

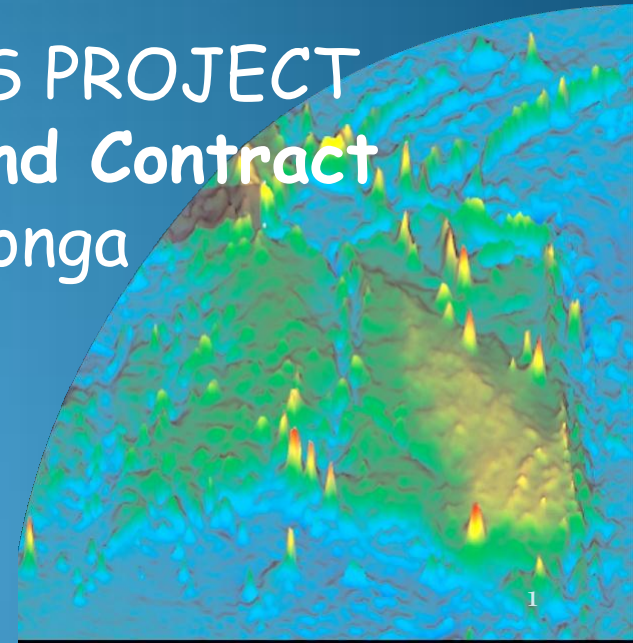


# Mineral Negotiation: New Zealand and Afghanistan - opposite ends

SPC-EU EDF DEEP SEA MINERALS PROJECT  
Regional Workshop on DSM Law and Contract  
Negotiations 11-15 March Tonga

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# Content

- Background -
- New Zealand regime
  - History - how NZ's regime got to where it is now
  - What NZ has now
  - Is it working?
- Afghanistan - Aynak Mining Contract
  - History
  - Minerals regime
  - Tender of acreage process
  - Negotiations
  - Contract and ancillary agreements
  - Is it working?

# New Zealand Mining Regime

- Long history of mining – first gold discovered 1840's? Active Mines Department, Geological Survey 1850's and other research institutes.
- Good archived information on mineral and energy resources built up over 150 years that is easily located, now high % on-line, free or small fee.
- Active mining industry mining hard rock and alluvial gold mining, coal mining, iron sands, multiple boutique sands, aggregates, hydrocarbons, moving into DSM – phosphate nodules, island arc SMS deposits.

# NZ Mining Regime

- Over the years developed a licensing regime for allocation and management of mineral resources
  - Australia, UK, Canada, styles, continual evolution and review- politically driven and after “mining disasters”
- 1990's major reform of sector based legislation to functional legislation resulted in Government retaining ownership of minerals (including fiscal issues), health and safety devolved to industry, environment to territorial authorities, land access issues to land owners/managers
- Recent coal mining explosion Pike River Coal Mine with loss of life reverted back to sector based legislation.

# NZ Mining Regime (cont.)

- Mineral policies promulgated by Mineral Programmes
- 'FPP' allocation on vacant acreage.
- Processes - application, allocation transfers, data lodgement prescribed by legislation - min prog, regs
- “Standard” conditions for prospecting exploration and mining licences for run of mill operations, royalty regime and calculation fixed by Mineral Programmes and Regulation, but ability to vary standard conditions when specific case requires it
- Work programmes tailored to operation, especially major mining proposals and to cater for new exploration technologies
- All licence conditions once granted publically available on-line, data acquired publically available on-line surrender of licence or after 5 years which ever comes first.



