

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 = ?

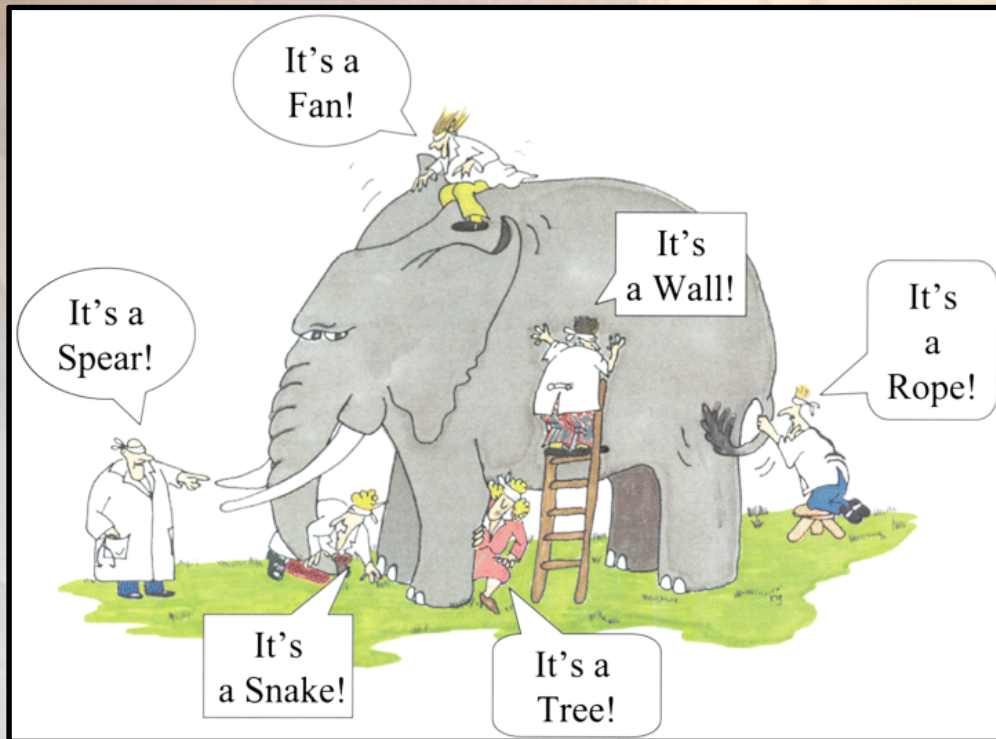


Background

- What is mining?
- ILO Definition
- UN Definition
- Fiji Law ?
- Technical



Mining – Perspectives / Context



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

- ◆ **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 (?)

