Legislative Framework: Mining in Fiji

Introduction
Structure

Background

History

Objective

Mining Act – Key Sections

Mineral Policy – Key Statements

Draft Mineral Bill – Status / Key Elements
Mining = ?
Mining = ?
Background

- What is mining?
- ILO Definition
- UN Definition
- Fiji Law?
- Technical
Mining – Perspectives / Context

- **Dictionary**: to obtain minerals from a mine
- **Technical**: stages from discovery to processing, nowadays, includes closure and rehabilitation
- **Economic$/Valuation**: to mine means to extract minerals at a sustainable profit
- **Engineering/Operations**: core unit cycles, drill/blast and load/haul
- **Legal**: depends on scope of application of Mining Act
- **Locally**: to remove minerals from the land (?)

The Blind Men and the Elephant: JG Saxe

It was six men…
To learning much inclined
Who went to see the Elephant
(Though all…were blind)
That each by observation
Might satisfy his mind

Source: www.nature.com
Mining in Fiji: Selected History

- 1868 Gold - Navua River
- 1872 Gold - Nasivi River
- 1885 Gold - Vuci River [Yanawai, Mt. Kasi]
- 1932 Gold Mining - Mt. Kasi
- 1933 Gold Mining - Nasivi
- 1935 Cu, Pb, Zn - Wainivesi
- 1950 Mn - Votualevu
- 1951 Mn - Nabu
- 1955 Mn - Vunamoli, Nasaucoko, Wainivesi Mine
- 1957 Fe - Tuveriki
- 1959 Cu, Pb, Zn - Udu Mine
- 1967 Fe sands - Ba, Sigatoka
- 1968 Cu - Namosi
- 1969 Bauxite - Savulevu
- 1977 Au - Tuvatu
Historic Legislative Framework 1/2

1908 ...first Mining Ordinance was enacted to facilitate and regulate mineral sector development.

1908 and 1965 the Mining Ordinance was updated and changed in scope five times.

1978 The Mining Act (Cap. 146) currently in use ...produced
1985 ...revisions made to the Regulations in 1985.

1997 Mineral Policy

1998 Discussion (Green) Paper – Proposal for New Legislative Framework (101 p)

1999 Policy Issues (White) Paper (69 p)

2000 Preliminary Drafting Instructions
History Legislative Framework 2/2


2004 Revised Drafting Instructions (78 p)

2005 Draft Bill Version 5

2006 Draft 11 – Mineral Bill produced

2009 Revision – Offshore Mineral Policy

2010 Mining (Amendment) Decree 2010
Purpose / Objective

...to make better provisions relating to prospecting for and mining precious metals and other minerals...
Structure

- Part 1 - General Ownership
  - Exclusions

- Part 2 - Prospecting and Mining
  - Rights & Obligations

- Part 3 - Damage and Compensation
  - Compensation
  - Restoration

- Part 4 - Registration
  - ...Documents
  - Agreements

- Part 5 - Miscellaneous
  - Royalties
  - Disputes

- Part 6 - Penalties
  - Notification
  - Fraud
  - Sabotage
Minerals - Classification

- Precious Metals
- Precious stones
- Earthy Minerals
- Radioactive Minerals
- Coal
- Metalliferous Minerals
Mining – Perspectives / Context

Legal: any place, …where…operation … in connection with any mining purpose is… carried on

[NB: clay / gravel/ sand/ stone NOT minerals]

However, mining lease granted only when definition in valuation context met
Key Sections: Reserved / Closed [Forbidden] Areas

- Government Protection Areas
- Sec. 10 Closed Areas
  - Fijian village
  - Burial grounds
  - Residential dwelling
  - Agricultural Land
  - Urban / townships
  - Water sources
  - Reserved forests
  - Public accessway
Key Sections - Tenements (Tenure Rights)

- Prospects Right (PR)
- Prospecting Licence (PL)
- Permit to Mine (PM)
- Mining Lease (ML) / Special Site Rights (SSR) / Road Access Licences (RAL)
SSRs
Mineral Rights (Mining Act)

• **Exploration** rights under **Prospecting Licence**
  - To look for, search for minerals (**study**)  
  - **NOT** sell

• **Mining** rights under **Mining Lease**
  - To extract, remove from the earth (**mine**)  
  - To crush, wash, clean, mill, concentrate into saleable quantity  
  - To **sell** minerals
**Form of Rights**

