
The Basic Framework

CENTRE FOR TECHNO-ECONOMIC MINERAL POLICY OPTIONS (C-TEMPO)
(A REGISTERED SOCIETY UNDER MINISTRY OF MINES, GOVT. OF INDIA)
www.c-tempo.org

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About Us:

The Centre for Techno Economic Mineral policy Options (C-TEMPO) has been set up under the aegis of Ministry of Mines, as a think tank to evolve policy options and help address the technology and management gap for non-ferrous minerals.

The objective of C-TEMPO is primarily to prepare and present attributable and non-binding techno-economic advice on various issues related to the mineral and mining sector. The aim of the Centre is to facilitate effective interaction between the investors, entrepreneurs, mining industry and the Central and State Governments and evolve policy options for stakeholders of the mineral sector.

In the Centre, a data bank of countries of interest in respect of their geology, mineral resources, export potential, technology etc. is being developed in coordination with Indian Missions abroad in the respective countries. This information will be leveraged to meet the growing demand of minerals in India to sustain the GDP and also from the view of strategic planning.

The Centre is also preparing and presenting Position Papers and studies on various techno-economic issues for the consideration of the Government, industry and other stakeholders. It also undertakes networking with Industry and Government for coordinated research in the mineral sector.
The Mines and Minerals
(Development & Regulation) Bill, 2011

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1.1 The draft Act starts with a declaration that it is expedient in the public interest that the Union (i.e. Central Government) should take under its control the regulation of mines and mineral development to the extent provided in the Act (Section 2). This declaration arises from the fact that though onshore mineral resources are in general the property of the State Government (offshore mineral resources are the property of the Central Government under Article 297 of the Constitution of India), entry 54 of List I (Union List) of the Seventh Schedule of the Constitution of India read with Article 246 of the Constitution confers exclusive power on Parliament to make laws in respect of regulation of mines and mineral development to the extent of such declaration and to that extent, the State Government are denuded of the power to make laws on the same subject even though entry 23 of List II (State List) otherwise empowers them to do so.

1.2 The draft Act defines a number of terms and phrases in the interest of clarity (section 3), the most important of which are the following:

(i) The United Nations Framework Classification (UNFC) is used as the defining standard to enable systematic classification of mineral reserves and resources in accordance with internationally accepted technologies and processes.


1.3 ‘Reconnaissance’ is defined as the ‘systematic study to identify areas of enhanced mineral potential on a regional scale’.

1.4 ‘Prospecting’ is defined as a systematic process of searching for a mineral deposit by narrowing down an area of promising enhanced mineral potential in order to facilitate general and detailed exploration.
1.5 ‘General exploration’ is defined as the process of initial delineation of an ‘identified deposit’.

1.6 ‘Detailed exploration’ is defined as the process of closed space sampling and drilling for a three dimensional delineation of a known deposit in order to conduct a feasibility study.

1.7 ‘Feasibility study’ means the Report prepared by a duly accredited agency to assess the technical soundness and economic viability of a mining project. (Section 126 provides for accreditation of agencies for preparing feasibility reports).

1.8 The Act does not define what a ‘mineral’ is. In a broad general understanding a mineral is a naturally occurring substance geologically or bio-geochemically formed, crystalline or amorphous, having a definite and uniform chemical composition with corresponding characteristic physical properties. Usually, but not always, it may contain a metal (like iron or sodium etc.), and may be made up of a number of such chemical substances. The crystalline nature is important because it enables the chemical substance to concentrate in a reasonably pure form. The formation of a mineral deposit is the result of geological processes taking place over million of years. For example, the iron ore deposits in India are widely believed to be caused by oxidation of iron in shallow seas about 2400 million years ago with the iron oxide getting precipitated by gravity and being compressed into rocks by heat and pressure as over time the deposits are overlaid by more material, often kilometers thick, due to a multiplicity of geological processes.

1.9 Further, while the Act does not define what an “ore” is, ores are rocks containing minerals, and mining is the process of ore extraction, followed by ‘refining’ to extract the ‘mineral’, and further followed generally by ‘smelting’ to extract the metal. Development of processes to be able to ‘liberate’ or extract the mineral from its ore is critical to techno-economic feasibility.
SECTION II
STATEMENT OF OBJECTS AND REASONS

2.1 The Mines and Minerals (Regulation and Development) Act, 1957 was enacted so as to provide for the regulation of mines and development of minerals under the control of the Union. The aforesaid Act has been amended in 1958, 1972, 1986, 1994 and 1999.