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



History – 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

1985revisions 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

2002 Position Paper – Review of Legislative Framework (46 p)

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

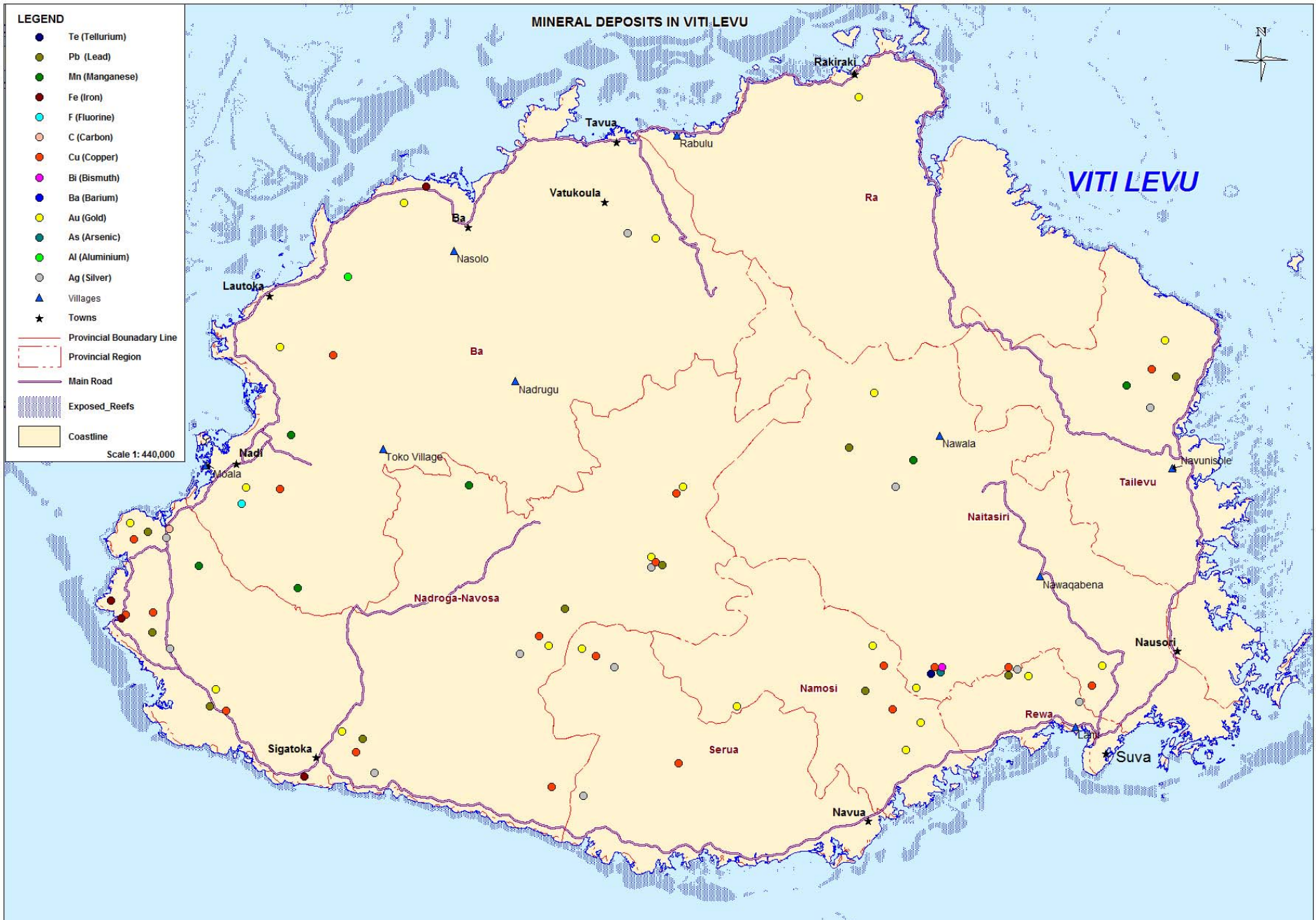
Disputes

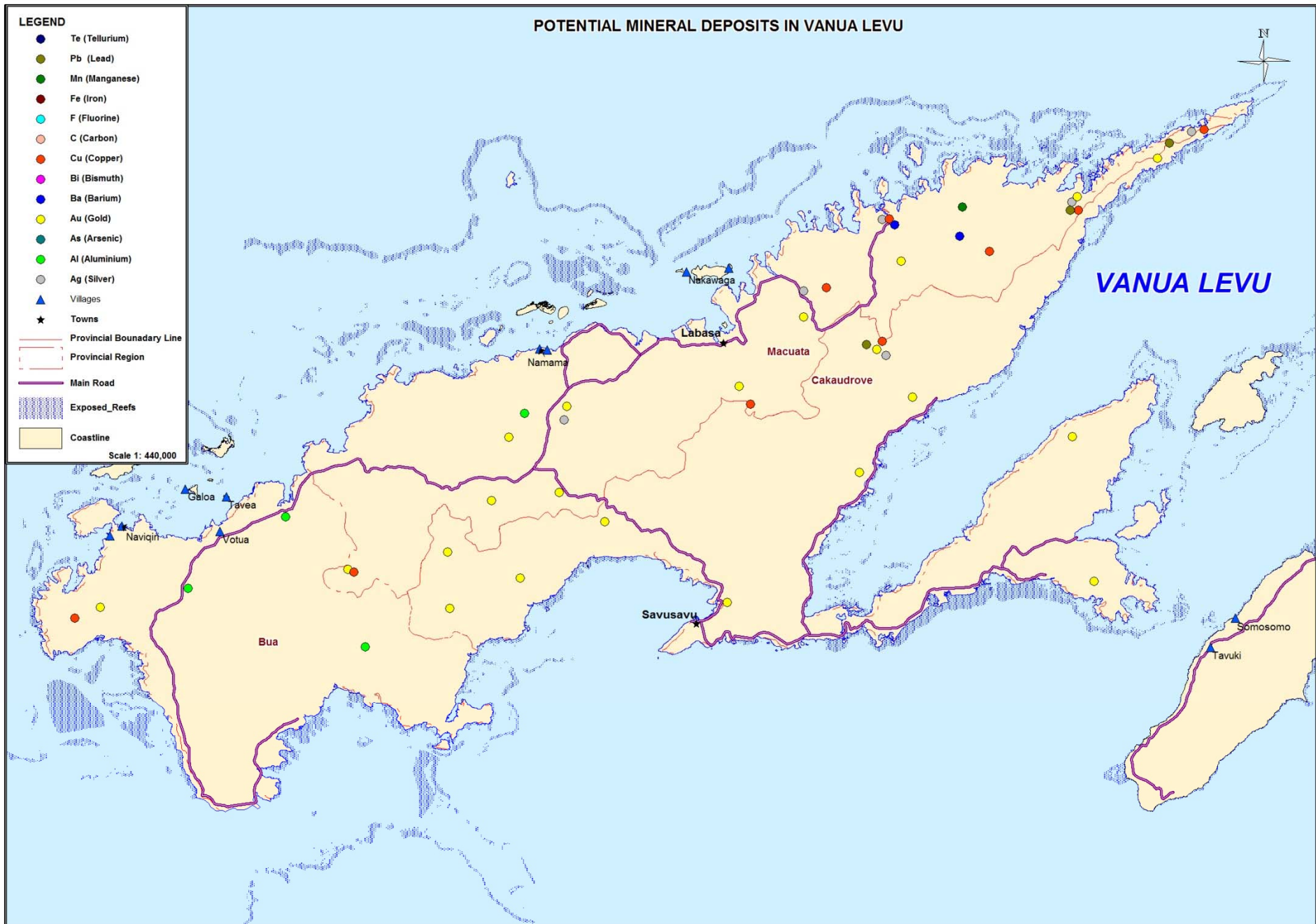
- **Part 6 – Penalties**

Notification

Fraud

Sabotage





Minerals - Classification

- Precious Metals



- Earthy Minerals



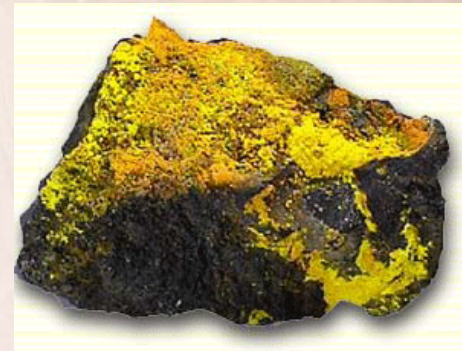
- Coal



- Precious stones



- Radioactive Minerals



- 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*



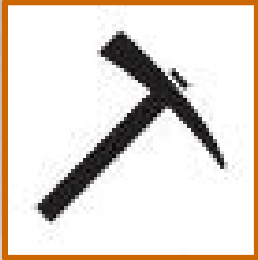
Key Sections : Reserved / Closed [Forbidden] Areas

- 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)



