, only the economic consideration and offered finder's fee shall be taken into account (Article 13 (II-III), 2006 Mining Law). It may be inferred that compliance with the evaluation criteria may function as sort of a pre-qualification round of evaluation while the ultimate best economic bid will be considered post-evidence of compliance to determine the winner of the tender.

### Bidding Fee – Revenue/Buy-In

Information not available.

### Eligibility

Mining concessions may only be granted to Mexican nationals and companies. Companies must be incorporated under Mexican law for corporate purposes involving the exploration and exploitation of minerals and have a legal address within the country (Article 11, 2006 Mining Law). Foreign owners of such companies must comply with the provision of the Foreign Investment Law, which only allows 100% foreign-owned Mexican firms to obtain concessions.

## **Other Sources**

1. [Guía de Procedimientos Mineros](#)

## 7. Indonesia

### Relevant Laws

1. [Law No. 4 of 2009 on Mineral and Coal Mining \(2009 Law\)](#)
2. [Regulation 11/2018 \(2018 Regulation\)](#)

### Conditions for Competitive Bidding

In consultation with Parliament and regional governments, the Indonesian government designates areas of land as mining business areas (WIUP) (Article 17, 2009 Law) for which mining business licenses (IUPs) may be issued by way of public tender, or as State reservation areas (WIUPK) (Article 27, 2009 Law) for which special mining business licenses (IUPKs) may be issued. The mining area (business or State reservation) is an area which potentially contains minerals and/or coal, which is not restricted by the Government and which constitutes part of the national spatial layout (Article 1(29), 2009 Law).

The issuance of licenses over Metal Minerals and Coal WIUP is subject to a bidding process, while licenses over Non-Metal and Rock WIUP are granted by application (Article 57, 2009 Law). A WIUPK is a State reservation area over which IUPKs may be granted. In granting an IUPK, a State-owned entity is given priority to obtain the rights to mine, and tender only occurs if more than one State-owned or regional Government-owned entity is interested. If none are interested, private business entities may take part in the tender process.

### Two-Tier Bidding – Pre-Qualification Criteria

Pre-qualification is performed based on the bidders providing documents showing they meet the applicable administrative, technical, and financial requirements as defined in the legislation. The pre-qualification proposal is evaluated and given weightings of 20% for the mining expertise of bidder, 35% for the human resources capability of bidder, and 45% for work program and budget put forward. Once bidders are pre-qualified, they may submit a financial bid or offer price.

### Bidding Process

The tender process entails a pre-qualification round, after the conduct of which qualified tenderers are expected to submit their respective bids. The Minister or Governor shall make any announcements regarding the subject issuance of IUPs or IUPKs at least 3 months prior to the start of the tender process.

The pre-qualification announcement shall be made by the tender committee at the start of tender process. The determination of the qualified tender participant shall be made seven (7) working days after submission of pre-qualification tender documents. The determination of the winner of the tender process shall be made five (5) working days after receiving the report of the relevant tender committee.

### Biddable Factors

Tender Requirements:

1. Material qualification requirements:
  - a. An Indonesian company seeking to make a bid must be authorized to conduct mining activities in its Articles of Association or bylaws. For PMA companies (*Perseroan Terbatas Penanaman Modal Asing, or* limited liability companies with foreign investment), the initial share capital of the bidding entity has to be at least equal to US\$ 450,000 (using an exchange rate of US\$ 1: IDR 13,860). The process of auctioning for private business entities will only be conducted when:
    - i. No BUMN or BUMD is interested in the WIUPK offer and/or no BUMN or BUMD is able to meet the administrative, technical, and financial requirements.
  - b. Submission of a work plan and budget for exploration activities to be conducted

- c. The placement of a guarantee for tender commitment equal to 10% of value of the data compensation prescribed in the tender package to be deposited in cash in an Indonesian State bank
- d. Submission of a statement or undertaking that, if selected as the winning bidder, the bidder will pay the price for compensation of information data no later than five (5) business days after the winner is announced

The evaluation of bidders is determined by the Auction Committee, based on weighted average results, with 70% from the pre-qualification result and 30% from the offer price ).

### **Bidding Fee – Revenue/Buy-In**

Information not available.

### **Eligibility**

1. Eligibility is based on whether or not the area is a WIUP or WIUPK.
2. If the area being tendered is a WIUP—the land area subject of the concession being offered determines the type of entities eligible to bid:
  - a. For WIUP mining areas smaller than 500 hectares, local regional state owned companies, local national enterprises, cooperatives and individuals (including firms and partnerships can participate in the auction. For WIUP mining areas bigger than 500 hectares, national state owned companies, BUMDs, national enterprises, foreign held entities (PMA, a corporation incorporated under Indonesian law) and cooperatives can participate in the auction.
3. Production Operation WIUP/WIUPK: Tender to business entity (including foreign investment company), a cooperative or an individual which/who has obtained a feasibility study report from government (or by upgrade from exploration by way of application) (Articles 38 & 46, 2009 Law).

### **Other Sources**

1. [Deloitte, New Energy & Resources Regulations](#)

## 8. Afghanistan

### Relevant Laws

1. [Afghanistan Minerals Law, August 16, 2014, Issue No: 1143](#) (2014 Minerals Law)
2. [Afghanistan Mining Regulations 2009, February 14, 2010](#) (2009 Regulations)

### Conditions for Competitive Bidding

Under the most recent Afghan legislation, reconnaissance licenses are granted by application, while exploration, exploitation, and small-scale mining licenses are granted based on bidding. (Article 19(2), 2014 Minerals Law). In case of justifiable reasons, the Ministry of Mines and Petroleum may grant both and exploration and exploitation licenses in a single bidding process upon the concurrence of the Commission and approval of the Council of Ministers. (Article 19(3), 2014 Minerals Law).

The 2014 Minerals Law refers to “relevant Regulations” as setting forth “the manner of any bidding process and other licensing related issues,” (Article 19(4), 2014 Minerals Law), however, as of this writing, the most recent regulations available for analysis are the 2009 Mining Regulations, enacted pursuant to an earlier law. Under the 2009 Regulations, areas open to competitive bidding include: (1) public or private lands not covered by valid and existing mineral rights or pending mineral rights bids, (2) lands covered by expired, abandoned, cancelled mining rights, and (3) reservation sites identified for future minerals activities by the ministry of mines. (Article 5-6, 2009 Regulations).

### Two-Tier Bidding – Pre-Qualification Criteria

Bidding for mineral rights subject of large or very large mining contracts requires a pre-qualification evaluation of bidders. Prior to the initiation of bidding for mineral rights, the Ministry of Mines shall decide on the requirements for pre-qualification, which may include minimum or threshold standards relating to the bidder’s professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience, business reputation, and personnel. All bidders that satisfy the pre-qualification criteria shall be invited to submit bids and shall be provided with the bidding documents. (Article 10, 2009 Regulations).

