

## LATEST UPDATE ON LEGAL FRAMEWORK AND REGULATIONS FOR THE MINING SECTOR AND MINING INDUSTRY IN MALAYSIA

### Introduction

The mining sector in Malaysia has its roots in the early 19th century, particularly during the golden age of tin mining. By 1904, what was then Malaya (now Malaysia) was producing 50,000 tons of tin annually, accounting for more than half of the global output to meet Europe's growing demand.[1] Over time, Malaysia became renowned for its mining of tin, bauxite, and other minerals. Today, states across the country are conducting research and planning to engage in a new frontier of mining: **Non-Radioactive Rare Earth Elements ("REE")**.

With the rise of REE, particularly after recent discoveries in Kedah, Terengganu, and Kelantan, Malaysia's mining landscape has garnered significant attention among the mining players throughout the region. Along with this, both the federal and state governments have introduced increasing regulations to manage and control mining activities effectively.

Since the mining industry has been a focal point of discussion due to these REE discoveries, there may be changes from our previous coverage. Readers can refer to our earlier article here: [The Legal Framework of the Mining Industry in Malaysia](#). In this current article, we will provide an update on the legal framework and regulations governing the mining sector and industry in Malaysia. It is crucial for stakeholders to stay compliant with the latest regulations, as the process of securing a mining tenement license differs across states in Malaysia as mining matters are regulated by the land administrators of each individual state in Malaysia.

### Existing Legal Framework for Mining in Malaysia

In relation to the existing legal framework for mining in Malaysia, we wish to highlight the relevant legislations as follows:

(a) National Land Code 1965;

- (b) Mineral Development Act 1994;
- (c) State Mineral Enactment;
- (d) State Mineral Regulations; and
- (e) National Forestry Act (if applicable, based on the mining site).

In addition to the acts and state mineral enactments, federal policies play a crucial role in shaping Malaysia's mining sector. The National Mineral Policy (NMP1) lays the groundwork for a robust, efficient, and competitive regulatory environment, focusing on expanding and diversifying the mineral sector through advanced exploration, extraction, and resource utilization driven by modern technology and research.[2] Building on NMP1, the National Mineral Policy 2 (NMP2) introduces sustainable development principles and includes a comprehensive set of short, medium, and long-term sustainability action plans.[3]

While federal laws and policies provide the overarching regulatory framework for mining in Malaysia, it is important to note that, as mentioned above, mining is a state matter under the country's legal structure. According to the Ninth Schedule of the Federal Constitution, states have the authority to issue permits and licenses for all mining activities. Each state enforces its own mining enactments and regulations, which are tailored to its specific needs and priorities. For instance, states with significant mining operations like Pahang and Perak have developed more detailed mining regulations and guidelines. Consequently, mining companies must navigate these varying state regulations carefully, especially on the growing interest on REE sector, where different states are exploring ways to responsibly mine the REE resources.

## **Recent Amendments and Regulatory Updates**

### **(a) National Mineral Policy 3**

We can expect for the introduction of a new National Mineral Policy, which will integrate updated approaches and implementations for Malaysia's mining sector. At the third National Mineral Council meeting on 2 July 2024 ("**MMN**"), which was chaired by Datuk Seri Fadillah Yusof, the Deputy Prime Minister and Energy Transition and Water Resources Minister, included a discussion on the National Mineral Policy 3 framework, developed by the Natural Resources and Environmental Sustainability Ministry to guide the comprehensive advancement of the national mineral industry.[4] In the MMN, Datuk Seri Fadillah Yusof emphasized that this new policy will serve as the primary guideline, superseding the current National Mineral Policy 2, which has been in effect since 2009.[5]

### **(b) Industrial Master Plan 2030**

In September 2023, the government unveiled the New Industrial Master Plan 2030 ("**NIMP**"), outlining Malaysia's strategic direction for industrial transformation, which includes development plans for the mining sector.[6] The NIMP 2030 Sectoral Plan for the

Mineral Industry outlines Malaysia's strategy to transform its mineral sector, enhancing economic complexity, sustainability, and inclusivity by 2030.[7] It covers key aspects like the industry's value chain, sub-sectors (metallic, non-metallic, and energy minerals), and the role of major players, including government bodies and industry associations. It identifies opportunities in minerals like silica sand, kaolin, graphene, and rare earth elements, which are crucial for advanced industries such as electronics and renewable energy.[8] The strategy emphasizes improving governance, integrating technology, and fostering talent development to drive innovation and attract high-value investments, ultimately supporting Malaysia's vision of becoming a digitally vibrant, sustainable, and globally competitive mineral industry leader.[9]

### **(c) National Mineral Industry Transformation Plan 2021-2030**

The National Mineral Industry Transformation Plan 2021-2030 ("**TIM**") was published on 22 April 2021 with the intention to promote sustainable management of the mineral industry, aiming to drive economic growth and make it a key source of wealth for Malaysia over the next decade. TIM focuses on advancing the development and management of the mineral industry with an emphasis on value creation, sustainable operations, and the integration of cutting-edge technology in line with Industrial Revolution. Its primary objective is to enhance the mineral industry's contribution to economic growth across the entire value chain, adhering to sustainability principles.