- Prospectors 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

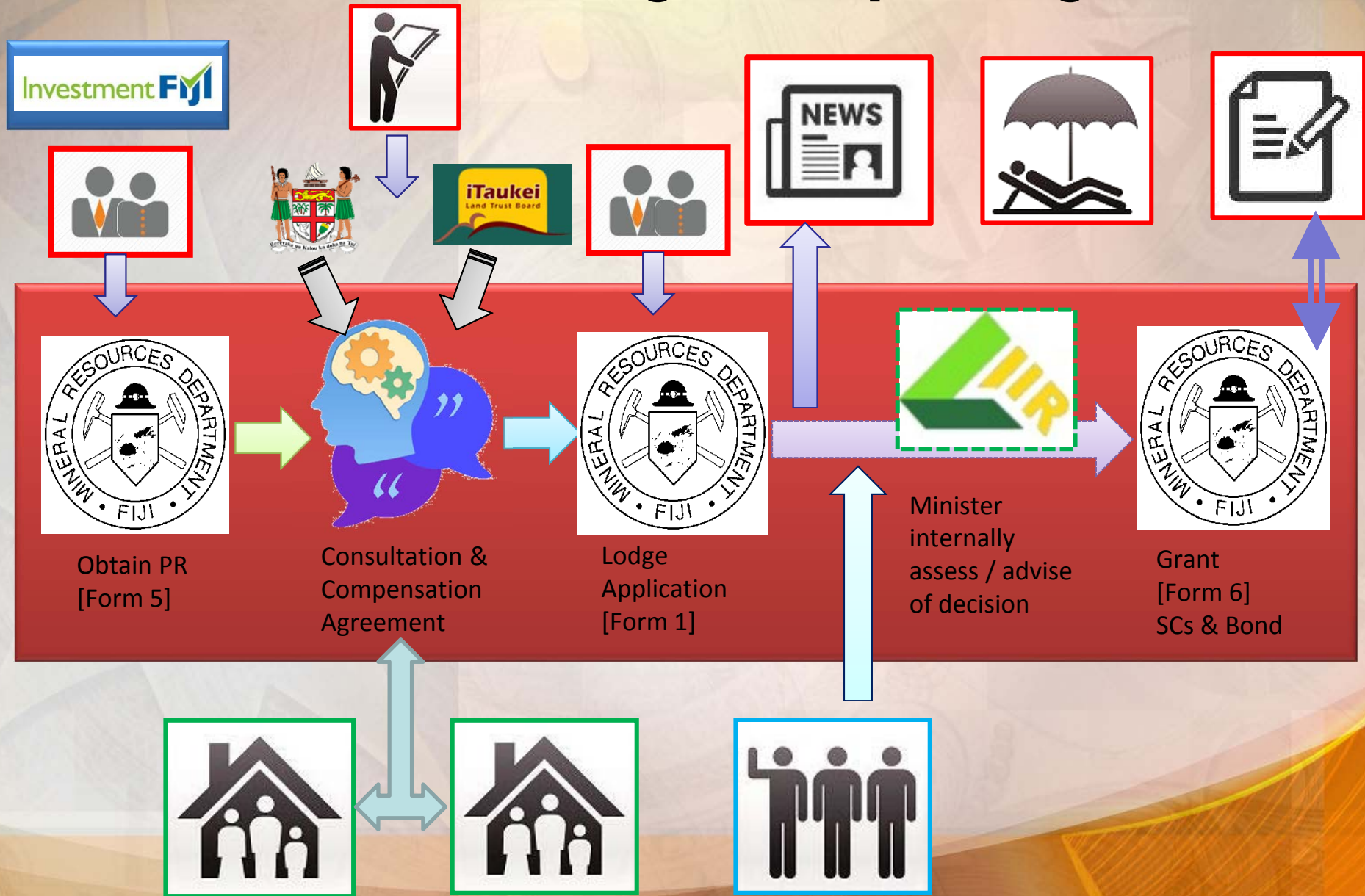


Exploration (**Guest** Occupancy)