### Bidding Process

The announcement of the bidding process is made on the Ministry of Mines website, as well as through national and international media (Article 9, 2009 Regulations). The Ministry of Mines, taking into consideration the conditions and circumstances of the tendering or bidding process shall determine a deadline for the presentation of proposals. If only one bid is received, the ministerial commission must make a decision, based on the contents of the proposal. Once a sufficient number of responses are received, if necessary the bid opening date and location shall be re-announced by Ministry of Mines and bidders shall be invited to attend the bid opening. (Article 13, 2009 Regulations).

The Afghan bidding process includes the public opening of bids once received, which shall be done prior to their actual evaluation. Bids shall be opened as soon as possible after their submission, in a public proceeding and in accordance with the terms and conditions set forth in the bidding documents. The opening of bids shall be performed by the evaluation board of the Ministry of Mines in the presence of bidders or their representatives, all of whom shall be officially introduced to the Ministry of Mines prior to the day of the opening of bids (Article 15, 2009 Regulations).

Bids shall remain valid until a contract is concluded with the preferred bidder in accordance with the terms set forth in the bidding documents. Unilateral withdrawal of bids may cause forfeiture of any bid security. The time of validity of a bid may be extended with the agreement of the bidder. In such case, the bidder must obtain an extension of any required bid security. (Article 15, 2009 Regulations).



The selection of a preferred bidder shall be based on the information given by the bidders in their bids. The Ministry of Mines may seek clarifications of bids in writing, and only written responses may be considered. The Ministry of Mines may not accept requests for changes in the bids, or enter into negotiations regarding any terms of the bids with the bidders (Article 16, 2009 Regulations). After the evaluation of bids, the evaluation board shall announce the preferred bidder and send a notice of acceptance of the bid to them. If the preferred bidder fails to conclude a mining contract in accordance with the terms set forth in bidding documents, the Ministry of Mines shall offer the mining contract award to reserved bidder, which is the bidder in second place (Article 18, 2009 Regulations).

In cases where the actual holder of an exploration license fails to win the bid for the exploitation license covering the same reserve or deposit, such holder shall have priority right to be granted the exploitation license under the same terms applicable to the winning bidder. Otherwise, the winning bidder for the exploitation license shall compensate all expenses incurred by the exploration license holder, including the payment of interest of 25% for costs incurred during exploration. (Article 54, 2014 Minerals Law).

### **Biddable Factors/ Evaluation Criteria**

The award of mining contracts shall be made on the basis of factual and objective criteria, set forth in applicable law and the invitation to bid, which may include the following:

1. The technical and managerial competence and experience of the bidder
2. The financial resources available to the bidder to carry out the proposed work program
3. The business competence and legal and financial standing of the bidder
4. The specific contents of the bid received, including the proposed work programs and related financial commitments and other economic benefits to the extent such criteria are stipulated as subject for bids in the invitation for bid and/or the invitation to pre-qualify
5. The extent to which the bidder will contribute to the development of sustainable Afghan mineral activities
6. Such other criteria as may be stipulated in the invitation for bids (*see below*--Article 12 requirements) (Article 16, 2009 Regulations)
  - a. Article 12: Bidder's information shall include:
    - i. The name, address and nationality of each bidder
    - ii. In the case of a bidder organized as a corporation:
      1. Its place of registration or incorporation, its principal place of business, the names, addresses and nationality of the directors, principal officers and authorized signatories of the company and its capital structure
      2. The corporate structure of the company
      3. Financial information of the bidder, including annual reports, audited balance sheets and profit and loss statements for the past three years; and any reports of relevance for the mineral activities which the bidder may have filed with government agencies responsible for securities regulation during that period
    - iii. How the mineral activities would be financed and method of performance security
    - iv. The bidder's previous experience and technical expertise in relevant mineral activities
    - v. A detailed description of the proposed exploration program, including minimum work obligations and estimated expenditures, if required by the bidding documents
    - vi. A description of the organization and expertise which the bidder will have available in Afghanistan and elsewhere for activities in connection with the license area for which the bid is submitted
    - vii. A description of the bidder's experience and procedures that will apply for securing the health, safety and welfare of persons involved in or affected by the mineral activities
    - viii. A description of the bidder's experience and procedures that will apply for protecting the environment, preventing, minimizing and remedying pollution and other impacts from the mineral activities
    - ix. Proposals with respect to the training of Afghan nationals and expenditures to be incurred therein
    - x. Any additional specific information identified in the regulations for each type of license and authorization (Article 12, 2009 Regulations)

## **Bidding Fee – Revenue/Buy-In**

1. Bidding fee for small-scale mine form and bidding documents shall be up to US\$ 500 in Afghan currency
2. Bidding fee for medium-scale mine form and bidding documents shall be up to US\$ 1,000 in Afghan currency
3. Bidding fee for large-scale is US\$ 2,000 in Afghan currency
4. Bidding fee for very large-scale is US\$ 5,000 in Afghan currency (Article 11, 2009 Regulations)

## **Eligibility**

“Bids may only be considered insofar as the bidder is qualified and eligible pursuant to Article 14. All Bidders shall be treated fairly and without discrimination.” (Article 16, 2009 Regulations)<sup>6</sup>

The material requirements for eligibility are as follows:

1. Afghan natural person older than 18 years who has obtained investment license
2. Afghan legal person established in accordance with applicable laws which has obtained investment license
3. Foreign legal person organized under applicable laws which has obtained investment license in Afghanistan
4. Any legal or natural person who demonstrates the capability of providing capital, machinery, equipment, and the expertise required for the implementation of the license terms and conditions. (Article 16, 2014 Minerals Law).

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<sup>6</sup> The article referenced in the 2009 Regulations refers to an older version of the Afghanistan Minerals Law, corresponding eligibility requirements in the 2014 law of the Minerals Law are described at Article 16, 2014 Minerals Law.