The TIM aims to establish a comprehensive ecosystem for the Malaysian mineral industry, guided by key target indicators.

- (i) Increasing the contribution of mining and quarrying sub-sectors to the country's GDP from 0.7% to 1% by 2030;
- (ii) Reducing trade imbalances;
- (iii) Establishing a Malaysian Mineral Industry Development Board; and
- (iv) Developing the entire mineral industry value chain – from upstream to downstream.

### **(d) The Green Practices Guideline For Mining Sector**

The government has actively promoted the adoption of green practices within the mining sector. The Green Practices Guideline for the Mining Sector, published by MyHijau @ Malaysian Green Technology and Climate Change Corporation, provides a strategic framework for implementing effective green practices. While environmental standards and regulations are already part of the National Mineral Policy 2 (NMP2) and the Industrial Master Plan 2030 (IMP), this guideline aims to integrate all relevant indicators and action plans holistically to drive environmental protection in mining.[10] It addresses green practices across the entire value chain, from upstream to downstream, and defines green mining as the use of best practices and technological advancements to achieve mineral extraction goals while minimizing environmental and climate impacts.[11] The primary focus is on reducing ecological footprints and greenhouse gas emissions.

## **Licensing and Permits: Any Changes?**

As mentioned above, the authority to issue and manage mineral tenement licenses are vested with the respective authorities of each state and as such, the procedures for applying, renewing, or extending these licenses vary by state in Malaysia. The eligibility criteria and conditions for such applications are clearly defined in the State Mineral Enactment, with additional details outlined in the State Mineral Regulations.

In relation to the above, we note that states like Selangor have become more stringent in the management of licensing and issuance of permits with regards to mining activities. For example, the Selangor Land and Mines Office's Circulars of 2/2015 and 5/2021 has designate Kumpulan Semesta Sdn. Bhd., a subsidiary of Menteri Besar Selangor (Incorporated) ("**KSSB**"), as the responsible entity for managing mining licenses for rock materials and minerals on state or government-owned land. Any application for such license must be made through KSSB for them to assess the eligibility of such applicant.

Similarly, in Pahang, steps have been taken by the state government to centralize its mining operations and the establishment of Pahang Mining Corporation Sdn. Bhd. ("**PMC**"), which was announced in the "Ucapan Belanjawan Tahun 2021 Pahang" (pg. 15) to oversee all mining tenements from 1 January 2021, onward, is a testament to this. PMC has been designated as the one-stop centre for planning, managing, and monitoring all mining activities in Pahang and will serve as the sole license holder for exploration, prospecting, and mining activities in the state of Pahang.[12] PMC's role is expected to contribute RM50 million to the state government in 2021.[13] Additionally, the state government of Pahang also introduced the 'Skim Pelombong Kecil' to legalize mineral mining on private land and curb illegal mining activities.[14]

In other words, gone are the days in which companies are able to hold a mining tenement under its own name in Selangor and Pahang as the state authorities are exerting more control in relation to mining matters in their respective states.

## **Trends in Mining Sector**

### **REE**

Although the government is advocating for necessary changes to the Mineral Development Act 1994 to accommodate the rapid development and growing interest in REE, no recent amendments have been made yet. Natural Resources and Environmental Sustainability Minister Nik Nazmi Nik Ahmad has emphasized that amendments are needed to align the Act with the country's evolving REE business model and to address ongoing illegal mining activities in reserved forest areas.[15] The Public Accounts Committee has reported that Peninsular Malaysia contains an estimated 16.2 million tonnes of non-radioactive REE, valued at RM810 billion.[16] However, mining of these resources is prohibited within reserved forest areas.

The blooming interest in REE has led to the issuance of new guidelines for REE mining activities. States such as Pahang, Negeri Sembilan, and Perak have already developed

their own guidelines and Standard Operating Procedures (SOPs) for REE mining. Their success in establishing guidelines should serve as a model for other states. The current situation indicates a lack of central guidelines for REE mining, which might lead to uneven regulation across states. This situation is compounded by the fact that mining is a state matter, and only state authorities can grant mining licenses.

As mentioned earlier, the value of REE resources in Malaysia is approximately RM810 billion. This significant market remains largely untapped except for illegal mining activities. The Federal Government's proposed amendments to the Mineral Development Act 1994 are expected to address these issues and support the development of the REE mining sector in Malaysia. This approach is a positive step towards advancing REE mining and ensuring more effective regulation.

## **Conclusion**

The mining sector in Malaysia is evolving rapidly with a growing emphasis on REE and increased regulatory scrutiny. Although major amendments to the Mineral Development Act 1994 have not yet occurred, forthcoming updates in the National Mineral Policy 3 and the Industrial Master Plan 2030 underscore the government's commitment to sustainability and technological advancement in mining. The introduction of the Green Guideline and the establishment of state-level entities like PMC and KSSB reflect efforts to improve regulatory oversight and environmental stewardship. Despite these advancements, challenges such as inconsistent state regulations and illegal mining persist, necessitating a unified national approach to fully control the sector's potential while ensuring compliance and sustainability.

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30 September 2024