- 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

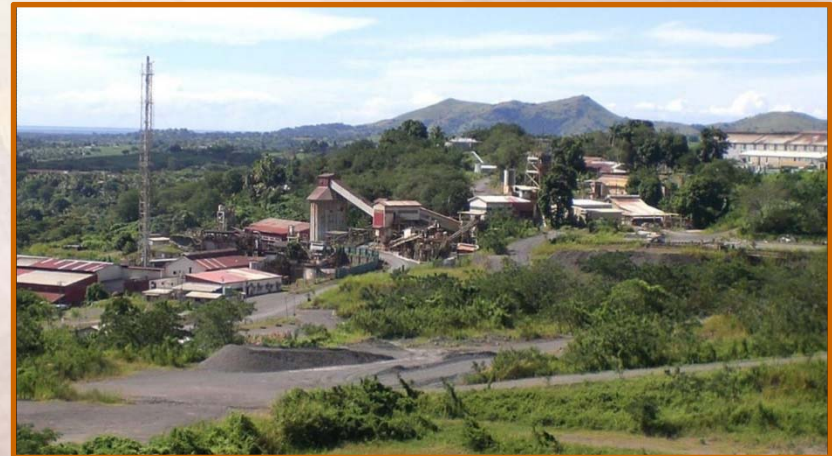


Summarised : Obtaining a Prospecting Licence



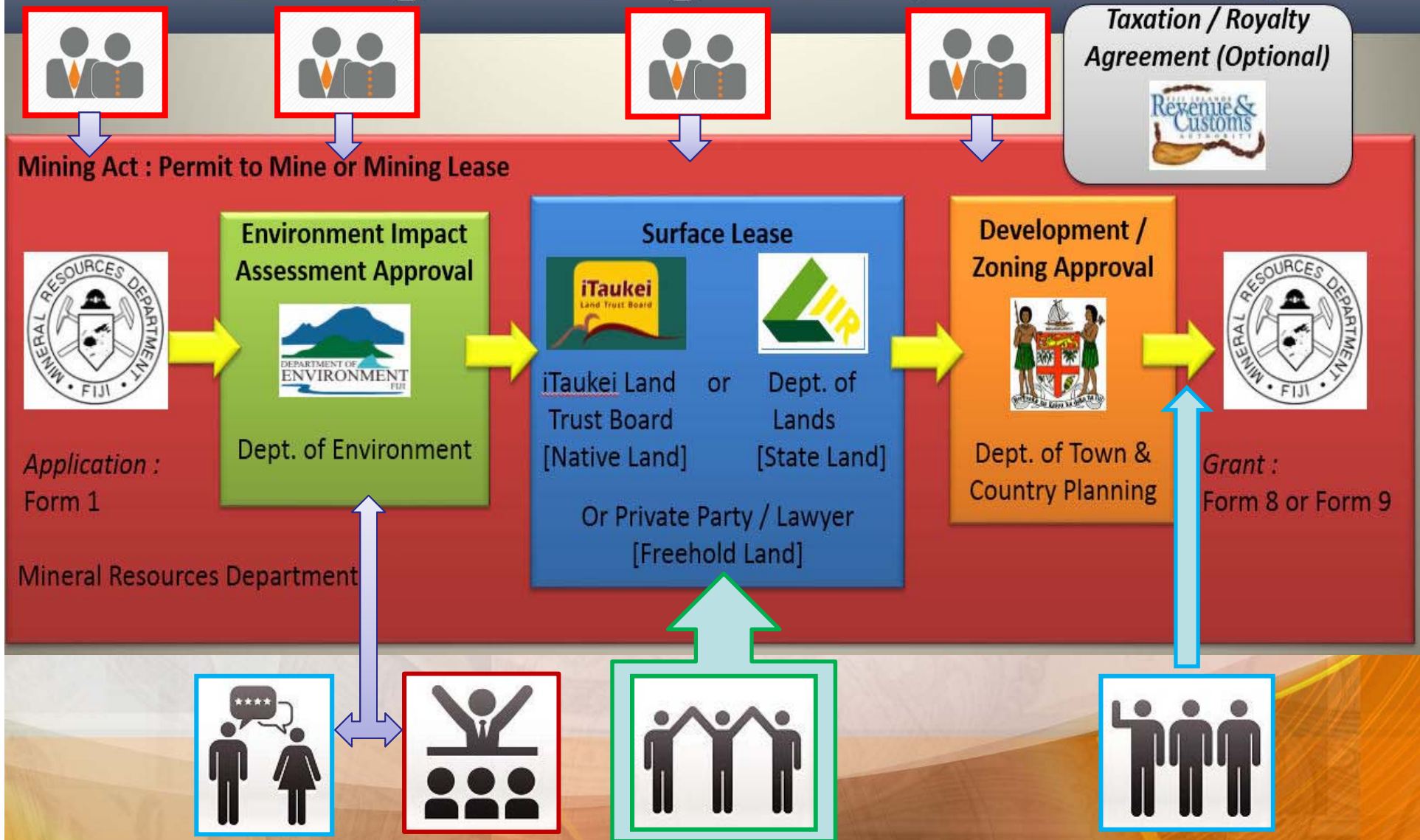
Mining (Semi-Permanent Occupancy)

- 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)