## 9. Vietnam

### Relevant Laws

- a. [Mineral Law, Resolution No. 60/2010/QH12](#), November 17, 2010 (2010 Mineral Law)
- b. [Decree No. 22/2012/ND-CP](#), on auction of the mining right, March 26, 2012 (as amended by Decree No. 158/2016 ND-CP).
- c. [Decree No. 158/2016/ND-CP](#), detailing a number of articles of the Mineral Law, November 29, 2016

### Conditions for Competitive Bidding

Vietnam's 2010 Mineral Law requires that auctions be held for the grant of mining rights to mineral activity areas, both unexplored areas and those for which exploration results have been given Government approval, unless the subject area has been identified as exempt from the auction requirement by competent State agencies (Articles 78-79, 2010 Mineral Law). In this regard, Decree No. 158/2016/ND-CP, which was enacted pursuant to the 2010 Mineral Law, sets forth the following standards for exemption:

1. Areas with minerals which assure energy security, including coal, uranium and thorium;
2. Areas containing limestone and clay stone which can be used as materials for cement production, or minerals being cement additives which have been determined as the sources of materials for cement factory projects; areas containing minerals which have been determined as the sources of materials servicing mineral deep-processing factory projects approved or consented in principle by the Prime Minister;
3. Areas with minerals within the national border belt or strategic defense and security zones;
4. Areas with work construction investment projects stated at point b. clause 1, Article 65 of the Mineral Law;
5. Areas with minerals which can be used for production of normal construction materials and which are already determined to be mined for maintenance and repair of technical infrastructure facilities;
6. Areas where exploration and exploitation of minerals are restricted according to Article 26.2(a) of the Law on Minerals;
7. Areas which have been granted with exploration and exploitation licenses; and
8. Other cases as determined by the Prime Minister (Article 22, Decree 158/2016/ND-CP).

The State agencies competent to make proposals to exempt mineral activity areas from the auction requirement are the Ministry of Natural Resources and the provincial-level people's committees, for areas falling under their respective licensing competencies (Articles 78 and 82, 2010 Mineral Law). All such proposals shall be subject to the approval of the Prime Minister. The mining rights over all other mineral areas or projects that do not fall within any category stated above will be made subject to the auction requirement, notwithstanding any exceptions granted as "other cases as determined by the Prime Minister" (Article 22, Decree No. 158/2016/ND-CP). Furthermore, the auction of mining rights may be organized for areas for which auction plans have been approved by competent State agencies (Article 3 (3), Decree No. 22/2012/ND-CP).

### Two-Tier Bidding – Pre-Qualification Criteria

Vietnam's bidding process begins with a "bid dossier" round that resembles pre-qualification (Article 19, Decree No. 22/2012/ND-CP). During this round, the receiving agency considers submitted bid dossiers to select eligible bidders based on their satisfaction of certain eligibility requirements, commitment that "its mining and processing equipment and technology and product sale plan conform with the requirements set in the bidding dossier," (Article 19(2), Decree No. 22/2012/ND-CP), and compliance with the following:

1. Submission of the original application for auction of the mining right;
2. Submission of the original or certified true copy of the business registration certificate, written introduction of capacity and experience in mineral exploration, mining and processing, and introduction of financial capacity and fund raising capacity;
3. For an area with mineral exploration results, submission of a preliminary investment program in mining, intensive processing and sale of the product, and a written commitment to implement such program in the event that the auction is won; and

4. For an area without mineral exploration results, submission of a preliminary investment plan for exploration, mining, intensive processing and sale of the product, and a written commitment to implement such plan in the event that the auction is won (Article 16(2), Decree No. 22/2012/ND-CP as amended by Decree No 158/2016/ND-CP).

The receiving agency shall publicly release a list of eligible bidders and publish it on the website of the competent licensing agency before the auction is held, and further notify such eligible bidders in writing of: (1) the time and venue of the meeting for the release of auction-related information; (2) the time of field survey in the area put up for auction; and (3) the time of payment of the auction charge and required deposit (Article 19(5), Decree No. 22/2012/ND-CP).

## **Bidding Process**

The auction may be held only when two (2) or more bidders participate (Article 3(2), Decree No. 22/2012/ND-CP as amended by Decree No 158/2016/ND-CP). Within thirty (30) days after the deadline for receiving bid dossiers, the receiving agency shall complete the selection bid dossiers for reporting to the auction council (Article 19, 22/2012/ND-CP). Within thirty (30) days after receiving a report on the selection of bid dossiers, the auction council chairman or professional auction service provider shall organize the auction of the mining rights (Article 19, 22/2012/ND-CP). The auction Council Chairman or auctioneer shall conduct the auction by direct secret bid through uninterrupted bidding rounds, in respect of which a reserve price shall be previously set. The reserve price of each subsequent bidding round shall be the highest bid of the previous round (Article 21, Decree No. 22/2012/ND-CP). The auction will only close after the auction winner is determined (Article 21, 22/2012/ND-CP), with the winning bid or auction price being higher than the reserve price (Article 4, Decree No. 22/2012/ND-CP).

## **Biddable Factors/ Evaluation Criteria**

Under Vietnam's auction method, the highest bid wins the post-bid-dossier pre-qualification round. The auction winner is the single organization or person offering the *highest bid* compared to the reserve price after all bidding rounds. However, if, after three (3) consecutive bidding rounds, there are still two (2) or more participants offering the same highest bid, the auction Council Chairman or auctioneer shall organize a draw to select the auction winner (Article 21(2), Decree No. 22/2012/ND-CP).

## **Bidding Fee – Revenue/Buy-In**

Each bidder participating in an auction shall be required to pay a deposit, which shall be refunded at the auction's end. For an auction for the grant of mining rights in an area with mineral exploration results, the deposit shall be 1-15% of the reserve price (Article 5, Decree No. 22/2012/ND-CP). For an auction held with respect to an area in which mineral exploration has not yet been conducted, the deposit shall be determined based on mineral survey and assessment results. A separate auction fee must be paid by each participant before the auction is held (Article 20, Decree No. 22/2012/ND-CP).

## **Eligibility**

1. Mineral Exploration (Article 34, 2010 Mineral Law)
  - a. Organizations and individuals having registered mineral exploration as their business line may be licensed to conduct mineral exploration. They include:
    - i. Enterprises established under the Enterprise Law;
    - ii. Cooperatives and unions of cooperatives established under the Law on Cooperatives;
    - iii. Foreign enterprises with Vietnam-based representative offices or branches.
  - b. Business households having registered mineral exploration as their business line may be licensed to explore minerals for use as common construction materials.
2. Mining (Article 51, 2010 Mineral Law)
  - a. Organizations and individuals having registered their business as mining may be granted mining licenses.. They include:
    - i. Enterprises established under the National Law on Enterprises
    - ii. Cooperatives and unions of cooperatives established under the Law on Cooperatives.

- b. Business entities having registered their purpose as mining minerals for use as common construction materials and conducting salvage mining.