2.2 The first National Mineral Policy was enunciated by the Government in 1993 for liberalization of the mining sector. With the passage of time and the economic development of the country, which requires a vibrant energy, metal and commodities sector to meet the infrastructure, manufacturing and other sectoral demands, the nature and requirements of the mineral sector has changed. Based on the recommendations of a High Level Committee set up in the Planning Commission, Government of India, in consultation with State Governments, had replaced the National Mineral Policy, 1993 with a new National Mineral Policy on the 13th March, 2008. The new National Mineral Policy provides for a change in the role of the Central Government and the State Governments to incentivize private sector investment in exploration and mining and for ensuring level playing field and transparency in the grant of concessions and promotion of scientific mining within a sustainable development framework so as to protect the interest of local population in mining areas. This has necessitated harmonization of legislation with the new National Mineral Policy.

2.3 Since that the existing law had already been amended several times and as further amendments may not clearly reflect the objects and reasons emanating from the new Mineral Policy, it is considered necessary to reformulate the legislative framework in the light of the National Mineral Policy, 2008 and consequently, repealing the Mines and Minerals (Regulation and Development) Act, 1957.

2.4 The salient features of Mines and Minerals (Development and Regulation) Bill, 2011, inter-alia, are as follows:-
(a) It provides for a simple and transparent mechanism with clear and enforceable timelines for grant of mining lease or prospecting licence through competitive bidding in areas of known mineralization, and on the basis of first-in-time in areas where mineralization is not known,

(b) It enables the mining holders to adopt the advanced and sophisticated technologies for exploration of deep-seated and concealed mineral deposits, especially of metals in short supply through a new concession,

(c) It enables the Central Government to promote scientific mineral development through Mining Plans and Mine Closure Plans enforced by a central technical agency namely the Indian Bureau of Mines, as well as the Regulatory Authorities and Tribunals,

(d) It empowers the State Governments to cancel the existing concessions or debar a person from obtaining concessions in future for preventing illegal and irregular mining,

(e) It empowers the Central and State Government to levy and collect cess,

(f) Establishment of the Mineral Funds at National and State level for funding activities pertaining to capacity building of regulatory bodies like Indian Bureau of Mines and for research and development issues in the mining areas,

(g) It provides for reservation of mineral bearing areas for the purpose of conservation of minerals,

(h) It enables the registered co-operatives for obtaining mineral concessions on small deposits in order to encourage tribals and small miners to enter into mining activities,

(i) It empowers the Central Government to institutionalize a statutory mechanism for ensuring sustainable mining with adequate concerns for environment and socio-economic issues in the mining areas, through a National Sustainable Development Framework;
(j) It provides for establishment of the National Mining Regulatory Authority which consists of a Chairperson and not more than nine members to advise Government on rates of royalty, dead rent, benefit sharing with District Mineral Foundation, quality standards, and also conduct investigation and launch prosecution in cases of large scale illegal mining,

(k) It provides for establishment of the State Mining Regulatory Authority consisting of such persons as may be prescribed by the State Government to exercise the powers and functions in respect of minor minerals,

(l) It provides for establishment of a National Mining Tribunal and State Mining Tribunals to exercise jurisdiction, powers and authority conferred on it under the proposed legislation,

(m) It empowers the State Governments to constitute Special Courts for purpose of providing speedy trial of the offences relating to illegal mining,

(n) It empowers the Central Government to intervene in the cases of illegal mining where the concerned State Government fails to take action against illegal mining,

(o) It provides for stringent punishments for contravention of certain provisions of the proposed legislation, and

(p) to repeal the Mines and Minerals (Development and Regulation) Act, 1957.

2.5. A notable feature of the Bill is to provide a simple mechanism which ensures that revenues from mining are shared with local communities at individual as well as community level so as to empower them, provide them with choices, enable them to create and maintain local infrastructure and better utilize infrastructure and other services provided for their benefit.

2.6. The Bill seeks to achieve the above objects.
A. Licensing of Concessions

3.1 The Act provides that a licence (or lease for mining) has to be taken in order to do reconnaissance, prospecting or mining. The licences for all three operations are called ‘mineral concessions’ and the holder of the licence or leases is called a licensee/lessee as the case may be, more generally as a ‘concessionaire’ (Section 4(1)). Undertaking operations without a valid concession is illegal and there is a penalty of imprisonment upto three years and fine of ten times the value of minerals illegally mined (Section 110).

