

**A LAW REGARDING MINES AND MINERALS MANAGEMENT IN THE
REPUBLIC OF EAST TIMOR - Technical Draft, June, 2002**

Table of Contents / Arrangement of Sections

PREAMBLE

PART I – INTERPRETATION

1. Definitions

PART II – MINING LICENSE ADMINISTRATION

- 2. Establishment of National Mineral Rights Registration System**
- 3. Responsibilities of the NMRRS**
- 4. Application for Mining Licenses**
- 5. Qualifications of Applicants**
- 6. Official Registration of Applications**
- 7. Designation of Mining License Areas**
- 8. Reserved Areas**
- 9. Designation of Mineral Categories**
- 10. Approval of Mining License Applications**
- 11. Form and Content of Work Programs, Reports**
- 12. Obligations of Registered Holders**

PART III – INVESTMENT STABILIZATION AGREEMENTS

- 13. Request for Stabilization Agreement**
- 14. Establishment of Minerals Advisory Board**
- 15. Responsibilities of Minerals Advisory Board**
- 16. Form and Content of Stabilization Agreements**
- 17. Terms and Conditions for Stabilization Agreements**

**PART IV – MINING LICENSE MONITORING, INSPECTION AND
ENFORCEMENT**

- 18. Duties of Inspectors**
- 19. Accountability of Inspectors**
- 20. Cancellation of Mineral Licenses**

PART V – PROTECTION OF THE ENVIRONMENT

- 21. Advanced Exploration Environmental Management**
- 22. Commercial Mining Operation Environmental Management**
- 23. Mine Reclamation Guarantee Trust Fund**

PART VI – LOCAL COMMUNITY SUSTAINABLE MINING PARTNERSHIPS

- 24. Creation of a Sustainable Mining Partnership**
- 25. Exploration Activity Initiatives**
- 26. Establishment and Objectives of a Sustainable Mining Development Authority**

PART VII – REGULATIONS

- 27. Authority to Prescribe Regulations**

PREAMBLE

Considering the following provisions enshrined in the Constitution of the Democratic Republic of East Timor -

- a. Sovereignty rests with the people;**
- b. The State shall be subject to the Constitution and to the law;**
- c. The validity of the laws...depends upon their compliance with the Constitution;**
- d. On matters of territorial organization, the State shall respect the principle of decentralization of public administration;**
- e. The Objectives of the State...**
 - To guarantee the development of the economy and the progress of science and technology**
 - To protect the environment and to preserve natural resources**
- f. The legal system of East Timor shall [recognize] rules provided for in international conventions, treaties and agreements**

And considering especially,

- g. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the economy;**
- h. The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and shall be used in a fair and equitable manner in accordance with national interests;**
- i. The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems;**
- j. The State shall promote national investment and establish conditions to attract foreign investment, taking into consideration the national interests, in accordance with the law;**
- k. Ownership, use and development of land as one of the factors for economic production shall be regulated by law;**

- This draft Law of the Democratic Republic of East Timor Regarding Mines and Minerals Management is respectfully submitted.

PART I - INTERPRETATION

1. In this law, the definition of:

“advanced exploration and mining work program” shall be a program submitted by an applicant or a registered holder that provides details on the submitter’s technical and financial capability and the investigative activities to be undertaken from the time preliminary mine feasibility analysis of a known mineral deposit is initiated during the advanced exploration stage. It shall also be the updated programs, to be submitted and registered no later than on an annual basis, documenting the completed and planned advanced exploration and mine-site development activities required to complete a final mine feasibility study, and the subsequent documentation of all activities required to conduct a commercial mining operation.

“authorized officer” shall be a person appointed by the Minister to perform designated functions conferred on them by this Law.

“base and precious metals/stones” shall be copper, lead, zinc, tin, iron, iron sands, chromium, manganese, magnesium, gold, silver, platinum group metals, diamonds, rubies, sapphires when mined for commercial sale in East Timor; and includes such other minerals and additional mineral categories as the Minister may from time to time declare by notice published in the Gazette.

“commercial mining operation” shall be the activities undertaken by a registered holder following the completion of a positive final mine feasibility study, and shall include mine and plant construction, partial and full commercial production, processing, transportation, marketing, sales, environmental management, and mine-site decommissioning and rehabilitation, where applicable.