## **Other Sources**

1. [Vilaf, Vietnam: 2012 substantial changes in Vietnam's Mining Regulations](#)

## 10. Canada – Province of Alberta

### Relevant Laws

1. [1867 Constitution Act](#) – 30 & 31 Victoria, c. 3 (UK)
2. [Regulations Respecting the Leasing of Mineral Rights on Certain Public Lands](#) - SOR/96-13, last amended on 11 May 2006 (Public Lands Mineral Regulations)
3. [Mines and Minerals Act](#), Revised Statutes of Alberta 2000, Chapter M-17, current as of 6 December 2016 (Alberta Mines and Minerals Act)
4. [Mines and Minerals Administration Regulation](#), Alberta Regulation 262/1997 (Alberta Mines and Minerals Regulation)
5. [Alberta Information Letter 2014-07](#), Subject: Public Offering of Crown Coal Rights in Alberta, 19 February 2014

### Conditions for Competitive Bidding

In general, the exploration, development, conservation, management, and extraction of mineral resources are matters primarily controlled by the government of the particular province or territory in which they are found (Article VI, Section 92A, 1867 Constitution Act). While the process by which mineral rights are acquired in Canada will vary by provincial or territorial jurisdiction, it appears that such rights are generally acquired on a first-come, first-served basis.

As an exception to this general rule, the Mines and Minerals Act of the Province of Alberta provides for a system by which rights over a mineral or subsurface reservoir may be granted by way of agreements issued: (1) upon application by the prospective grantee; (2) by way of sale by public tender; or (3) pursuant to any other procedure as determined by the minister (Section 16, Alberta Mines and Minerals Act). An agreement through which mineral rights are sold by way of public tender is issued when the minister publicly announces the name of the successful tenderer for the agreement, and the tenderer has complied with the provisions in the sale notice in respect of the preconditions for the issuance of the agreement (Section 7(1)(b), Alberta Mines and Minerals Regulation).

Furthermore, the federal government, which retains jurisdiction over certain aspects of mining regulation, provides for a competitive bidding process for mineral claims in respect of federally owned lands located within the provinces and territories. In particular, the minister may, by way of lease, grant to any person the exclusive right to search for, win, and take one or more minerals in respect of federal public lands located in or under the jurisdiction of any province or territory (Section 3, Public Lands Mineral Regulations). No such leases may be granted under law unless the minister has called for tenders and the grantee is the person making the highest tender (Section 4(1), Public Lands Mineral Regulations). However, a lease may be granted without calling for tenders where the grantee is the registered owner of the surface rights of the lands under which the subject minerals are situated (Section 4(2), Public Lands Mineral Regulations).

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Biddable Factors/ Evaluation Criteria

While the regulations of the Province of Alberta do not appear to expressly provide for specific criteria, it is generally understood that the winner of the tender is the bidder that submits the highest non-refundable cash bonus (*see* Information Letter 2014-07).

### Bidding Process

Information not available.

### Bidding Fee – Revenue/Buy-In

Information not available.

## **Eligibility**

In the Province of Alberta, the following may be the lessee or one of the lessees of an agreement over mineral rights:

1. An individual who is 18 years of age or older (Section 23(1), Alberta Mines and Minerals Act).
2. A corporation that is
  - a. Registered under the Companies Act;
  - b. Registered, incorporated, or continued under the Business Corporations Act;
  - c. Incorporated or continued under the Bank Act (Canada);
  - d. A railway company incorporated under an Act of Canada;
  - e. A loan corporation or a trust corporation;
  - f. An insurer licensed under the Insurance Act; or
  - g. In any other case, approved by the Minister as a corporation that may hold a mining license (Section 23(2), Alberta Mines and Minerals Act).

# 11. Australia - Queensland

## Relevant Laws

1. [Mineral Resources Act 1989](#) - Queensland (1989 Act)

## Conditions for Competitive Bidding

In Queensland, Australia, there is discretionary bidding for exploration permits for minerals other than coal. There may be competitive tender if the Minister considers it in the best interests of the State for an exploration permit to be granted by a competitive tender (Section 136A, 1989 Act).

There is also mandatory bidding for coal exploration permits (Section 136C, 1989 Act). However, there is no bidding for mineral development licenses. Applications for the grant of mineral development licenses made in respect of or including the same land shall be given priority by the Minister and at its discretion (Section 185, 1989 Act).

## Two-Tier Bidding – Pre-Qualification Criteria

By the Minister's discretion, there may be a process involving the short-listing of a group of possible preferred tenderers and inviting them to engage in another round of tendering before granting a license to a tenderer from the same group (Section 136I, 1989 Act).

## Bidding Process

The Minister may publish a gazette notice (*i.e.*, a call for exploration permit tenders for coal and non-coal resources) inviting the submission of tenders for an exploration permit. Any process the Minister considers appropriate may be used for a call for exploration permit tenders including, for example:

1. A process of appointing a preferred tenderer on the tenders made in response to the call (whether or not involving a cash bid component); or
2. A process involving short-listing a group of possible preferred tenderers and inviting them to engage in another round of tendering before appointing a preferred tenderer from that group (Section 136I, 1989 Act).

The Minister must not grant the exploration permit unless s/he is satisfied that the prescribed criteria for the grant of the permit are met, and the Minister must consider any "special criteria for the call" (Section 136K, 1989 Act). The Minister may require a chosen tenderer to pay any amounts necessarily incurred, or to be incurred, to enable the exploration permit to be granted; and do all or any of the following within a stated reasonable period: pay the rental for the first year of the term of the permit under Section 138, or give security for the permit (Section 136J, 1989 Act).

## Biddable Factors/ Evaluation Criteria

Requirements for making tender: (Section 136E, 1989 Act).

A tender for an exploration permit must:

1. Be in the approved form; and
2. Be accompanied by a statement specifying a description of the program of work to be carried out under the authority of the exploration permit, and specifying the estimated human, technical and financial resources proposed to be committed to exploration work during each year of the program
3. Be accompanied by a statement, separate from the statement mentioned above, detailing the tenderer's financial and technical resources;
4. Be accompanied by the following:
  - a. A statement, separate from the statements mentioned above about how and when the tenderer proposes to consult with, and keep informed, each owner and occupier of private or public land on which authorized activities for the proposed exploration permit are, or are likely to be carried out (Section 136E(d)(i), 1989 Act)



- b. Proof of the tenderer's identity
- c. The application fee prescribed under a regulation
- d. If a process for appointing a preferred tenderer involving a cash bid component is to be used for deciding the call—the tenderer's cash bid
  - i. *Note: Although only the government makes a tender technically, the Queensland legislation uses the term "preferred tenderer" to describe the successful bidder, thus the requirements for tenderers to "make a tender" constitute the biddable factors/ evaluation criteria.*

### **Bidding Fee – Revenue/Buy-In**

Requirements for making tender include "the application fee prescribed under a regulation" (Section 136E(d)(iii), 1989 Act).

### **Eligibility**

There are references to "eligible persons" throughout, but there is no clear list of eligibility criteria.

## 12. Zambia

### Relevant Laws

1. The Mines and Minerals Development Act, 2015 (2015 MMDA)

### Conditions for Competitive Bidding

Zambia uses a policy of discretionary bidding. In general, only mineral areas closed to priority mining can be made subject to competitive bidding in accordance with law (Article 28, 2015 MMDA). In this regard, the Minister may, by statute, close an area described in the relevant statutory order to priority licensing in respect of all minerals or certain specified minerals only. The Minister shall not close an area if such area is already covered by an issued mineral process license, or when the mining rights over the same have lapsed or are otherwise no longer available. The Director of Mining *Cadastre* shall record areas closed to priority licensing in the appropriate register.