3.2 However, certain Government organizations do undertake reconnaissance and prospecting as part of their promotional work and the Section exempts them from having to go through the procedure of obtaining the licence. All they have to do is notify their intention to carry on work in a specified area. There is, however, a restriction on the time period for which they can carry on such activity (3 years of reconnaissance and 6 years of prospecting) so that they do not block an area where private investment is possible for the purpose (see section 4(2) read with Section 23).

3.3 The intention of a Government organization undertaking reconnaissance and prospecting out of public funds is to produce data to attract private investment. Therefore, on the completion of the work by the Government organization, the State Government, if there is mineralization, may either notify the area to invite applications for grant of mineral concessions appropriate to the level of data available; or keep the area apart for some additional time (not more than 3 years) and then notify invite the applications when conditions are more favorable; or release the area, in case the data shows little or no economic mineralization as per gathered data (Section 4(4) & (5)), so as to give the private sector a chance to try its luck.
3.4 Conceptually, reconnaissance or prospecting is not a guarantee of finding the minerals (mineral strike) even if they are there. The choice of technology, methodology, expertise in interpretation, etc, is all crucial to locate and identify a mineral deposit. For minerals located deep, it is quite often that successive concessionaires may fail to find the minerals, and some later concessionaire, using the data generated earlier, and bringing in new technology or sophisticated software may find a good deposit. Sometimes unexpected mineral findings in another geological environment in some other part of the world can lead to exploration in similar environments here in the country in the hope of finding something. Speedy grant and rapid turnover for reconnaissance and prospecting is the key to locating mineralization in the long run, and the Act aims to do this.

3.5 If the area is not notified or kept aside for notification (which is done under Section 13, details of which are given later), the State Government has to release the data on its official website. Not deciding on the issue of notification including keeping aside for future notification or not releasing the area or the data (for a released area) are all events that enables anyone interested in applying for the area or seeking the data, to apply to the National Mining Tribunal for a decision (Section 85(1)). This is expected to ensure that areas are not needlessly held up for want of a decision.

B. Eligibility for Concession

3.6 There are two kinds of eligibility criteria. One is based on the nature of the applicant. The requirement is that an individual (or a firm or cooperative of individuals) has to be Indian in nationality. In the case of companies applying for concessions, the requirement is that the company should be registered under Section 3 of Companies Act. As such foreign companies wanting to obtain mineral concessions need to register a subsidiary private company in India under Section 3. Government allows 100% FDI on the automatic route in the mineral sector.

3.7 The second kind of eligibility arises from the concession side. For this purpose, each State (Province), each group of associated minerals and each type of
mineral concession (i.e., concession instrument) is a separate parameter, and the MMDR Act imposes ceilings, State-wise and mineral-wise and concession/instrument-wise, limiting Reconnaissance Licence to 10,000 sq.km.; High Technology Reconnaissance cum Exploration Licence (HTREL) to 5,000 sq.km., Prospecting Licence to 500 sq.km. and Mining Lease to 100 sq.km. for a mineral or prescribed group of associated minerals in a state (Section 6).

It needs to be understood that Reconnaissance, HTREL and Prospecting Licences are fundamentally different from mining lease in that in the former, an area is not ‘held’, but has to be rapidly explored because the concession is for a very short time; upto 3 years for reconnaissance, 3-5 years for prospecting and 6-8 years for HTREL; and in each year the concessionaire has to relinquish area explored where economic mineralization is not found. The annual relinquishment achieves the twin purpose of ensuring that the concessionaire makes best use of technology and expertise in the short time available to him; it also makes him eligible to take other areas to the extent that relinquishment gives him the right to ask for more area within the overall ceiling.

3.8 Unlike reconnaissance and prospecting where there is likely to be a large and quick turnover of area in the hands of the concessionaire, in the case of a mining lease, the area is held for a relatively long period of time in order for the lessee to properly excavate the area to access the ore body, place machinery to evacuate the ore, and actually extract whatever mineral can be extracted. The law provides that a mining lease shall be for a period of not less than 20 years (and not more than 30 years), but the lease can be extended till the minerals are exhausted (Section 8). It is essential, therefore, that a mining lease should be granted only after there is sufficient knowledge of the ore body to be extracted particularly for deep-seated and concealed ore bodies. That is why in the new Act (unlike the 1957 Act) direct Mining Leases will not be given, and prospecting must first be done to establish the nature and disposition of the ore body (Section 13 (5) dealing with grant of mining leases may be seen).