# NZ Mining Regime (cont)

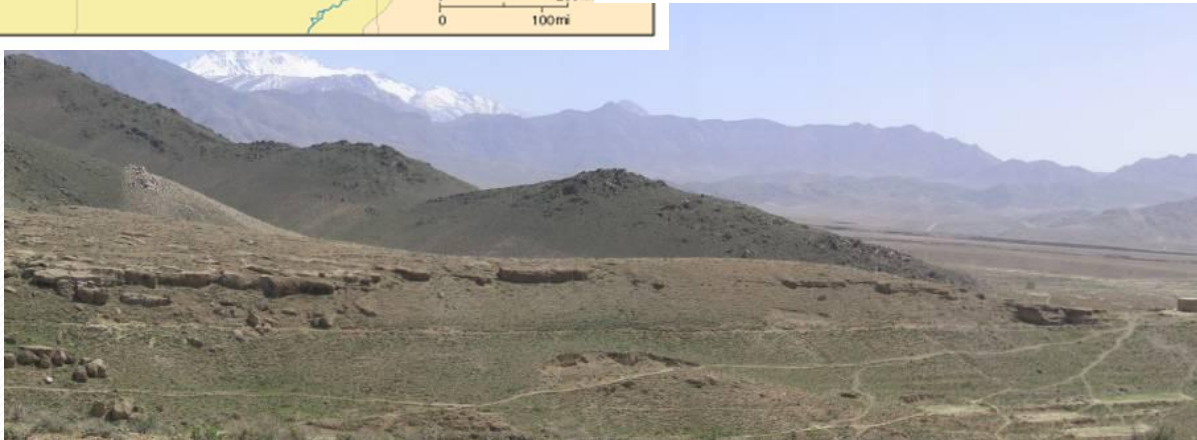
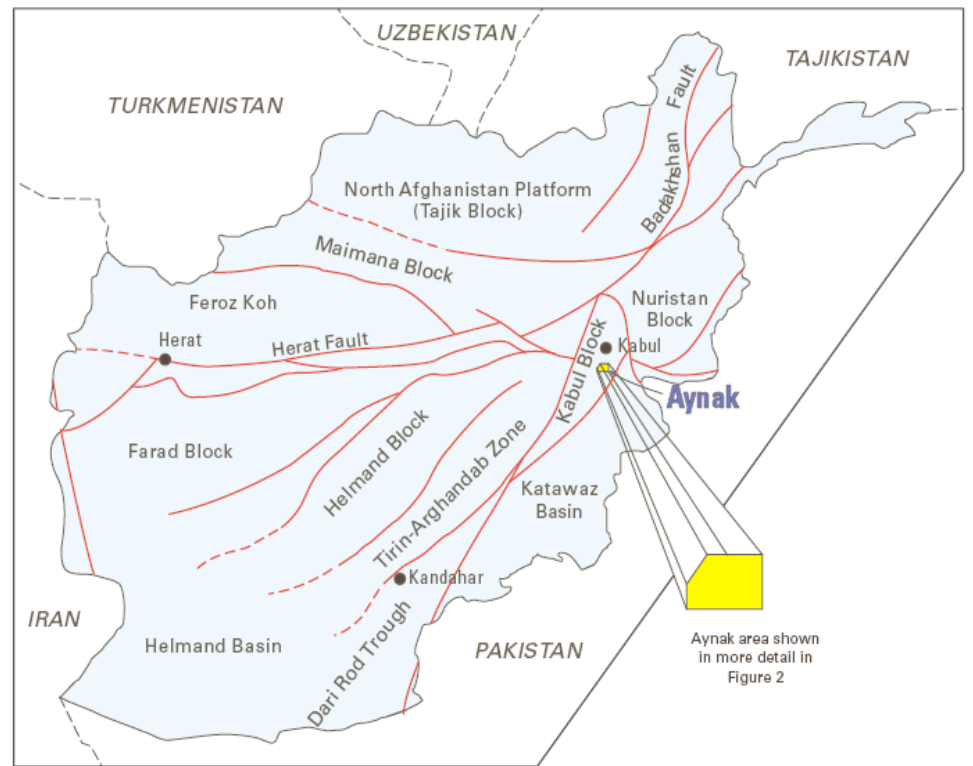
- Plenty of checks and balances, planning tribunals, district and high court options, judicial review, in fact too many options if parties do not resolve differences - deep pocket options.
- Developing regime for deep sea minerals - oceans reform project
- Administrative procedures give certainty of process to be followed, but necessarily in outcomes



# Afghanistan Regime

- Background - 2007-2010 World Bank funded assistance programme to Afghanistan Mines Division
- Mining Act 2009 provided for tender of large scale mining developments amongst other matters. Act not understood by decision makers and revised
- Government looking for major revenue generator, job creation, training
- Aynak copper deposit - a major resource with potential to achieve this.
- World Bank provided expertise to assist with allocating resource by a "objective standards based process, transparency, without prejudice to any particular bidder and winner to make good on all promises made in bid. Funded transaction team and resident advisors.

# Afghanistan - Aynak





# Aynak Cu deposit tender

- **Process included:**
  - A public process open to qualified bidders;
  - A call for EOI from potential bidders followed by a pre-qualification review of interested potential bidders;
  - Qualified bidder due diligence, including data and document review, and site visits;
  - Submission of bids, by qualified bidders based on RFP, with required information and planning components addressing technical and financial issues;
  - Bid evaluation using identified criteria to select the winning bid; and
  - **Negotiation of mineral development based on model mineral agreement in RFP and awarding of mineral right.**

# Aynak Cu deposit tender

- Aynak tender processed spanned 3 successive Ministers of Mines
- Tender process initiated 2005, preferred bidder selected Nov 2007 against stated criteria
- Negotiation contract in 3 stages. Dec 2007 – April 2008 contract signed, mining licence signed May 2009, Contract 71 pages, 65 clauses, 10 appendices and Ancillary Agreements
- Process “burnt” several nationals and expat technical advisors and administrators on the journey
- Allegations of corruption and intrigue throughout.
- But finally got there, major mining works now stalled by archaeological work, security issues and just being in Afghanistan
- But licence and contract still not publically available

# Some comments

- 2 entirely different allocation systems
- Related to level of maturity in relevant sectors
- Both end points of a continuum between ultimate flexibility to certainty
- Fit for purpose and culture –
  1. Afghanistan the ultimate deal making culture - individual negotiated contacts and
  2. Licensing regime in NZ - transparency, certainty, minimal discretion
- Opposite ends of spectrum information disclosure
  - Which model gives you the best outcome?



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