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Bidding Process

The minister shall issue invitations for bids the award of mining rights over identified areas by notice in a daily newspaper of general circulation in Zambia.

The notice shall include:

1. A description of the subject area, with a map and geographical coordinates, for which the bids are to be solicited;
2. Procedures and rules relating to the submission of the bids; and
3. The period within which the bids shall be submitted.

The Minister shall establish a technical committee to evaluate submitted bids. Within fourteen (14) days from the date of the expiry of the period set by the Minister, the bids shall be referred for evaluation by the technical committee. The technical committee shall then provide a detailed analysis of all the bids, rank the bids in accordance with certain parameters, and on the basis of the foregoing recommend a bidder to the mining licensing committee. Such parameters include: (1) the bidder's investment and financial plan; (2) the bid price; (3) in case the bidder is the holder of pre-existing mining rights, whether such bidder has been compliant with the terms of the same; and (4) other relevant matters. The committee shall, upon receipt of the recommendation by the technical committee, grant the mining rights to the recommended bidder in accordance with applicable law (Article 19, 2015 MMDA).

### Biddable Factors/ Evaluation Criteria

The following criteria shall be taken into consideration:

1. The bidder's investment and financial plan;
2. In case the bidder already holds mining rights in a different mineral area, whether the holder has been compliant with the provisions of the MMDA and the terms and conditions of the mining rights;
3. The bid price; and
4. Any other relevant matters for purposes of the MMDA (Article 19, 2015 MMDA).

### Bidding Fee – Revenue/Buy-In

Information not available.

### Eligibility

1. A mining right over an area between a minimum of 2 *cadastre* units and a maximum of 120 *cadastre* units in extent shall only be granted to the following companies:
  - a. Citizen-influenced company,<sup>7</sup> which means a company where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company
  - b. Citizen-empowered company, which means a company where twenty-five to fifty percent of its equity is owned by citizens
  - c. Citizen-owned company a company, where at least (50.1) fifty point one percent of its equity is owned by citizens and in which citizens and in which citizens have significant control of the management of the company. (Article 13, 2015 MMDA)
2. A mining right or non-mining right (*i.e.*, mineral processing license or mineral trading permit) shall not be granted to a company which:
  - a. Is in liquidation, other than liquidation which forms part of a scheme for the reconstruction of the company or for its amalgamation with another company
  - b. Is not incorporated under the Companies Act
  - c. Has not established a registered office in Zambia
  - d. Has among directors >10% shareholders a person who—is bankrupt, and/or has been convicted in the past 5 years of fraud/dishonesty (Article 14, 2015 MMDA)
3. A mining right or non-mining right shall not be granted to an individual who:
  - a. Is under 18 years of age
  - b. Is or becomes an undischarged bankrupt individual
  - c. Has been convicted in the past five (5) years of fraud/dishonesty within or outside Zambia (Article 14, 2015 MMDA).

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<sup>7</sup> As defined by [Citizens Economic Empowerment Act, 2006](#); (Part 1 Article 3) - (p. 166, Article 2, 2015 MMDA)

## 13. Kazakhstan

### Relevant Laws

1. [Kazakhstan Law of Subsoil and Subsoil Use, July 2010, No. 291-IV](#) (2010 Law)
2. [Kazakhstan Code on Subsoil and Subsoil Use, December 27, 2017](#) (SSU Code 2018)

### Conditions for Competitive Bidding

In Kazakhstan, proposals are submitted by the authorized body “for the study of and utilization of mineral resources ... to the competent authority on the formation of draft lists of subsoil to be on tender” (Article 20 (13), 2010 Law). The rights to explore the subsoil areas indicated on such draft lists may be granted by tender to a foreign entity, except when such entity is working with a national company and where the direct negotiation of a contract is possible. The rights to use such subsoil areas may be granted without tender to national companies or to persons making commercial discoveries under exploration contracts on the basis of direct negotiations (Article 31, 2010 Law).

The SSU Code 2018 introduced a new licensing system according to which the subsoil use right is granted on a first come, first served basis to interested parties by issuing licenses for certain types of activities including geological studies, exploration and production of solid commercial minerals, production of common commercial minerals, subsoil space consumption, gold mining. The contracting system granted through an auction process as described above is preserved in relation to the operations of exploration and production of hydrocarbons and production of uranium.

### Two-Tier Bidding – Pre-Qualification Criteria

Information incomplete or unavailable.

### Bidding Process

The tenders are organized by the Ministry of Industry and New Technologies. The governing body is the Commission for the tender for subsurface use rights. Bids for the right to subsoil use for production of common minerals are reviewed and evaluated to determine the winner from among bidders of a tender (Article 22, 2010 Law). The release of the “term of summarizing the competition” must be made within fifteen (15) days from the date of the deadline for submission of the bids, which period can be extended for no longer than one (1) month (Article 52, 2010 Law). The contract for subsoil operations is concluded based on tender results. Subsoil use rights may be granted without tender on the basis of direct negotiations (*i.e.*, to national companies or a person making a commercial discovery under an exploration contract) (Article 31, 2010 Law).

The license must be considered by the authorized body within ten (10) working days. The SSU Code 2018 replaces the three types of contracts for hydrocarbons (exploration, production and combined) by two types of contracts, namely exploration and production, establishing a clear condition for the end of exploration period.

The SSU Code 2018 establishes that the winner of the auction, within twenty (20) working days after publication of the auction results shall submit to the competent authority a programme of work for the exploration period, which shall become part of the contract, with minimum indicators by volume, description and deadlines.

### Biddable Factors

The winner of the competitive tender is determined by the assessment of the following factors submitted in the bid: (1) the amount of the signature bonus; (2) the amount of expenses for social-economic development of the region and development of its infrastructure; and (3) the amount of expenses for personnel content and training, local content in goods and services, research and development work, and payment for geological information (Article 52, 2010 Law).

Examples: Minimum local content in goods, works and services, minimum local content in frames; minimum cost for training of Kazakh personnel; size of R&D spending; the starting amount of a signing bonus (Article 47, 2010 Law).

The SSU Code 2018 excludes the obligations of a subsoil user engaged in exploration of hydrocarbons for the payment of expenses for personnel training, the financing of research and development of work, and the socio-economic development of the region. These obligations arise only from the second year of investments under the subsoil use contract.