3.9 One of the thrust areas of the new Act is the concept of scientific mining and zero-waste of resources. The concession grant system under the new Act
ensures this in several ways. Firstly, as given above, by encouraging competitive and technology driven reconnaissance and prospecting. Secondly, the minimum size of the mine for major minerals will now be 10 ha (instead of 4 ha). Thirdly Section 7(4) allows amalgamation of two adjoining leases to enable better mine planning and to reduce wastage by avoiding ‘sterile’ areas between two separate leases. It also extends the lease period to the date of the later of the two leases (rather than the earlier date of the two leases as per the 1957 Act), when two leases are amalgamated.

3.10 For coal minerals and atomic minerals and beach sand minerals, specific procedures are laid down (eg. Section 10) and grant of concessions (and renewal) requires prior approval of the Central Government. In all other cases, State Government is competent to grant the concession (unlike the 1957 Act, prior approval is no longer required for the 10 major minerals* that formed Part C of Schedule 1 of that Act). This has been made possible by reducing discretion (removal of ‘special reasons in grant of mineral concessions’), improving disclosure norms, and setting up Independent Regulatory Authorities (Section 58) and Mining Tribunals (Section 75) at Central level for major minerals and making provision for States to do so at its level in respect of minor minerals (Section 70). The Regulatory Authority will be responsible for general good governance. The Tribunal will be the redressal mechanism for delays and erroneous decisions. As a result the intention of the ‘prior approval’ is likely to be better achieved in the form of a holistically well regulated mineral sector.

3.11 Three alternative and clear mechanisms for grant of concessions have been laid out in the Act. The first is ‘chronological’ or first-in-time. This applies to prospecting (whether HTREL or PL) and is based on the principle that the general work of Government agencies, like GSI, throws up regional level

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*major minerals are minerals of economic, commercial and industrial importance, and minerals in Part C of First Schedule of the Act include iron ore, bauxite, and minerals of copper, lead and zinc ore, gold, silver, platinum, etc. The new Act lists out all the known major minerals identified in the country as available resources in Schedule I. There are of course hundreds of other minerals occurring in other parts of the world.
geological and mineral data, which then needs to be verified by geophysical, geochemical and drilling work at the risk and cost of the entrepreneur. The case of Reconnaissance can be called a special case where the data is so deficient that everybody can be treated as a ‘first-in-time’ case and so the concession can be given on a non-exclusive basis.

3.12 The second mechanism is the ‘priority based on work done’, which is also called ‘seamless transition’. Reconnaissance, prospecting (including general and detailed exploration) and mining constitutes a natural progression based on progressive data acquisition and accumulation, giving progressively greater confidence regarding the availability of minerals. Investment in reconnaissance (or prospecting) will take place only if there is an assurance of the ultimate reward in the form of mining rights. As such Section 22(7) and 25(3) specify that the person who applies for prospecting licence on the basis of his reconnaissance work and for mining on the basis of his prospecting work shall have the right to the concession to the exclusion of those who have not so invested in reconnaissance or prospecting as the case may be.

