

# **Minerals Contracting Overview**

## **Best Practices and Lessons Learned**

**Presented by: Mary Louise Vitelli, Esq.**

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## Minerals Contracting Overview

# Legal Framework for Minerals Contracts

**Policy**

**+**

**Law**

**=**

**Minerals Contract**

**+**

**Regulations**

## Minerals Contracting Overview

### Topics of Extractive Industry Contracts

Commonly referred to as “Minerals Contracts”

**Minerals**

**Oil**

**Natural Gas**

**Coal**

## Minerals Contracting Overview

### Types of Extractive Industry Contracts

#### Minerals

- License
- Development Agreements/Contracts
- Offtake Agreement

#### Oil & Natural Gas

- Production Sharing Agreements (PSAs)
- Concession
- Field Service Contracts

# Minerals Contracting Overview

## License

Legal authorization that conveys “mineral tenure” and may include:

- Prospecting
- Exploration
- Artisanal/Small-Scale mining
- Exploitation
- Retention

Licenses may define limits by size (of area), amount of production, type of machinery/equipment used, number of employees, etc.

## Minerals Contracting Overview

### Minerals Development Agreement/Contract

A written document which is enacted by the State and a legal person for the purpose of exploration and development of minerals and exploitation activities in which the rights and obligations of each party are stipulated in accordance with the provisions of applicable law.

## Minerals Contracting Overview

### Offtake Agreement

An agreement between a producer of a resource and a buyer of a resource to purchase/sell portions of the producer's future production.

- Typically negotiated prior to the construction of a facility (i.e., mine) to secure a market for the future output
- Natural resource development with high capital costs
- Company wants sales guarantee
- “Get out” clauses may be included in contract

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### Production Sharing Agreement (PSA)

An “alternative contract structure” (*late 1960s by Indonesia*) that gives foreign companies the right to extract oil on pre-defined terms for a long period of time (i.e., 25-40 years)

Rather than compensating the State for oil/natural gas a company extracts and takes, in a PSA companies are labelled as “contractors” and the State “compensates” them for their investment and operating costs, giving them a share of the profits.



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### Concession

A traditional form of contract that grants the company the oil/natural gas it extracts for which the company compensates the State through taxes and royalties.

## Minerals Contracting Overview

### NOTE:

**PSA and Concession seem very different – but...**

- Terminology differs but financially alike
- Symbolic and philosophical interpretations
- Both serve more of a political function than anything.

**Example:** Where foreign ownership of oil (i.e., Iraq) is negative, use of the term PSA is preferred.

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### Field Services Contract

Specialty firms with “niche” expertise hired by Mining Companies to conduct specific activities usually on time and materials basis (actual cost plus overhead + profit), i.e., seismic studies, well testing, deep water exploration.

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### Good and Service Contracts

Cover a broad range of support to minerals development that the Mining Company may not wish to do, does not have capacity to do or finds it more economically or socially prudent to outsource.

From technical aspects such as mine design, seismic mapping, and mine construction/well works to provision of cafeteria and transport services.

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## General Mining Rights conferred in Minerals Contracts

Agreement	General Rights
Minerals Development Agreement	Exploration <b>AND</b> Exploitation
License	Exploration <b>OR</b> Exploitation
Production Sharing Agreement	Extraction for long-period of time
Concession	Extraction and compensate State
Field Services Contract	None: conduct limited technical activities
Goods and Services Contracts	None: conduct specific activities

## Minerals Contracting Overview

### Today's Focus: Minerals Development Contracts

1. What elements are in place to trigger use of such contract?
2. How are such contracts awarded?
3. Whom should be party to such contract?
4. What are the institutional roles in design and implementation of such contract?

# 1. Triggering a Minerals Contract

Rank	Decision criteria for Mining Investment
1	Geological potential for target mineral
2	Security of Tenure
3	Ability to repatriate profits
4	Consistency and constancy of mineral policies
5	Company has management control
6	Mineral ownership
7	Realistic foreign-exchange regulations
8	Stability of exploration/mining terms
9	Ability to predetermine tax liability
10	Ability to predetermine environmental obligations
11	Stability of fiscal regime
12	Ability to raise external financing

# 1. Triggering a Minerals Contract

## Why use a Minerals Development Agreement?

*It is a tool that serves as a basis of negotiations to improve investment agreements.*

1. “Mature” minerals laws, regulations, codes not sufficiently in place; and/or
2. Existing mineral laws, regulations, codes require or will benefit from supplemental details in a contract
3. Template for terms with State-owned mining entities rights and obligations of government and investors.