“exploration” shall be all investigations conducted by a registered holder to establish the existence, define the extent and determine the economic value of a mineral deposit; and shall include general surveying, prospecting, detailed geological, geophysical and geochemical surveys and the sampling and analysis of air, water, soil and rock materials. It shall also include the advanced exploration drilling, trenching, bulk sampling and pilot plant testing leading up to and including completion of a final mine feasibility study.

“exploration work program” shall be a program submitted by the applicant for a mining license and registered as part of the granting of such license, and which provides details on the submitter’s technical and financial capability and the investigative activities to be undertaken during the exploration stage. It shall also be the updated program to be submitted on an annual basis documenting the completed and planned exploration activities up to the initiation of advanced exploration/preliminary mine feasibility analysis.

“final mine feasibility study” shall be the final decision-making documentation produced from the collection and analysis of all technical, financial, environmental, social and cultural data and considerations required by the registered holder to make a formal commitment, based on the expectation of an acceptable measure of profitability, to undertake a commercial mining operation.

“industrial minerals and construction materials” shall be gypsum, phosphate rock, limestone, marble, ochre, travertine, marl, ceramic and refractory clays, bentonite, kaolin, dolomite, magnesite, quartz, silica sand, sand and gravel, andesite, basalt, diorite, gabbro, ultramafic rock when mined for use in East Timor for agricultural, building, road-making, or industrial purposes; and includes such other minerals and rocks and additional mineral categories as the Minister may from time to time declare by notice published in the Gazette.

“investment stabilization agreement” shall be the attachment to a mining license which may be voluntarily requested by a registered holder, at any time during the conduct of an exploration work program or an advanced exploration and mining program. Its purpose is to cap certain prevailing tax rates, investment incentives, non-tax fees and levies, and legal terms and conditions over a fixed time period. Government consideration of such a request will be directed at mining projects that require large capital expenditures and debt financing demanding internationally secure long-term investment predictability.

“mining license” shall be the license granted to a qualified applicant that ensures the security and continuity of rights to conduct exploration and advanced exploration and mining work programs as specified in this Law.

“Minister” shall be the Minister whose scope and duties assigns to that person the responsibility for the management of the nation’s mines and minerals development.

“registered holder” shall be the person who has been granted a mining license subject to all the rights and obligations as specified in this Law.

“sustainable mining” shall be the planned balancing of site-specific, profitable extraction of a non-renewable mineral deposit with a formal Government/community/registered holder-operator management partnership that allocates resources and stimulates the development of locally viable, diversified economic, environmental and cultural enterprises designed to continue beyond the life of the mine.

PART II – MINING LICENSE ADMINISTRATION

2. The Minister shall appoint one or more authorized officers to administer the National Mineral Rights Registration System (NMRRS).
3. (1) NMRRS will be established and maintained in the Dili, East Timor office of the Registrar of Mineral Rights. All applications, approvals and legal transactions relating to mining licenses shall be submitted, accepted, processed and registered only at this office.

(2) NMRRS authorized officers shall maintain an official Mining License Registration Book and the official License Area Map Control Series to be updated on a daily basis and available for viewing by the general public.
4. Applications for a mining license shall be submitted in person by the applicant or a registered agent during specified office hours. Only complete applications with all prescribed attachments and registration and land rental fees shall be accepted and time/date stamped for processing.
5. A mining license may be granted to:
 - a. a company that has been registered as a legitimate business entity according to the laws of East Timor,
 - b. a cooperative society registered according to the laws of East Timor, or
 - c. an individual who is a citizen of East Timor, over 16 years of age, who has been a resident of East Timor for at least one year;

Provided that they meet all the application conditions stated in this Law.

6. (1) The official record of the accepted application shall be entered in the Registration Book and on the appropriate Map Control Series map-sheet as “pending approval”.

(2) No other application shall be accepted for this area until the “pending” application has been approved or rejected.

(3) Applicants shall be given a time/date stamped receipt upon acceptance by an authorized officer of a complete application.
7. (1) Mining license areas shall be requested based on the 1000 meter World Geodetic System grid (WGS 84) as outlined on the official NMRRS 1:50000 topographic Map Control Series.

(2) Mining license applicants may request a minimum area of one (1) square kilometer up to a maximum area of 100 square kilometers within one (1) contiguous block defined by UTM coordinates.

(3) It shall be the responsibility of the applicant or registered holder to determine the accuracy of the UTM map coordinates compared to actual ground locations. In any boundary dispute, the actual ground location shall define the true boundary, as established by an authorized officer.

