

Definitions to be checked with reference to clause 16:

“**Company**”, includes Parent Company and Mining Company unless individually referred or stated otherwise.

16 GOVERNMENT ASSURANCES AND OBLIGATIONS

16.1 Legislation to Approve Agreement

16.1.1. The Government undertakes to use its best efforts to cause the legislation necessary to ratify this agreement and to give effect to the exemptions from the Applicable Law, to the extent expressly provided in this Agreement, to be prepared, introduced and passed in Parliament within _____ days of signing this Agreement.

16.1.2. Pending ratification of this Agreement, the Company may undertake reconnaissance **and/or** exploration activities subject to: (i) compliance with all applicable laws; and/or (ii) rights and obligations, specified in clauses _____ *[list the relevant clauses]* of this Agreement; and (iii) the operational standards specified in clauses _____ *[list the relevant clauses]* of this Agreement. *[delete/modify this provision “16.1.2” or part(s) hereof as appropriate]*

Commentary for 16.1.2: If, pending ratification of this agreement, as in 16.1.1., the Company wishes to undertake reconnaissance and/or exploration (or whatever term is used to describe them) activities, at least three main issues will have to be considered in adapting this clause:

- (a) Are the laws of the host State sufficient and balanced, to provide protection to Company and its “finds” in reconnaissance/exploration and to protect interests of other stakeholders and the environment? – it may not be so in many cases;
- (b) Would it be necessary, possible and mutually acceptable to address the lacunae in the balance referred to in the previous issue by providing for application of certain rights and obligations in this Agreement, with adjustments where called for, to the reconnaissance/exploration stage prior to ratification?; and
- (c) Further, in the event environmental and social standards in the host State are low, could these be strengthened by laying them down or preferably by supplementing them with reference to external standards in this Agreement? And would it be necessary, possible and mutually acceptable to extend the application of these to any reconnaissance/exploration activity that may be undertaken before ratification of the agreement?

- 16.1.3. The provisions of this Agreement, except clauses 16.1, _____ [*list specific clauses*] and other clauses expressly provided in clause 16.1, shall not come into operation until legislation, ratifying this Agreement, as referred to in clause 16.1 comes into effect.

16.2 Stabilization

- 16.2.1 If a provision of the Applicable Law, including the Tax Law, at the date of this agreement is changed or repealed, or new fiscal impositions in the nature of a tax or duty on Parent Company or Mining Company are made by the Government after the date of this agreement, except for changes expressly provided for in clause 16.2.3 and elsewhere in this agreement, and as a result either Parent Company or Mining Company ("**Affected Party**") is adversely and significantly financially affected or its liabilities are materially increased, the parties must agree on a fair and reasonable method to compensate the Affected Party for those changes or new fiscal impositions, including the loss of use of money factor, including by an appropriate amendment to this agreement, and to the Prospecting Licence or Mining Lease, to compensate for the adverse financial effect and maintain the rights, interests and revenues of the Affected Party expressly derived or expected to be derived at the date of, and under, this agreement.

Commentary on 16.2.1: This clause is from SEERIL's Model Host Government Mine Development Agreement of 30th June 2009, and its substantive modification is restricted to addition of the words "expressly" and "materially". The threshold for triggering the application of this clause is qualified by the words, or de minimis exceptions, "*adversely and significantly* financially affected" and "liabilities are *materially* increased". It could help further in refining and lending more certainty to the application of this clause if these terms could be defined or guidance laid down for their interpretation.

- 16.2.2. Notwithstanding clause 16.2.1, the Company shall be bound by all non-discriminatory changes in Applicable Law concerning health, safety, labour, the environment, and to address the proximate human rights impacts of mining provided that the changes in social and environmental standards are reasonable and generally accepted in the international mining industry.