**Prospectors Right**
- Enter **open** land
- Prospect
- Remove/ use plants/ trees
- Excavate < 4 feet
- Take/ use water
- Build temporary structures

**Prospecting Licence**
- Enter with employees
- Build facilities
- Build infrastructure (roads etc…)
- **Exclusive right** to prospect as per PR holder <400ha

**Special PL**
- Over 1,300ha
- Special Terms and conditions
Exploration (Guest Occupancy)

- **Low impact study/research activities**
  - Geological observations and studies
  - Soil sampling
  - Surveying
  - Geophysical measurements (aircraft / satellite / ground)

- **Medium to high impact research activities**
  - Trenching
  - Drilling

- **Temporary Occupancy / Short-term**
Summarised: Obtaining a Prospecting Licence

1. Obtain PR [Form 5]
2. Consultation & Compensation Agreement
3. Lodge Application [Form 1]
4. Minister internally assess / advise of decision
5. Grant [Form 6] SCs & Bond
Mining (Semi-Permanent Occupancy)

- Mine design and planning
  - Includes EIA
- Lease boundary surveys
- Access roads / land clearing (stripping)
- Construction
- Drill / Blast
- Haul / Transport to Mill / Waste Dumps
- Mill / Sell
- Rehabilitate
Summarised Application Process

Obtaining a Mining Lease (Land-based)

1. Mining Act: Permit to Mine or Mining Lease
2. Environment Impact Assessment Approval
3. Dept. of Environment
4. Application: Form 1
5. Mineral Resources Department
6. Surface Lease
   - iTaukei Land
   - Trust Board [Native Land]
   - Or Private Party / Lawyer [Freehold Land]
7. Dept. of Lands [State Land]
8. Development / Zoning Approval
   - Dept. of Town & Country Planning
   - Grant: Form 8 or Form 9
9. Taxation / Royalty Agreement (Optional)
Types of Tenure

Tenements for Precious Minerals > 15m depth

<table>
<thead>
<tr>
<th>Geographical Area (hectares)</th>
<th>40ha</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permit to Mine</td>
<td>Permit to Mine</td>
</tr>
<tr>
<td>Special</td>
<td>Special</td>
</tr>
<tr>
<td>Mining Lease</td>
<td>Mining Lease</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Term (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 years</td>
</tr>
<tr>
<td>5 years</td>
</tr>
<tr>
<td>21 years</td>
</tr>
</tbody>
</table>
Types of Tenure

- **Special Mining Lease**
  - Geographical Area (hectares): 128ha
  - Term (Years): 2 years

- **Permit to Mine**
  - Geographical Area (hectares): 104ha
  - Term (Years): 5 years

- **Mining Lease**
  - Geographical Area (hectares): 26ha
  - Term (Years): 21 years

Tenements for Non-Precious Minerals > 15m depth
## Mining Lease Approval

<table>
<thead>
<tr>
<th>Key Features</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary Legislation</strong></td>
<td>Mining Act</td>
</tr>
<tr>
<td><strong>Agency / Organisation</strong></td>
<td>Mineral Resources Department</td>
</tr>
<tr>
<td><strong>Key Documents</strong></td>
<td>Survey of Boundaries</td>
</tr>
<tr>
<td></td>
<td>Project Feasibility Study / Mine Plans</td>
</tr>
<tr>
<td></td>
<td>Applicant Background (Financial capacity)</td>
</tr>
<tr>
<td></td>
<td>Compensation Agreement or equivalent</td>
</tr>
<tr>
<td><strong>Fees</strong></td>
<td>Filing Application : $127.80</td>
</tr>
<tr>
<td></td>
<td>Preparation of Mining Lease : $1227.80</td>
</tr>
<tr>
<td><strong>Charges</strong></td>
<td>Rental (1/2 year deposit) @ $191.65/hectare (Refundable if application rejected)</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>Performance Bond / Security Bond (Refundable upon closure / rehabilitation to satisfaction of Director)</td>
</tr>
</tbody>
</table>
## Environmental Approval

