

# 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](#)