## 2. How is a Minerals Contract Awarded?

1. By Application (rare)
2. State-owned Mining Company awarded license
3. Preferred Mining Company/Investor awarded license
- 4. Tender Process**

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

1. Reservation of Area for Tender
2. Preparation of “Transaction Documents”
3. Clear Tender stages
4. Contract Negotiation and Award
5. Monitoring and Evaluation of Contract

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

- 1. Reservation of Area for Tender (Government)**
  - a. Ensure that area is not under license.
  - b. Optimally some geo-science data is in place.
  - c. Social and environmental issues have been considered.

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

2. **Preparation of “Transaction Documents” (Government)**
  - a. Information Memorandum (general overview)
  - b. Model Contract
  - c. Available Geo-science Data
  - d. “Rules of the Tender” including stages of tender
  - e. Review of legal and institutional framework

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

#### 3. Clear Tender stages (Government)

- a. Ideally 2-stage process based on clear criteria
  - (1) Pre-qualification
  - (2) Selection and award
- b. Both stages allow “site visits”
- c. Questions and Clarifications
- d. Evaluation and Selection

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

#### 4. Contract Negotiation and Award (Company/Gov't)

##### Negotiation

- a. Selected Company comes to town (can be 1-2 years!)
- b. Reconciliation of related issues, i.e.,
  - i. social and environmental issues
  - ii. fiscal terms/taxes/customs
  - iii. infrastructure
  - iv. security

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

#### 4. Contract Negotiation and Award (Company/Gov't)

##### Award

- a. Inter-Government Committee review may be required
- b. Cabinet Review and Approval may be required
- c. Parliamentary Ratification may be required
- d. Application/pursuit of necessary permits  
(i.e., environmental, construction, labor)

## 2. How is a Minerals Contract Awarded?

### Tender Process Summary

#### 5. Implementation, Monitoring and Evaluation of Contract (Company/Government)

- a. Clear institutional roles
- b. Definite benchmarks for performance
- c. Agreed timelines for performance
- d. Agreed and published penalties and enforcement



### **3. Whom Should be a Party to a Minerals Contract**

1. Government
2. Mining Company
3. State Mining Company
4. Consortia of Companies
5. Individual

## 4. Institutional Roles in Minerals Contract

### Example of Ministerial Institutional Oversight

Government Institution	Role/Responsibility
Ministry of Mines	Overall sector regulation/contract monitoring
Ministry of Finance	Fiscal terms, financial reporting/payments
Ministry of Environment	Environmental compliance/remediation
Ministry of Labor	Worker protection
Ministry of Social Protection	Resettlement, Land Rights, Social impacts
Ministry of Culture	Discovery of Cultural and Historical Relics, etc.
Ministry of Interior	Where applicable, security
Ministry of Energy	Electricity supply
Ministry of Urban Planning	Local development, infrastructure
Ministry of Transport	Construction of roads, rail, ports
Ministry of Foreign Affairs	International contracts' review

## 4. Institutional Roles in Minerals Contracts

### Additional/Possible Institutional Oversight

Institution	Potential Role
Office of the President	Review/approval of contract
Cabinet	Review/approval of contract
Special Commissions	Review/approval of contract
Parliament	Review/ratification of contract
Inter-Governmental Bodies	Facilitation/review/approval
Attorney General	Enforcement of contract terms
Inspectorate (financial)	Audit/enforcement of financial commitments

## 4. Institutional Roles in Minerals Contracts

### Illustrative Technical Institutional Oversight

Institution	Potential Role
Ministry of Mines	Cadastre (licensing, reporting) Inspectorate (safety, health) Survey (geo-science data) Ground Water Permits
Ministry of Environment	Environmental Permits
Ministry of Urban Planning	Construction Permits
Ministry of Transport	Transport Permits

# Minerals Contracting Overview

## Pros and Cons of Minerals Development Agreements

PROs	CONs
Long-term agreement on key terms	In retrospect the deal always could have been better
Clear statement of requirements	Poor negotiations can result in mediocre terms
Inputs from key stakeholders	Monitoring & enforcement of various commitments can be onerous
Government has clear idea of terms	Political, social, economic priorities may change over time
Demonstrates to other potential investors certainty of investment	Any change in the deal can result in bad PR



## Minerals Contracting Overview

**Thank you.**

mlvdc@aol.com