3.13 The first mechanism is mainly operative in conditions of data insufficiency, and the second mechanism operates mainly in conditions where the entrepreneur is generating his own data. In both these situations, there is very little valuable data available with the Government for the purpose of leveraging for financial or developmental payoffs. However, these two mechanisms provide potential value in the form of data generated in respect of areas relinquished by the concessionaire. A concessionaire may relinquish an area for a number of reasons, including limited ability to hold the area, lack of interest in the kind of minerals that may be discovered on the basis of the data, etc. Such areas which are not applied for, can be and are generally targeted by public agencies for promotional prospecting work and the results are in the form of identification of specific areas where accumulation of data by concessionaires and Government agencies doing promotional work have enabled identification of highly potential prospects that can either be put to bid for detailed prospecting leading to mining (if mineralisation is proved) or worked on further by Government agencies to improve the data quality and then put to bid directly for mining,
provided data is supportive. Section 13 provides for both these possibilities, in specific different ways. In both cases, the bids will be a combination of techno-economic and financial parameters. The techno-economic parameters promote the strategies enunciated by the National Mineral Policy, 2008, in relation to beneficiation (which is essentially improving the grade of the ore, i.e. the percentage of the extractable mineral in ore, by a combination of physical and chemical processes), zero-waste mining (i.e. complete use of run-of-mine), ore-linkage (i.e. assured supply of ore by the miner to consuming industries), value addition (e.g. mineral beneficiation or metal making), new technologies, and infrastructure development, etc. applicable generally at mining stage. The financial bids at prospecting stage are generally anticipated as being in the nature of production sharing, given the uncertainties at this stage. At mining stage, since the valuations and extractability are likely to be well known (based on the feasibility study), bids can be in lump sum installments (generally payable from the mining revenue and not in advance), or to be more safe, in the nature of production sharing.

3.14 A change for a major part, as a result of the new provision for disposal of mining leases through bidding based on the valuation of the ore body, is the matter of renewal of leases, modified as Section 28 which now provides for ‘extension’ of a lease on the expiry of its term. The 1957 Act provides for ‘renewal’. However, since in a bidding situation for a mining lease, the bid is for the entire extractable ore body, in the interest of equity (and also scientific mining) it is clearly necessary to extend the lease on the existing terms and conditions, rather than leave it for an open-ended decision of renewal. The new Act, therefore, provides for extension of leases till mineable deposit is available, rather than renewal.

3.15 The provision for a techno-economic cum financial bid and an almost guaranteed extension till extraction of the entire ore body optimizes the value realization for the State Government in more ways than one. In particular, it addresses, through a transparent process, the issue of value addition within a State. Many State Governments insist on value addition (mineral, metal or product making) within
the State, on the assumption that will provide employment, income and revenues. While normally, (particularly for bulk minerals like iron ore, bauxite and limestone) the cost of mineral transportation favours setting up of the value addition plant fairly close to the mine or well connected to it, issues of power, water and land availability, infrastructure and other considerations favouring better investment returns and more investment security also determine decisions on siting of the value addition unit. The bid amount is intended to reflect the cost on this account, and the State will obviously need to endeavour to mitigate these costs to obtain higher bid values.

3.16 Another major change, based primarily on the Hoda Committee Report (and para 3.3 of the National Mineral Policy, 2008) is to make concession instruments (reconnaissance, prospecting licences and mining leases) transferable as provided in Section 17. As such, after giving notice, a reconnaissance or prospecting licence (including HTREL) can be transferred. No prior permission is necessary, and the State Government can refuse to accept the transfer only if the transferee is ineligible under the Act (i.e. in terms of nationality, specific disqualification or excess area). Facilitating quick and easy transfer is the key to increasing turnover rate for exploration area. It is only for coal, atomic minerals and beach sand minerals that prior approval of Central Government is necessary, whereas earlier the Mineral Concession Rules required prior approval of the State Government in all cases of transfer.

On transfer, the rights and liabilities including rights to the data are also transferred to the transferee. This has two advantages. It allows a highly specialized or higher risk taking company or a specific-mineral oriented company to take over a promising area as a ‘late stage’ exploration enterprise, thus incentivizing efficiency. It also allows a specialized exploration company (with no expertise in mining) to sell the mining rights to a mining company, and move on to other exploratory ventures. This in fact is the model of Junior Exploration Companies (‘Juniors’) which is responsible for most mineral discoveries in Canada in the last two decades. Incidentally, Canada currently has one of the highest spend on explorations in the world.
3.17 In the case of mining, there is a lease agreement between the State Government and the concessionaire, and as such under Section 18, prior approval of the State Government is necessary (and of course of the Central Government for coal, atomic and beach sand minerals). The Act generally facilitates transfer except in case where it may result in fragmentation, or is against the national interest (including monopoly situation for strategically important minerals). The State Government, however, has the power to ensure that the consideration (sale price) for this transfer represents a fair value (Section 18(2) & (3)), by challenging an apparently low value and obtaining a market value. Needless to say, the State Government has a vital interest also because the fee for transfer will in fact be based on the consideration (Section 17 (6)).

