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Specified Minerals: Amendment to Requirements for Extension of Prospecting Right and Amendment to Requirements for Suspension of Work

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1. Amendments which came into effect as of April 1, 2018

In August 2017 the Ministry of Economy, Trade and Industry of Japan (“METI”) published and requested public comments on proposed amendments applying to the mining of “Specified Minerals” (the “Amendment”). The Amendment applies to:

- (1) extensions of the tenure of prospecting rights; and
- (2) the postponement of commencement of digging work and the cessation of digging work.

The Amendment finally came into effect as of April 1, 2018.

Under the Mining Law of Japan “Specified Minerals” means:

- oil and combustible natural gas;
- gold ore, silver ore, copper ore, lead ore, bismuth ore, tin ore, antimony ore, mercury ore, zinc ore, iron ore, iron sulfide ore, manganese ore, tungsten ore, molybdenum ore, nickel ore, cobalt ore, uranium ore, thorium ore and barites, which constitute hydrothermal deposits located subsea or beneath the sea;
- copper ore, lead ore, zinc ore, iron ore, manganese ore, tungsten ore, molybdenum ore, nickel ore and cobalt ore, which constitute sedimentary deposits located subsea or beneath the sea; and
- asphalt.

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2. Amendment with regards to extensions of prospecting rights for Specified Minerals: implementation of exploratory plan and limitation of desktop work

Under the Mining Law, a holder of a prospecting right can extend the prospecting right by two (2) years only twice, provided that the following conditions are met:

- the holder has diligently explored the target minerals;
- continuous exploration activity is necessary to confirm the condition of the mineral deposit; and
- the holder has paid the applicable mining lot tax.

However, the interim report published by METI in July 2017 (the “**Interim Report**”) pointed out that *“from the viewpoint of enhancing domestic exploitation of natural resources in Japan it is not desirable that most of the development of Specified Minerals is being suspended, or has never even started. It is important to renew the developers (right holders) and facilitate the development of natural resources in Japan.”*

Based on the above argument in the Interim Report, the Amendment requires that when a prospecting right for the Specified Minerals needs to be extended, it must be verified that the holder of such prospecting right has diligently conducted the exploratory work in accordance with the implementation plan which the holder submitted to METI. However, with respect to prospecting rights granted or applied for before the amendment to the Mining Law in 2011 (which introduced the new system related to “Specified Minerals”), the holder of such prospecting rights must make a new implementation plan for the exploratory work as part of its application for extension of the prospecting right, and it must be verified that the holder has diligently conducted such exploratory work according to such implementation plan.

More importantly, the Amendment introduced the principle that **merely conducting a desktop work will not satisfy the requirement for extension of the prospecting rights.** The Interim Report raised this issue stating that *“given that extension of prospecting rights gives the holder an exclusive mining right thereunder..., it is not desirable to approve its extension where only a desktop work has been conducted without any on-site exploratory work being carried out”*. However, under the Amendment, any objective progress of the desktop work necessary for usual exploratory work (such as interpretation of geographical data or compiling the obtained data) will still be taken into account for the purpose of approving the extension of prospecting rights.

3. Amendment to approvals for postponement of commencing mining work and cessation of mining work: limitation of “sequential development” as the reason for suspension of work

The Amendment also restricts the grant of approvals to postpone: (a) commencing work; or (b) cessation of work, under both prospecting rights and digging rights (hereinafter, collectively “**Suspension of Work**”). This amendment is intended to restrict the ability of the holders of mining rights to postpone the beginning of mining work or cease to do such work in order to prioritize the development of other mining areas (such as neighboring area) – known as “sequential development”. Sequential development is the second most frequent reason for Suspension of Work under prospecting rights and the most frequent reason for Suspension of Work under digging rights. In the Interim Report, it is pointed out that *“it must be verified whether ‘sequential development’ is reasonable and genuinely inevitable according to the situation around the recent development of natural resources in Japan, taking into account the performance of development in the neighboring area and other circumstances”*.

The Amendment introduced the principle that Suspension of Work should only be permitted where it is necessary to prioritize other mining work in the same area and that **Suspension of Work due to the market situation will not satisfy the requirement for obtaining such approval.** The introduction of this principle in the Amendment is explained in the METI announcement as follows: *“justification of ‘watching the market situation’ as the reason to suspend development has caused most of the sleeping mining area for such a long time.... This practice has possibly prevented new development of minerals and participation by new mining operators. There will always be market risk in the development of minerals, and such risk must not be regarded as an ‘inevitable’ reason to suspend mining work.”*

4. Recommendations to holders of mining rights for Specified Minerals

Given the Amendment described above, the holder of a mining right for Specified Minerals should recognize the following points:

- firstly, with respect to prospecting right for Specified Minerals, only conducting a desktop work will not satisfy the requirement for extension of the tenure of the prospecting right. The holder of the rights must demonstrate that progress is being made in the exploratory work (such as interpretation of geographical data or compiling the obtained data with objective materials); and
- secondly, with respect to digging rights for the Specified Minerals, the holder of the rights must recognize that will no longer be was easy to postpone the commencement of the mining work or to cease it on the grounds of “sequential development”, especially where such justification is on the basis of the current market situation.



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