Commentary on 16.2.2:

- (a) Firstly, the changes in Applicable Law concerning the defined areas have to be non-discriminatory. Secondly, this provision uses the term "human rights impacts of mining" and not "human rights" by itself. This is done to define the scope of the term, with the aim of addressing possible apprehensions of investors that host States may try to use the term "human rights" to justify passing unexpected legislative measures. Second, the words "human rights impacts of mining" are qualified by the word "proximate" with the objective of

further defining their scope and reducing the possibility of unexpected measures. Third, changes in “environmental and social standards”, where proposed, have to be “reasonable and generally accepted in the international mining industry”. If stakeholders deem appropriate and acceptable, the words “generally accepted in the international mining industry” could be qualified by “not higher than”;

- (b) Further, as in commentary on clause 16.1.2, it could be useful to incorporate recognized external/international environmental and social standards (as revised from time to time) by reference in relevant clauses of this Agreement. This could help address disputes, if any, on the words “social and environmental standards are reasonable and generally accepted in the international mining industry” – at the end of clause 16.2.2.

16.2.3. If the parties are unable to agree upon an appropriate amendment to this agreement within ____ days of the coming into effect of the change or repeal of the provision of, or the addition to, the Applicable Law, then any party may:

- (i) apply to the High Court or other, highest, court having jurisdiction, of _____ [*Country*] for the limited purpose of seeking permission, on the basis of establishing a preliminary case, to offset and pay into an escrow account in _____ [*Country*], money otherwise payable to the Government, in amounts not more than the additional burden placed on the Company by the revision in the Applicable Law and not more than 50% of the total money that would have been otherwise payable to the Government under the Applicable Law prior to its amendment in question, until the parties agree on a method of compensation or until the matter is decided by arbitration as in 16.2.3(ii); and/or
- (ii) refer the matter to arbitration under clause _____.

Commentary on 16.2.3:

- (a) This clause is from SEERIL’s Model Host Government Mine Development Agreement of 30th June 2009, with two substantive modifications – firstly, addition of the words “the limited purpose of seeking” to qualify the word “permission” and, secondly, addition of the words “on the basis of establishing a preliminary case” after the word “permission”. These modifications could be useful to define the purpose and scope of approaching the High Court and secondly to define the scope of examination that the High Court would be called to undertake. In absence of defining such purpose and scope, parties could be drawn into unexpected circumstances in Courts;
- (b) Even with these modifications, as the clause stands, the High Court would have to agree to or determine “amounts reasonably estimated to compensate for those changes” and it would help to examine this issue further. A “cap” of 50% is placed on the money that can be deposited

in escrow under 16.2.2(j). The “cap” is indicative and may be modified by the parties. It has been inserted to prevent a very large portion of money otherwise payable to the Government from being denied to it pending a dispute. This may be necessary for projects in Host States that are dependent on mineral revenues. But if the changes in the economic equilibrium are too onerous for the Company, then, a similar-opposite argument can be put forth on behalf of the Company. Hence, this “cap” will have to be carefully decided.

16.3 Title to minerals

The Government undertakes and agrees that Mining Company will acquire property in and title to the minerals the subject of a Mining Lease from the Government on severance of the mineral ore from the land in Mining Area.

16.4 Government Development Obligations

16.5 Government Obligations Re: Local Governments and Landowners

16.5.1 Financial benefits to be received by the Provincial Government and the Landowners, in addition to those expressly provided in this agreement or under legislation on the date of this agreement, must be negotiated by the Government. The benefits must be provided without added cost to Parent Company or Mining Company.

16.5.2 The Government must keep the Provincial Government and the Landowners regularly informed about activities under this agreement.

16.5.3 The Government assures that :

- (i) the Parent Company and Mining Company shall not be required to apply for more than one business licence from the Provincial Government under the _____ [*Title of Law*], and will not be required to pay more than one business licence fee; and
- (ii) it or the Provincial Government will not under the Roads Act, or other applicable legislation, close any public or private road giving access to Mining Area without first obtaining the written consent of Mining Company.

16.6 Foreign currency remittance and availability

The Government confirms that interest, dividends and all other payments for goods and services are freely remittable from _____ [*Country*] and that if foreign currency is required to make such payments, then the Government shall not place any restriction on conversion of local currency into any other currency by the Company.

However, the freedom to remit funds is subject to the right of the Government to impose equitably, non-discriminatorily and in good faith, such measures as may be necessary to safeguard the integrity and independence of its currency, its external financial position and balance of payments, consistent with (*or analogous to*) rights and obligations of a member of the International Monetary Fund.

[Commentary on 16.2.3: The words "\(or analogous to\)" are added to cover Host States which may not be members of the International Monetary Fund.](#)