3.18 All grants, transfers, cancellations, etc. of concessions have to be notified on the Government website.
SECTION IV
RECONNAISSANCE LICENCE

4.1 The maximum area for reconnaissance for a mineral or a group of associated minerals in a State at a time is 10,000 sq.km., and the maximum tenure is 3 years (and minimum is one year) (Section 7(1)).

4.2 The licence is non-exclusive, and there has to be progressive relinquishment of area over the licence period, and the gathered data has to be given to GSI and the State Government for their use after a lock-in period of 6 months (Section 19(1)(f)).

4.3 A reconnaissance licence is transferable to a person eligible under the Act under intimation to the State Government. There is a Transfer fee (Section 17).

4.4 Reconnaissance licence for coal, atomic minerals and beach sand minerals (and transfer thereof) requires approval of Central Government (Section 17(2)).

4.5 The conditions on which a reconnaissance licence is issued include operating as per an approved Reconnaissance Plan and keeping accounts of the expenditure. Simultaneous ground operations of multiple licence holders are regulated by filing of quarterly plans of operations to exclude overlapping areas (Section 19(1)(b)).

4.6 For a reconnaissance licence, there is a non-refundable application fee and refundable earnest money. There is an annual licence fee which will be between Rs.50/- and Rs.500/- per sq.km. per year (This works out to an annual fee of Rs.5 lakhs to Rs.50 lakhs for the maximum area allowed). There is also a security deposit equal to the first year’s licence fee (Section 19(4)).

4.7 As per Section 14(1)(a) of the Act a reconnaissance licence application has to be decided within a period of 3 months (in case Central Government approval is required, a further period of 3 months is allowed for the purpose). In case it is not so decided, or it is refused, the applicant may approach the Mining Tribunal.
SECTION V
PROSPECTING LICENCES

(High Technology Reconnaissance cum exploration Licence-HTREL and Prospecting Licence -PL)

A. High Technology Reconnaissance cum Exploration licence (HTREL)

5.1 The maximum area that can be granted under a High Technology Reconnaissance cum Exploration Licence (HTREL) for a mineral or a prescribed group of associated minerals in a State at a time is 5,000 sq.km., and the maximum tenure of such licence is 6 years (extendable by another 2 years, so that the total time of 8 years available for HTREL is at par with the RL + PL route of a maximum of 3 + 5 years) (Section 7(2)). The concept of ‘associated minerals’ is essentially based on accepted geological knowledge of such association (eg. gold or selenium with copper).

5.2 The licence is exclusive and is given on the basis of chronology of the application (i.e., to the earliest eligible applicant), but is not available for bulk minerals like iron ore, bauxite, limestone etc. which are surficial ‘bedded deposits’ or cappings not requiring high technology for their discovery (proviso under section 6(1)). The licence is particularly oriented for high-risk venture-capital funded exploration of concealed deposits eg., base metals (i.e. Copper, lead, zinc, etc.), noble metals (gold, silver, platinum, etc.), gemstones etc. The licence has been designed specifically considering a situation where major surficial deposits (i.e., upto a depth of 50 m) have been identified based on the current level of technology used, and location of deeper deposits requires advanced geophysics, including gravity, magnetic, magneto-telluric, IP resistivity and other geophysical surveys both aerially and on the ground, at relatively high cost, especially in areas where there are no obvious indications of such mineralization.

5.3 There will be progressive relinquishment of area over the licence period (so that at the end of the licence period area held is not more than the entrepreneur’s eligibility for mining purposes, i.e 100 sq km), and the gathered data (which is
likely to include high value geophysical data very useful to subsequent exploration also) will need to be given to GSI and the State Government for their use. The concept of progressive relinquishment incentivizes efficient and time-bound exploration work (Section 19(1)(a) and 21(1)(a)).

5.4 An HTREL is transferable to a person eligible under the Act under intimation to the State Government. HTREL grant (and transfer) for coal, atomic minerals and beach sand minerals requires prior approval of Central Government. There is a transfer fee (Section 17(6)).

5.5 The condition on which an HTREL is issued include operating as per an exploration plan which includes a six monthly detailed plan of operation and six monthly expenditure projection (Section 21(1)(b)). Substantial efficiencies actually arise mainly because the entrepreneur has to cover a large area (upto 5000 sq.km.) in a limited time (not more than 8 years) with annual relinquishment. The annual relinquishment decision itself ensures that he is serious about his exploration so that he does not relinquish an area with mineralization after having paid a huge licence fee.