<table>
<thead>
<tr>
<th>Key Features</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary Legislation</strong></td>
<td>Environment Management Act</td>
</tr>
<tr>
<td></td>
<td>Environment Impact Assessment</td>
</tr>
<tr>
<td></td>
<td>Processing Regulations</td>
</tr>
<tr>
<td><strong>Agency / Organisation</strong></td>
<td>Department of Environment</td>
</tr>
<tr>
<td><strong>Key Documents / Requirements</strong></td>
<td>Terms of Reference / Scope of EIA</td>
</tr>
<tr>
<td></td>
<td>Environment Impact Assessment (EIA) Report</td>
</tr>
<tr>
<td><strong>Fees</strong></td>
<td>EIA Screening $128.13</td>
</tr>
<tr>
<td></td>
<td>EIA Processing $5,125</td>
</tr>
<tr>
<td><strong>Charges</strong></td>
<td>Applicant to meet costs of meetings / site visits / consultations</td>
</tr>
</tbody>
</table>
Environmental bond

32. (1) An environmental bond is a bond against the cost of—
(a) restoration, improvement or remediation work on any area;
(b) compensation for loss or damage to property or income; or
(c) preventative or remedial action,

(3) An environmental bond does not need to be taken from a proponent if—
(a) a bond has already been taken from the proponent in respect of the proposal under a mining lease, a lease issued by the Native Land Trust Board or any similar provision; and
(b) the EIA Administrator considers that the bond so taken adequately covers the cost of rehabilitation as described in subregulation (1).
Landowner Rights

• Right to:
  - Advance notification / information
  - Object to grant
  - Be consulted for consent on use of resources (e.g. timber/water) / land for facilities
  - Compensation for irreversible damage
  - Rental for surface rights
  - Raise grievances to Director Mines
  - Appeal decision of Director Mines

For more info. : Code of Conduct / Protocol / Landowners Questions Answered Booklets
Significance of Tenure Rights: Investor

- Reward for risk
- Secure rights to extract and sell minerals = assurance to enable generating returns on significant capital investment
- Earn rights from nation and communities (social licence) to ‘ownership’ of minerals
Legal Ref.– Mining Act

• Closed areas
  • Sec. 11 Lands closed
    ○ Villages / housing / plantations
    ○ City / towns / public road
    ○ Water catchment / forests

• Exploration
  • Sec. 20 / 24 / 25
    ○ Artificial water usage (only with consent)
    ○ Drainage / control of water
    ○ Amicable relations with LOUs (TLTB / Commissioner)
    ○ Removal of vegetation / trees [restricted / erosion]
    ○ Limits of excavations
    ○ Water use (reasonable / with consent)
    ○ Grievance / complaints
    ○ Site selection (camps)
    ○ No burning of vegetation
Legal Ref. – Mining Act

- **Mining**
  - **Sec. 34 / 38 / 39**
    - Excavations
    - Housing
    - Machinery / buildings / workshops
    - Stacks / dumps / stockpiles
    - Water diversion / bridges
    - Road / access (hierarchy of rights)
    - Accessways (not roads)
    - Water rights
    - Processing plants
  - **Reg. 120-123**
    - Storage/ Mgt. of poisons (chemicals) including risk
Legal Ref.– Mining Act

- **General**
  - Sec. 40/ 41
    - Compensation
    - Immediate
    - Post rehabilitation
  - Reg. 59 / 82 Pollution

- **Post-mining / exploration**
  - Reg. 78 / 89 / 90 / 91
    - Abandoned mine – plans
    - Rehabilitation
    - Trenches / pits / shafts / beacons / posts
    - Slope stability (steep walls / open pits)
    - Salvage
    - Bond refund
Key Sections

- Compensation
- Royalties
Significance of Env. / Compensation

Sec. 16 + Sec. 65 = Social licence to operate
Mineral Policy - 1997

• Key Statements

• Please note, this policy paper is not intended to replace or supersede the provisions contained in any of the legislation stated herein. It is intended as a guide for investors to clarify Government's mineral policy direction.

• to provide investors with a clear, stable and transparent policy guide to investing in Fiji's mineral sector.

• provide responses to the questions most frequently asked by investors where the intention of the legislation is not clear.
Mineral Policy – 1997 - General

• believes that well-managed mineral sector developments contribute positively to national growth and social welfare improvements for all of Fiji's citizens; hence, the Fiji Government actively supports mineral sector developments

• mineral resources will be developed in an environmentally sensitive and socially acceptable manner, and that there is an equitable sharing of the financial and developmental benefits and costs of mining between all stakeholders

• Government requires that mineral developers take into account all the social, environmental, and economic costs and benefits of the development at the project planning stage, and throughout the life of the project

• developers are encouraged to develop a participatory and collaborative approach to mine planning and development
Grant criteria

• Government does not require **equity participation**, or any other form of direct involvement in mineral development projects.