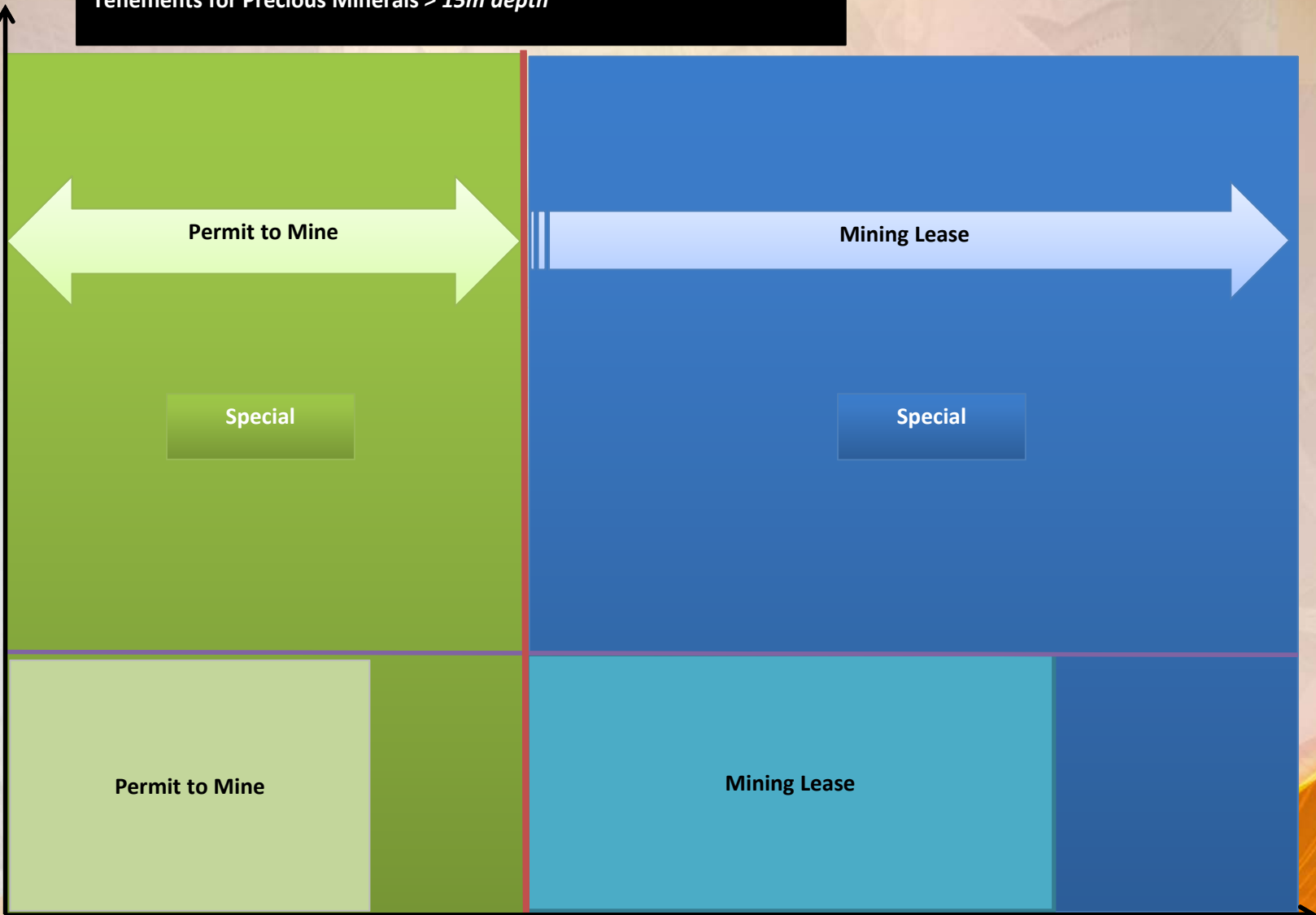


Types of Tenure

Tenements for Precious Minerals > 15m depth

Geographical Area (hectares)

40ha



2 years

5 years

21 years

Term (Years)

Types of Tenure

Tenements for **Non-Precious Minerals** > 15m depth

Geographical Area (hectares)

128ha



2 years

5 years

21 years

Term (Years)

Mining Lease Approval

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

Environmental Approval

Key Features	Details
Primary Legislation	Environment Management Act Environment Impact Assessment Processing Regulations
Agency / Organisation	Department of Environment
Key Documents / Requirements	Terms of Reference / Scope of EIA Environment Impact Assessment (EIA) Report
Fees	EIA Screening \$128.13 EIA Processing \$5,125
Charges	Applicant to meet costs of meetings / site visits / consultations

EMA – EIA Regs. - Env. Bond

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 :

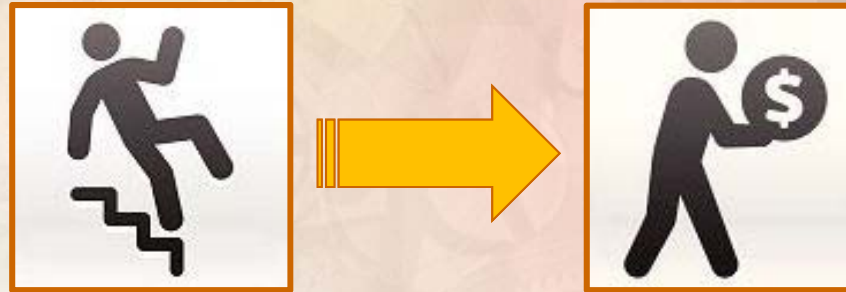
- Advance notification / information
- Object to grant
- Be consulted for consent on use of resources (e.g. timber/water) / land for facilities
- Compensation for irreversible damage
- Rental for surface rights
- Raise grievances to Director Mines
- Appeal decision of Director Mines