(4) The area requested by the applicant shall be checked with the land use information compiled on the Mining License Map Control Series map-sheets to determine the following land status provisions:

- a. areas not already under license and deemed open for granting of mineral rights shall be designated as pending on the appropriate map-sheet(s)
- b. areas where other Government land access or use permission is required shall be noted for registered holder written access confirmation and registration
- c. areas where official Government restrictions disallow any mining related activity shall be excluded from the area applied for.

8. Notwithstanding any other provisions of this Law, the Minister may designate any area, not already covered by a mining license in good standing and in which mineral and energy resources are known to occur, as a reserved area to be Gazetted and advertised for award by public tender.

9. (1) Applicants shall be asked to designate which of the following mineral categories they wish to investigate:

- a. industrial minerals and construction materials;
- b. base and precious metals/stones; or
- c. both.

(2) If both categories are chosen, separate work programs must be submitted for each mineral category.

(3) Where category (a) is chosen, an application with an attached advanced exploration and mining work program may be accepted for processing and approval if the applicant feels that sufficient exploration information is already available.

- (4) Where category (b) is chosen, only an application with an attached exploration work program shall be accepted for processing and approval.
- (5) Where an application to investigate one category of minerals is submitted for an area, or part of an area, already held under license for the other mineral category, approval shall only be given for such an overlapping right if the written agreement of the first registered holder is attached.
- (6) Where no agreement can be reached, and the Minister determines that investigation of the commercial potential of the open mineral category is in the national interest, he may impose a controlled access/financial compensation arrangement on both parties.
10. (1) Confirmation of the content of the submitted information by authorized officers, and final approval or rejection of the application by the Minister shall be undertaken within 30 days from the registration date, and applicants shall be notified in writing.
- (2) Where an initial application is rejected, specified reasons for such action shall be stated in the written notice, and the applicant shall be given 30 days from the date of this notice to appeal to the Minister, or resubmit the application, before the pending license area is declared open for granting.
- (3) An applicant or registered holder may apply for any number of mining licenses.
11. (1) The proper form and content of work programs and annual work-related reports shall be outlined in a model format of objective criteria, as prescribed in regulations.
- (2) All criteria outlined in the work program and report formats must be addressed by all applicants and registered holders. The technical and financial capability required and the amount of work program detail required shall be based on the activities described by the applicant or registered holder to advance the understanding of the license area's mineral potential.
- (3) All work programs, annual updates, reports and information submitted by registered holders as a requirement of this Law, shall be registered and maintained in confidential files for a period of two (2) years from the date of submission, before being incorporated into open mineral inventory and geological data base files.

12. (1) A registered holder shall maintain a mining license in good standing provided that :

a. the prescribed escalating land rental fees based on total area under license are paid annually,

b. an updated exploration work program is submitted and registered annually during the exploration stage,

c. an advanced exploration and mining work program is submitted and registered prior to the initiation of preliminary mine feasibility investigations which require significant increases in expenditures, ground disturbance and environmental and social impacts;

d. updated work programs are submitted and registered annually up to and including the final mine feasibility study, and then, where applicable, annually updated mine plans, environmental management plans and mine decommissioning and rehabilitation plans throughout the commercial mining operation stage,

e. all license transactions, such as payment of land rental fees, voluntary mineral area relinquishment notices, legal transfer and assignment documents, license surrender notices, are submitted in a timely fashion by the registered holder and are officially registered in NMRRS.

(2) The registered holder shall make every effort to get permission, preferably in writing, from all registered landowners and traditional land occupiers prior to entering such land for the purpose of conducting activities approved by this Law.

(3) Where permission to enter land for the purpose of conducting approved mining license activities is not obtained from the land owner /occupier, the registered holder shall appeal in writing to the Minister, who shall then direct an authorized officer to arbitrate a mutually acceptable land access/compensation agreement.

PART III – INVESTMENT STABILIZATION AGREEMENT

13. (1) The registered holder may, at any time during the conduct of an exploration work program or an advanced exploration and mining program, submit a written request to the Minister for the granting of an investment stabilization agreement to be negotiated and attached to a mining license in good standing.

(2) The request shall solicit special consideration that certain tax, fiscal and legal provisions prevailing at the time of the granting of such an agreement be fixed over a specified period of time.

(3) Request for a stabilization agreement shall be voluntary on the part of the registered holder. Its submission shall be based on the registered holder's assessment that a mining venture of national importance is being seriously contemplated that requires a large capital investment and significant debt financing, and therefore deserves a more secure demonstration of political and fiscal predictability and risk mitigation over a long term fixed period.