• Exploration and mining rights are given to any candidate, who by **merit**, can show Government that they have the capability to carry out an agreed upon work programme.

• Does not want to see prospective land tied up by companies that are only interested in **speculative ventures**.

• Feasibility Study which demonstrates the commercial and technical viability of the project. The **Feasibility Study** will be accompanied by a detailed financing plan for the development and by all information/assessments as required by the environmental impact assessment process. Second, the completion of a **Development Agreement** outlining the broad principles, responsibilities, and obligations of all parties to the development.
Env. & Community

- Sustainable mineral sector projects are those that effectively incorporate community participation during the corporate decision-making process, that ensure an equitable distribution of the benefits arising from mine developments, and that, having carefully assessed the socio-environmental impacts, minimise these impacts.

- Government sets environmental policies at two levels; the Department of the Environment coordinates the formulation and implementation of national policies, while MRD, as the main regulating agency for the mineral sector, sets complementary mineral sector policies.

- In instances where there is a significant risk of serious or irreversible damage, or an element of scientific or technical uncertainty exists regarding elements of mine dev., Government then expects that precautionary abatement/mitigation measures be taken. Where such measures are required they will be expected to address the worst case scenario.
Env. Bonds . Rehab. / Monitoring

- Government will ensure that only those developments which have a net benefit in terms of total costs and benefits (including economic, social and environmental costs and benefits) proceed.

- All monitoring, to ensure compliance with socio-environmental standards, will be undertaken by Government-accredited laboratories or consultants. All costs of monitoring will be borne by the mining project developer.

- The amount of the bond will be determined by the MRD according to the element of risk associated with the project. The full bond or a partial amount thereof may be used to remedy unacceptable environmental impacts of the mining project, or may be used as a penalty for late or non-remediation of remediable impacts identified during Environmental Impact Assessment process.
Compensation / Closure

- The level of compensation will be determined by Government, in consultation with the mine developer and the person or community entitled to such compensation, after considering the degree of impact. Compensation is linked to the degree of impact, not to the value of the mineral.

- In line with Government's adoption of the precautionary principle, and to ensure that sufficient funds are available to complete rehabilitation at mine closure, the mining project developer will be expected to make contributions to a Mine Closure and Rehabilitation Fund.

- Developers must recognise that the Royalty payment, for the right to extract minerals, and the compensation payments, for landowner loss of tenure and damage to land and improvements thereon are separate.
The Mineral Bill - Objective

“To provide a transparent and progressive regime for the assessment, development and utilisation of Fiji’s mineral resources which will accommodate the needs of a vibrant and safe mining industry whilst at the same time protecting the rights of land owners and achieving acceptable economic, social, and environmental outcomes for all stakeholders.”
Proposed Legislative Framework (full package)

Mining Act and Regulations (Cap. 146) and the Quarries Act and Regulations (Cap.147) to be replaced with a new legislative framework which will ultimately consist of -

1. Primary Legislation (Act / Decree);
2. Subordinate Legislation (Regulations);
3. Codes of Practice and Codes of Conduct (setting mandatory performance requirements);
4. Guidelines (providing non-mandatory good practice); and Departmental policies, practices and procedures.
Structure / Framework

Mineral Bill

Administration
Part 1,10,11

LOMOS / MMP

Land Access (Tenure)

Socio-economic Impact

Compensation, Royalties Govt. Charges

Environ. Mgt.

OHS Mgt.

Part 2
Part 3
Part 4
Part 5
Part 6

Part 5
Div.5
Part 7

Part 7
Part 8

Part 7
Part 5
Div. 5’s
Part 6
Div. 7

Part 9

Mandatory & Prescriptive : Regulations

Mandatory : Codes (Practice/Conduct)

Voluntary : Guidelines
Part 9

Coverage - Scope

Petroleum / Exploration Licences

Parts 1-8, 10-11

Metalliferous & Earthy Minerals

Exploration Licences - Mining Leases

Abandoned / Decommissioned / Rehabilitation Sites

Quarries

Rock treatment
Fiji’s environmental management administration is completely ill-equipped in respect of technical resources to regulate to acceptable standards a mine the size of Namosi, as evidenced by the lack of effective environmental management at the small scale Nawailevu bauxite mine, Vanua Levu.

- Policy review
- Green growth
- Capacity building
- Good governance
Questions?

Contact:
Ian Fong

Email: ianfong123@gmail.com