○ 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

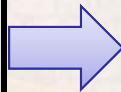
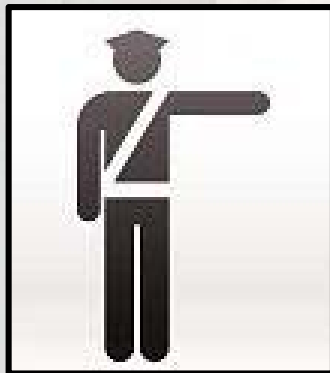


- Royalties



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

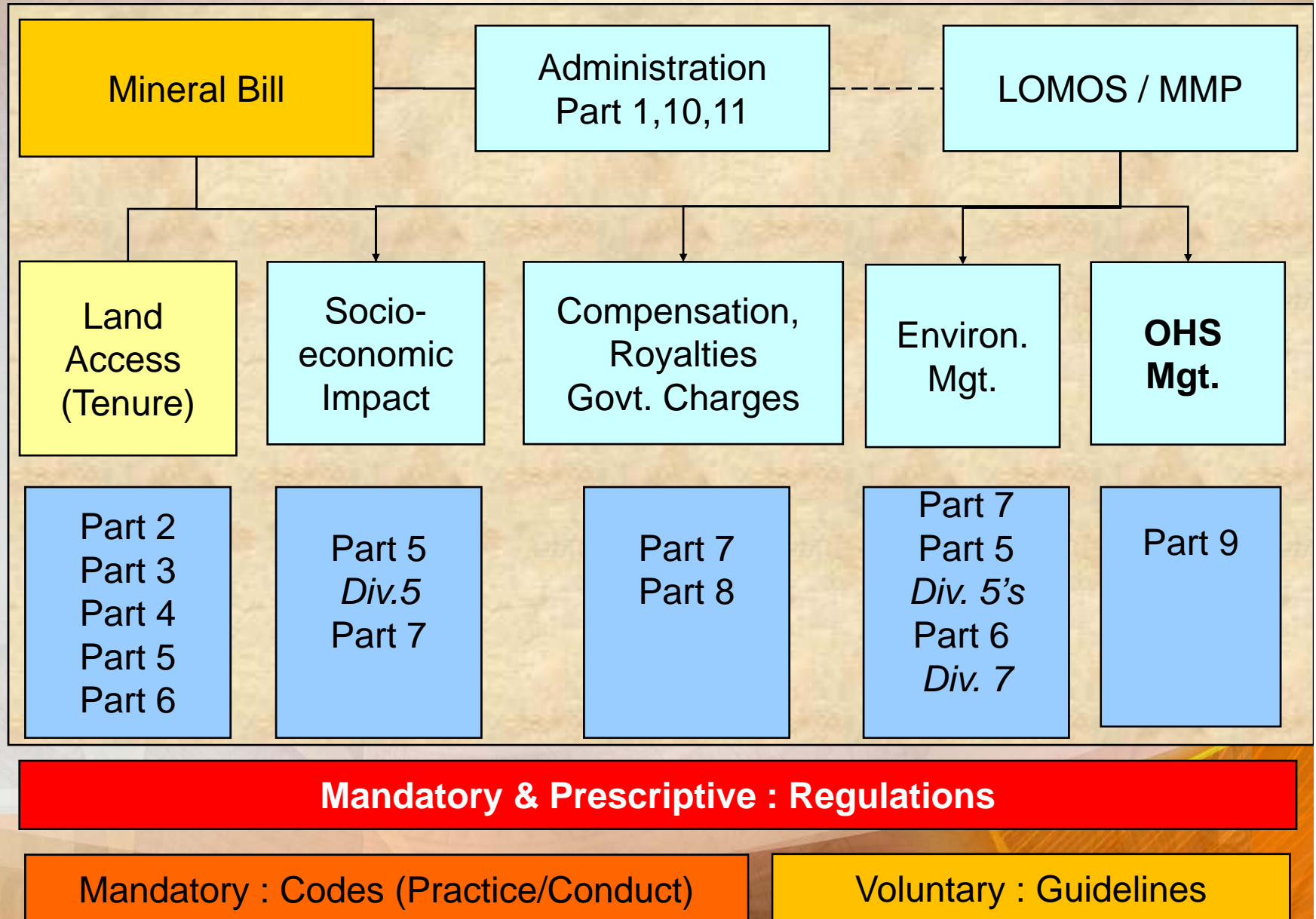
achieving acceptable **economic, social, and environmental** outcomes for all stakeholders.”