14. (1) Investment stabilization agreement requests shall be referred to a Minerals Advisory Board, herein referred to as the "Board".

(2) The Board shall be made up of:

- (a) Secretary of State as Chairman
- (b) two authorized officers appointed by the Minister
- (c) two appointees from Ministry of Planning and Finance
- (d) one appointee from Ministry of Justice
- (e) one representative from each impacted District
- (f) one external international mineral investment advisor.

15. The Board shall be responsible for:

- (a) advising the Minister on the national importance of the mining project under consideration
- (b) advising the Minister on current international competitive practices regarding mining sector-specific taxation, incentives, fees and legal stabilization provisions being applied in other jurisdictions.
- (c) advising the Minister on which of the prescribed taxes, incentives, fees and legal provisions may be capped at prevailing rates and legislation to best provide the long-term investment predictability necessary to demonstrate the Government's commitment to the success of the project.
- (d) advising the Minister on the appropriate fixed timeframe to be applied based on the investment recovery period documented by the registered holder; and subject to amendment based on a more accurate timeframe documented in the final mine feasibility study

16. The form and content of a model investment stabilization agreement shall be prescribed in regulations and shall address, inter alia, the following elements:

- corporate income taxes
- interest / dividend / withholding taxes
- value added /sales / excise taxes
- royalties
- import / export duties
- depreciation / amortization of capital expenditures
- loss carry forward time limits
- tax deductibility of financial guarantees
- asset transfer at mine closure
- repatriation of profits
- land access/land use fees, charges
- cooperative infrastructure developments
- local community sustainable mining partnerships
- regional revenue sharing / tax distribution
- ring fencing
- force majeure
- expropriation compensation
- dispute settlement mechanisms / international arbitration

17. (1) Where a registered holder is granted tax stabilization over a negotiated investment recovery period, that stabilized license shall then be treated as a separate legal entity with all costs to be applied within that one project area over the fixed time stipulated.

(2) A registered holder may request consideration of an investment stabilization agreement for any number of mining licenses.

PART IV – MINING LICENSE MONITORING, INSPECTION AND ENFORCEMENT

18. The Minister shall appoint one or more authorized officers to undertake the following duties:

- a. to document the issues arising from any license area or license boundary dispute between registered holders or between registered holders and private and traditional land owners/occupiers, and submit dispute settlement and/or compensation recommendations to the Minister.
- b. to inspect any mining license area for the purpose of ascertaining if all provisions of this law are being complied with.

c. to examine books, accounts, documents or records of any kind required to be kept in complying with this law, and take copies of such data for the purpose of auditing financial obligations required by law.

d. to enter license areas, premises or workings to determine if technical, environmental, worker health and safety standards as required by this law and other legislation that may apply to such operations are being complied with.

e. to take samples of rocks, ore, concentrate, tailings or minerals for the purpose of collecting and compiling data and information concerning the geology and mineral resources of East Timor.

19. (1) No authorized officer shall disclose any information obtained in connection with the administration of this law without the permission of the Minister, and in all cases, only in connection with the preparation of official reports, statistics, or legal proceedings.

(2) No authorized officer shall directly or indirectly acquire any right or interest in any mining license, and any document or transaction purporting to confer such a right to any such officer shall be null and void.

20. (1) Cancellation of the conjunctive mineral right conferred on a registered holder of a mining license shall be considered only as a serious last resort.

(2) Where a registered holder is deemed to be in default or violation of obligations stipulated in this law, they shall be informed through a series of written notices, fines, warnings, suspension of activities and appeal procedures, as prescribed in regulations, before any Notice of Cancellation shall be issued.

PART V - PROTECTION OF THE ENVIRONMENT

21. The advanced exploration and mining program and, where applicable, subsequent updated programs conducted by a registered holder shall address, inter alia, the following mining license area environmental management imperatives:

a. the conducting of an ecological base-line survey documenting the pre-existing levels of air, soil, rock, plant, animal and cultural imprints on the environment prior to the initiation of advanced exploration activities.