### **Bidding Fee – Revenue/Buy-In**

The law contains some information about the amount of fee for participation in the competitive tender process and bank account to which such fee must be deposited, implying that a fee is required, when it discusses what the notice on the tender for subsurface use rights must contain, but does not provide further detail as to the specifications of the fees (Article 47 (4), 2010 Law).

The license for exploration shall contain an obligation to pay a signature bonus and a fee for use of land plots (rental payment) in the amount and under the procedure set forth by tax legislation of Kazakhstan (Article 191 of the SSU Code 2018)

### **Eligibility**

Eligibility information is unclear.

### **Other Sources**

1. [Aequitas, Subsoil Legal Regime in Kazakhstan](#)
2. [Grata International, New Code on Subsoil and Subsoil Use for mining companies](#)

## 14. India

### Relevant Laws

1. [The Mines and Minerals \(Development and Regulation\) Amendment Act, 2015, No. 10 of 2015](#)
2. [The Mines and Minerals \(Development and Regulation\) Amendment Act, 2016, No. 25 of 2016](#)

Together, “MMDR 2015”

### Conditions for Competitive Bidding

In India, there is mandatory competitive bidding for the grant of mining leases in respect of identified minerals—*i.e.*, bauxite, iron ore, limestone, and manganese ore (Sections 10B(4), 2(i)(ea), MMDR 2015). For non-identified minerals, the grant of combined prospecting-cum-mining licenses shall only be made by way of an auction process (Section 11(5), MMDR 2015).

**Revenue sharing agreement for gathering information related to exploration:** Under the National Mineral Exploration Policy (NMEP), private agencies may be engaged to carry out exploration with the right to a certain share in the revenue paid by the successful bidder in respect of a specific mineral block. The revenue-sharing may be either in the form of a lump sum or an annuity to be paid throughout the period of the mining lease. The selection of a private company is to be done following a transparent process of competitive bidding.

The NMEP proposes the following:

1. The pre-competitive baseline geo-scientific data will be created as a public good and will be fully available for open dissemination free of charge.
2. A National Aero-geophysical Mapping program will be launched to map the entire country to help delineate the deep-seated and concealed mineral deposits. ([Business Standard](#))

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Bidding Process

An applicant who fulfills the eligibility conditions shall be selected through a method of competitive bidding, including e-auctions (Section 10B(4), MMDR 2015).

### Biddable Factors/ Evaluation Criteria

“The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter or any combination or modification of them.”<sup>8</sup> (Section 10B(5), MMDR 2015).

### Bidding Fee – Revenue/Buy-In

Information not available.

### Eligibility

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<sup>8</sup> We do not have access to these terms and procedures.

Information not available. Eligibility “as specified in this act” is referred to but is not present within the MMDR as amended up to May 10, 2012.

## **Other Sources**

1. [Mines and Minerals \(Development and Regulation\) Act, 1957](#)
2. [Samir Whitaker, What do India's new mining regulations mean for business and biodiversity?](#)

## 15. United States of America

### Relevant Laws

1. [Mineral Leasing Act of February 25, 1920 \[As amended through P.L. 109-58, Enacted August 8, 2005\] \(MLA 2005\)](#)

### Conditions for Competitive Bidding to be in Effect

#### Coal:

1. The Secretary of the Interior divides lands classified for coal leasing into leasing tracts and then, at the request of any qualified applicant or on the Secretary's own decision, s/he may offer those lands for leasing and leases will be awarded by competitive bidding.
2. Discretionary bidding – the Secretary of the Interior may “subject to condition which s/he deems appropriate, negotiate the sale.”
3. No bid shall be accepted less than fair market value as determined by the Secretary of the Interior (Section 2(a)(1), MLA 2005).

#### Phosphates, Sodium, Sulphur:

1. “The Secretary of the Interior is authorized to lease to any applicant qualified under this Act, through advertisement, competitive bidding, or such other methods as s/he may by general regulations adopt, any” phosphate, sodium, or sulphur deposits of the United States (Sections 9(a), 24, and 3, MLA 2005).

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Biddable Factors

Information not available.

### Bidding Process

Information not available.

### Bidding Fee – Revenue/Buy-In

Information not available.

### Eligibility

Information not available.



# PURPORTED BIDDING COUNTRIES LACKING INFORMATION

## 1. Russia

### Relevant Sources

1. [“Mining in the Russian Federation: overview” King & Spalding \(2012\)](#)
2. [FAOLEX database, FAO](#)
3. Law of the Russian Federation on Subsoil (as amended by Federal Law of March 3, 1995, N 27 -03 and August 3, 2018) (effective as of January 1, 2019)

Each of Russia’s regions has its own policies on the granting of mineral rights. Regional legislation is available in various forms on [Faolex.fao.org](http://Faolex.fao.org), though much of it is in Russian. From a brief review of legislation for St. Petersburg, Perm, Kaluga, and Chechen, there are no major differences in legislative form. This inference is drawn from a cursory review of a small sample of legislative documents. Further examination of regional legislation is necessary to develop clearer ideas about competitive bidding structures for mining in Russia.

According to King & Spalding’s “Mining in the Russian Federation: overview” (2012), production and combined licenses are awarded by tender or auction conducted by the Federal Agency for Subsoil Use (“Rosnedra”). The winner of a tender is the participant that submits the most “technically competent, financially attractive, and environmentally sound proposal. In contrast the winner of an auction is the participant that offers the highest amount of one-time bonus payment for the right to develop subsoil resources.” However, “the holder of an exploration license can obtain a production license through a simplified procedure, without tender or auction, upon discovery of deposits.” King & Spalding also suggests that the imposition of a bid fee for participation in a tender or auction is part of the fiscal regime for subsoil use.

## 2. China

### Relevant Sources

1. Mineral Resources Law of the People's Republic of China, March 19, 1986 (as amended on August 29, 1996 and August 27, 2009) (2009 Mineral Resources Law)
2. "Mining Law in Asia – Legal Guide," Herbert Smith Freehills (2012) (HSF Legal Guide)

There appear to be a number of ways by which a foreign mining company may obtain a right to mine in China. These include obtaining a right to mine through the tender, auction or bid process among others. (pp. 21-22, HSF Legal Guide). "Where a viable deposit has been located, but no entity has obtained valid exploration rights for that site, the government may sell those rights to a pre-qualified applicant by tender, auction or bid in accordance with the "Administrative Measures Concerning the Invitation and Submission of Bids, Auctions, and the Listing of Exploration and Mining Rights." An entity that successfully obtains the right to mine by one of these methods must then enter into an agreement confirming the terms and conditions of the allocation of the mining rights." (p. 23, HSF Legal Guide).

On the contrary, the Mineral Resources Law of the People's Republic of China (Amended 2009) makes no reference to bidding, and details only the application process. "Anyone who wishes to explore or mine mineral resources shall separately make an application according to law and shall register after obtaining the right of exploration or mining upon approval, with the exception of the mining enterprises that have, in accordance with law, applied for and obtained the right of mining and are conducting exploration within the designated mining area for the purpose of their own production." (Article 3, 2009 Mineral Resources Law).