Proposed Legislative Framework (full package)

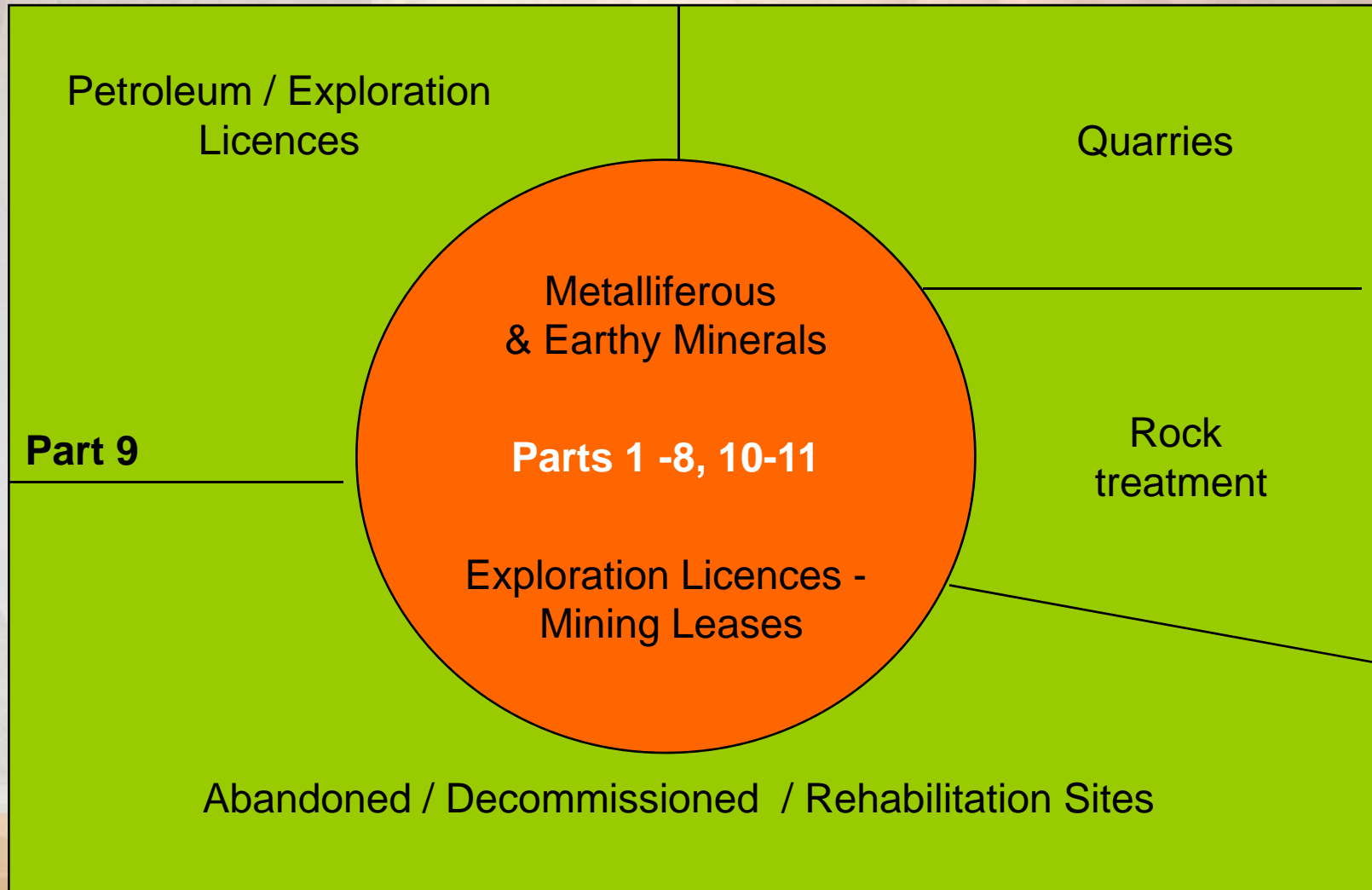
Mining Act and Regulations (Cap. 146) and the Quarries Act and Regulations (Cap.147) to be **replaced** with a new legislative framework which will ultimately consist of -

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



Coverage - Scope



Where to...next?

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?

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