- b. the conducting of an Environmental Impact Assessment Study addressing all relevant issues, to a degree of detail based on the current advanced exploration and mining work program activities, as prescribed in prevailing environmental legislation.
22. The final mine feasibility study, and subsequent work plans documenting the conduct of a commercial mining operation, shall address and periodically review and revise the following environmental management imperatives:
- a. a mine-site environmental management plan documenting the sequential environmental protection actions to be undertaken over the life of the mine.
 - b. a mine decommissioning and rehabilitation plan to be conceptually designed and costed in the final mine feasibility study and implemented, modified and re-costed periodically over the life of the mine.
 - c. the establishment of a Mine Reclamation Guarantee Trust Fund.
23. The terms, conditions and financial elements of the Mine Reclamation Guarantee Trust Fund shall be negotiated with the Minister and documented in the final mine feasibility study based on the following principles:
- a. Funds allocated for this purpose shall be held in a Government/registered holder joint signatory trust account with clear emergency fund access procedures defined.
 - b. Funds shall be deposited in an internationally secure financial institution in a mutually agreed portfolio that may involve both fixed term deposits and managed equity holdings.
 - c. Funds held in this trust account by the registered holder-operator shall be deductible against commercial mining operation income.
 - d. Funds shall be denominated in a stable currency and deposited through annual contributions based on total estimated reclamation cost divided by estimated mine-life.
 - e. The fund shall be reassessed annually regarding revised costs and timing of reclamation and closure activities and accrued earnings in the fund.
 - f. The legal and fiscal framework of the fund shall address treatment of residual earnings and fund asset transfer arrangements at closure.

PART VI – LOCAL COMMUNITY SUSTAINABLE MINING PARTNERSHIPS

24. The Minister, on behalf of the Government, shall be obliged to coordinate the creation of a sustainable mining partnership between the Government, the registered holder, and the local community impacted by mining license activities, based on the principles of mutual need, mutual support and mutual benefit.
25. The exploration work program and where applicable, subsequent updated programs to be conducted by a registered holder shall address, inter alia, the following local community imperatives:
- a. Permission from local community authorities to access mining license areas under their authority prior to the conduct of work plan activities,
 - b. Local community education sessions to explain that the purpose of “exploration” is to identify the presence of, and if successful, the extent of a rarely determined commercial mining operation, and
 - c. During the exploration stage, discussion with district and community authorities to maximize local employment, skills training and use of local goods and services to whatever extent is consistent with the magnitude of the exploration work program.
26. (1) The advanced exploration and mining work program and, where applicable, such updated programs to be conducted by the registered holder shall address, inter alia, the following local community initiatives:
- a. The establishment of a Sustainable Mining Development Authority (SMDA) chaired by an authorized officer and made up of representatives of the local community, the regional district and the registered holder’s advanced exploration and mining operations management team.
 - b. Dependent upon a positive final mine feasibility study, the establishment of a formal Government commitment to allocate a proportion of the anticipated Government revenues accruing from a successful commercial mining operation for the use of SMDA.

(2) The sustainable mining partnership to be managed by SMDA shall address the following objectives:

a. offering skills training and education to local residents related to direct and indirect mining and environmental management support employment and contracted services; and

b. offering skills training, education and financial and technical support to local entrepreneurs and cooperatives to assist them in the development and maintenance of long-term sustainable enterprises that reinforce local economic, environmental and cultural traditions.

(3) Based on annual budget commitments, SMDA shall finalize a cooperatively managed Community Development Plan to be implemented over the next twelve (12) month period.

(4) The annual Community Development Plan shall be reviewed and renewed each year of the commercial mining operation, and shall incorporate modifications, adjustments and/or new plans deemed appropriate by the participating members of SMDA.

PART VII - REGULATIONS

27. (1) The Minister may make regulations for the sustainable management and development of mines and minerals and for the purpose of giving effect to the provisions of this Law.

(2) Without prejudice to the generality of subsection (1), regulations may provide for or with respect to-

- a. prescribing anything which in terms of this Law is to or may be prescribed;
- b. the manner and form of documents required and information to be supplied by applicants and registered holders;
- c. the shape, size and manner in which mining license areas and boundaries are requested, registered and maintained in good standing and the fees and rentals to be applied;
- d. the transfer, assignment, relinquishment and surrender of mining licenses;

- e. the nature of the accounts, books and plans to be kept by registered holders;
- f. the defining and method of calculation of royalty payments and the manner and time of payments;
- g. the fees to be paid in respect of any matter or action taken under the provisions of this Law;
- h. the health, safety and welfare of workers employed and citizens impacted by the activities authorized by this Law;
- i. the terms and conditions of all environmental management requirements and the framework for coordinated enforcement with environmental authorities;
- j. the inspection of mine-sites and the reporting of accidents by registered holders and authorized officers;
- k. the penalties for offences against the regulations and anything which is to be prescribed.