With regard to qualification, the Mineral Resources Law states, "Anyone who wishes to establish a mining enterprise must meet the qualifications prescribed by the State, and the department in charge of examination and approval shall, in accordance with law and relevant State regulations examine the enterprise's mining area, its mining design or mining plan, production and technological conditions and safety and environmental protection measures. Only those that pass the examination shall be granted approval." (Article 15, 2009 Mineral Resources Law). This examination and approval stage may constitute a pre-qualification stage, though the legislation discusses it only with regard to granting of rights by application and makes no reference to bidding. The law gives no information about biddable factors.

No bidding fee is described and information is not available with regard to eligibility requirements either in the legal guide or the Mineral Resources Law.

## 3. Ukraine

### Relevant Sources

1. International Comparative Legal Guides “[Ukraine: Mining Law 2017](#),” (Mining Law Guide)
2. Asters Legal Alerts “Ukraine improves procedures for granting subsoil use licenses” (Amendment 2018).

All research on Ukraine comes from a secondary source as primary sources were unavailable.

For exploration, a special permit from the State Geology Service must be obtained under one of two different regimes for subsoil use: (1) licensing and (2) production sharing. Under the licensing regime, a special permit is purchased by the investor at an auction held by the government. Mining licenses are awarded via auction to the bidder offering the highest price, except in the following cases:

1. If an investor already holds a special permit allowing exploration in a particular area and having fulfilled its obligations under this permit, the investor wishes to proceed to the development of the area.
2. Extraction of non-significant reserves
3. Exploration and extraction of minerals of local importance

Under a production sharing regime, a special permit is awarded to foreign investors on execution of a product sharing agreement with the Government. Production sharing agreements are entered into between the Government and the winner of a competitive tender who will be the investor offering the most attractive terms of cooperation with the State. There may be an issuance of special permits without auction when the holder of an exploration permit wants to proceed with the exploitation of the minerals. The Mining Law Guide provides that, commencing on 1 April 2017, State companies will not be granted preference without an auction solely by the virtue of them being fully owned by the state.

The subsoil use permit may be obtained through a non-auction procedure, by filing an application along with the EIA results. Alternatively, the application may be filed without the EIA results in cases of extension of subsoil sites by no more than 50% of the earlier designated territories.

The subsoil use permit must be amended under certain conditions.

There is no reference to fees with regard to auction and eligibility under the licensing regime. Companies, enterprises, organizations, citizens of Ukraine, foreign legal entities and natural persons may be subsoil users under Article 13 of the Subsoil Code.

## 4. Peru

### Relevant Laws and Other Sources

1. Consolidated Text of the General Mining Law – Supreme Decree No. 014-92-EM (General Mining Law)
2. [https://sipa.columbia.edu/sites/default/files/Capstone%20-%20Peru%20\(25%20June%202015\)\\_FOR\\_PUBLICATION.pdf](https://sipa.columbia.edu/sites/default/files/Capstone%20-%20Peru%20(25%20June%202015)_FOR_PUBLICATION.pdf)
3. [http://latinresources.com.au/overview\\_of\\_process\\_for\\_grant\\_of\\_a\\_mining\\_concession\\_in\\_peru](http://latinresources.com.au/overview_of_process_for_grant_of_a_mining_concession_in_peru)

In Peru, mining concessions are ordinarily granted on a first-come, first-served basis. However, according to Article 128 of the General Mining Law, an auction will be held over the grant of mineral rights in the event that simultaneously filed applications are found to overlap over a given area. Under these circumstances, the Mining Concessions Office will announce an auction that must occur between ten (10) and thirty (30) days after the requests were made.

The base price of the auction is set at 3% of UIT (tax unit) for areas up to 100 hectares and will increase by 0.2% of UIT per 100 additional hectares or fraction thereof. A deposit, in cash or management check, of 10% of the auction base price is required.

The Director General of the Mining Concessions Office will open the bid envelopes in the presence of the interested parties. The equivalent of 20% of bid offer in cash or manager's check is required as a guarantee of seriousness of the offer. The area at auction will be awarded to the highest bidder. The winning bidder must deposit the amount of its bid, less the guarantee of seriousness within two (2) working days, or will be at risk of losing the 10% of the base price of auction and the seriousness deposit. In this case, the tender will be awarded to the next highest bidder, who or which must pay the price it would have offered within five (5) days of notification. Deposits will be returned to bidders who or which do not obtain the award.

## 5. Brazil

### Relevant Laws

1. Decree No. 9406, June 12, 2018 (Regulates Decree- Law No. 227, February 28, 1967; Law 6567, September 24, 1978; Law No. 7805, July 18, 1989; Law 13575, December 26, 2017.

### Conditions for Competitive Bidding to be in Effect

Regimes for the use of mineral substances under Brazilian law are given by (i) concession, (ii) authorization, (iii) license, (iv) permit, or (v) monopolization regime when it shall depend direct or indirectly on the execution of the Federal Government.

### Two-Tier Bidding – Pre-Qualification Criteria

Information not available.

### Biddable Factors

Information not available.

### Bidding Process

Brazil's new mining code provides that any mining areas reverting to the Brazilian government will be offered to new investors through an electronic bid procedure using objective criteria established by the Brazilian National Mining Agency (*ANM*).

### Bidding Fee – Revenue/Buy-In

### Eligibility

Research authorizations and mining rights shall only be granted to a Brazilian company or a company incorporated under Brazilian law and with head office and administration in the country or a cooperative, under certain conditions set forth by the ANM. The applicant shall demonstrate the request or approval for environmental licensing, jointly with an economic exploitation plan signed by a legally qualified professional and shall contain, among other documents and information required by relevant decree, a description of beneficiation facilities, indicators related to reserves and production and mine closure plan and terms established by ANM Resolution.

### Other Sources

Brazil Mining Reforms: Jones Day

Notes: Found primary source translated by Google. According to my understanding, and considering particularly Law No. 7805 of July 18, 1989, there is still not an auction process established in Brazil. When referring to the articles which were not invalidated by the Mining Decree 2018, and to the Decree itself, there is no description regarding an auction process. However, there are references to an electronic bid, but no further explanation.

# POTENTIALLY UPCOMING LEGISLATION

## 1. South Africa

### Potentially Upcoming Legislation

The mining regime of South Africa is governed by the Mining and Petroleum Resources Development Act of 2002, which specifies that mining rights are to be generally allocated according to a first-in, first-assessed principle. In particular, Section 9(1) of the law provides:

- “If a Regional Manager receives for than one application for a prospecting right, a mining right or a mining permit, as the case may be, in respect of the same mineral and land, applications received on—
- a. The same day must be regarded as having been received at the same time and must be dealt with in accordance with subsection (2)
  - b. Different dates must be dealt with in order of receipt.”

However, the Mineral and Petroleum Resources Development Amendment Bill of 2013 (MPRD-AB) no longer includes Section 9(1)(b) of the MPRDA of 2002. Such omission has given rise to speculation that an auction system may be implemented for the allocation of mineral rights. In particular, the Minister has made public statements that, at minimum, an auction system for the allocation of lapsed or revoked mineral rights may likely be implemented. As of 2017, MPRD-AB has not yet been enacted. (See Oladiran Bello, Alex Benkenstein, & Ross Harvey, “*Assessing Competitive Resource Tenders as an Option for Mining Rights Allocation in South Africa*,” available at <http://www.saiia.org.za/occasional-papers/430-assessing-competitive-resource-tenders-as-an-option-for-mining-rights-allocation-in-south-africa/file>.)

## 2. Ghana

### Potentially Upcoming Legislation

Under the current regulatory regime, mining rights, concessions, and licenses are granted by the Minerals Commission on a first-come, first-served basis. While the Minerals Commission has publicly announced its intention to introduce a competitive tender process for brownfield areas, or explored areas with known geo-scientific data, no laws or regulations have been enacted as of 2017. (See Natural Resource Governance Institute, “*Country Strategy Note*,” May 2015, available at [http://www.resourcegovernance.org/sites/default/files/nrgi\\_Ghana-Strategy\\_20151207.pdf](http://www.resourcegovernance.org/sites/default/files/nrgi_Ghana-Strategy_20151207.pdf); Oxford Business Group, “*Ghana government takes steps to address recent decline in mining*,” available at <https://oxfordbusinessgroup.com/overview/digging-deep-government-taking-steps-address-recent-decline>.)

## **COUNTRIES WITH NO BIDDING LEGISLATION**

**1. Botswana**

**2. Niger**

**3. Jamaica**

**4. Mali**

**5. Norway**

**6. Namibia**

**7. Chile**

## Annex - Summary table

Country	Source of Law	Mandatory/Discretionary	Exploration/Exploitation	Pre-Qualification Round	Evaluation Criteria	Other Comments
<b>Dem. Rep. of Congo</b>	2002 Mining Code	Discretion to reserve deposits triggered by geological information	If an area is subjected to tender, both exploration and exploitation rights are auctioned	Vague language "open or by invitation"	Plan of work, financial and technical resources, varied economic criteria	
<b>Guinea</b>	2013 Amended 2011 Code	Mandatory. Geological information and level of investment triggers reservation	Bidding for exploration permits and mining concessions	No information	Detailed information not available	Finder's Fee
<b>Sierra Leone</b>	Mines and Minerals Act 2009	Discretion to reserve deposit triggered by geological information then mandatory for designated areas	Both exploration and exploitation	No information	No information	
<b>Nigeria</b>	2011 Regulations, 2007 Mining Act	Discretionary bidding available if satisfying certain conditions	Exploration License and Mining lease	Applicants "will be prequalified"	Program of work and expenditure, Financial and technical resources, previous experience, other factors	



Country	Source of Law	Mandatory/Discretionary	Exploration/Exploitation	Pre-Qualification Round	Evaluation Criteria	Other Comments
<b>Liberia</b>	2010 PPCA, 2010 Mineral Policy	Mandatory with discretionary opt out (insufficient geological information or for transfer from exploration to exploitation)	Exploration and exploitation	Prequalification, unless opt out because of lack of bidders	Detailed evaluation criteria	Distinction between national and international bidding, sole source procurement provision, contractual terms set out in bid, margin of preference provision, prohibited criteria in evaluation provision
<b>Mexico</b>	Mexican Mining Law	Discretionary	Only exploitation under specific circumstances	No information	Evidence of capacity and economic bid/finder's fee-- best economic bid meeting standards wins	Finder's fee, Provision for Indigenous land community participation + preferential right for those communities to match winning bid

Country	Source of Law	Mandatory/Discretionary	Exploration/Exploitation	Pre-Qualification Round	Evaluation Criteria	Other Comments
<b>Indonesia</b>	Regulation 28/2013, Law No. 4 of 2009, 2. Law No. 4 of 2009 on Minerals and Coal Mining	Mandatory dependent on participants (state-owned entity distinction)	Exploration and exploitation	Prequalification with weighted averages	Weighted average results of prequalification and cash bid	Distinction on licensing areas based on favor for participation by state-owned entities, "Seriousness" money equal to 10% of information compensation
<b>Afghanistan</b>	2009 Mining Regulations, 2014 Minerals Law	Mandatory	Exploration and exploitation	Prequalification	Financial and experiential factors	Finder's Fee/priority for exploration license holder to match bid, designation of both preferred bidder and reserve bidder (second place)
<b>Vietnam</b>	a. No. 60/2010/QH12, 2010 Mineral Law, Decree 158/2016/ND-CP, Decree 22/2012/ND-CP	Mandatory with exceptions including Minister discretion	Exploration and exploitation	"bid-dossier" stage resembling pre-qualification round	Highest bid wins in the second round	Auction only with 2 or more bidders, reserve price set for auction

Country	Source of Law	Mandatory/Discretionary	Exploration/Exploitation	Pre-Qualification Round	Evaluation Criteria	Other Comments
<b>Canada (Alberta)</b>	Public Lands Minerals Regulations, Alberta Mines and Minerals Act, Alberta Information Letter 2014-07	Discretionary	Exploration and exploitation	No information	Highest non-refundable cash bonus	
<b>Australia (Queensland)</b>	Mineral Resources Act 1989	Discretionary for non-coal, mandatory for coal	Exploration only	Discretionary short-listing	Program of work, financial and technical resources, cash bid	Relationships with landowners: State of plan for consultation with private and public landowners
<b>Zambia</b>	Mines and Minerals Act 2015	Discretionary	Exploration and exploitation		Investment and financial plan, bid price, bidder with highest score wins	
<b>Kazakhstan</b>	Subsoil Use Law 2010	Mandatory for exploration with exceptions, discretionary for subsoil use, discretionary room for direct negotiations	Exploration and exploitation	No information	Signature bonus and amount of socio-economic expenditure	Working with national company
<b>India</b>	MMDR 2015	Mandatory	Notified/Non-notified	No information	Share in production, royalty payable,	

Country	Source of Law	Mandatory/Discretionary	Exploration/Exploitation	Pre-Qualification Round	Evaluation Criteria	Other Comments
					other relevant parameter	
<b>United States</b>	Mineral Leasing Act of February 25, 1920 as amended	Discretionary subject to Secretary decision	Coal, Phosphates, Sodium, Sulphur	No information	No information	