5.6 If during prospecting for any minerals under the licence, other minerals are found, they can be included in the licence (except bulk minerals like iron ore, bauxite and limestone which are not allowed and in case of coal, atomic minerals and beach sand minerals prior approval of Central Government will be required). This provision is necessary since at the initial stage of the reconnaissance operation under the licence the level of knowledge would normally not be enough to be able to know what minerals are likely to be there and at what depth and in what extractable quantity. Since the licence holder will be spending a large sum of money on a high risk venture, he must be given the opportunity to get the best possible reward if there is a mineral occurrence detected by him (Section 21(1)(i)). If during operations, the HTREL licencee locates bulk minerals he is eligible to put in a direct PL application for these minerals as per the applicable provisions.
5.7 For HTREL there is a non refundable application fee and a refundable earnest money. There is an annual licence fee of upto Rs.50/- per ha. (Rs.5000/- per sq.km) per year. There is also a security deposit equal to the first years licence fee. The licensee has to pay compensation to the landowner for the period that the ground is occupied by him for prospecting (Section 21(1)(k)).

5.8 HTREL applications are to be decided within a period of four months (as per Section 14, with an additional 3 months in case of atomic minerals where Central Government approval is required).

B. Prospecting Licence (PL)

5.9 The maximum area allowed under PL for a mineral or a prescribed group of associated minerals in a State is 500 Sq. Km. at a time for a period of 3 years (extendable by another 2 years) (section 7(3)).

5.10 The licence is exclusive, with progressive relinquishment of area so that by the end of the prospecting period the area held is not more than an entrepreneur would be eligible for mining purposes, i.e 100 sq km (Section 6(5)).

5.11 There are three ways of obtaining a PL. Firstly, a person who has done RL and applies for a PL has a priority based on chronology as per Sec 22(7). Secondly, in areas where there is sufficient data on the geological, geophysical and geochemical aspects of the area, and there are enough indications (as per the technical standard called the United Nations Framework Classification or UNFC) that the mineral occurrences are sufficiently large to be of economic value and are extractable by a mining process, the State can notify the area and invite techno-economic cum financial bids under Sec 13(1) (as described in detail below). Thirdly, in areas where there is no knowledge of mineralization, on the one hand there is no object of value for bidding purposes on the other, the PL itself requires substantial expenditure and assumes substantial risk, and expecting a bid amount when there is no knowledge of mineralization will disincentivise serious exploration based on geological expertise. In such areas, bids are not called, and the area is left open for direct applications which will be dealt on
chronological priority basis (first-in-time principle) under Sec 22(3). This may also include the case where a HTREL licencee discovers a surfacial bedded deposit which cannot be included in the HTREL (proviso under section 21(1)(i)).

5.12 In the second option described above, a combined techno-economic and financial bidding process has been prescribed, with the State Government giving weightage to specific techno-economic parameters based on the nature and location of the prospect. The States Government can also give a relative weightage between the financial and techno-economic parameters to either maximize revenues, or features like value addition as appropriate.

5.13 If during prospecting for any minerals under the licence, other minerals are found they can be included in the licence (except coal, atomic minerals and beach sand minerals which require prior Central Government approval). This provision has been kept because at the prospecting stage, the level of knowledge may not be enough to know all the minerals that are likely to be there, particularly those that may occur at a depth (Section 21(1)(i)).

5.14 The common perception that first-in-time is necessarily a contradiction to the competitive principle does not always apply to the mineral sector. The fact is that competition is always in respect of an object of value. Where mineralization is known and a tangible value can be attached to it, a bidding process can be structured, having regard to technical issues. Section 13 addresses such cases. Where there is no knowledge of mineralization in an area, especially in a multi-mineral occurrence, and there are large number of such areas (in India the Obvious Geological Potential area is 5,70,000 sq.km.) and a PL can be for a maximum of 500 sq.km. for a person, with limitation imposed by earnest money, etc., the actual scarcity value attaches to the exploration budget and not the land or the mineral, and, therefore, in essence, the parcels of pre-potential areas are competing (based on basic geological data) for scarce exploration budgets! In the context of HTREL, the competition is essentially for exploration budgets funded from venture capital. A simple and transparent system of grant of concession in such cases is the obvious answer, and the world over, the first-in-time principle is used (Section 22(3)).
5.15 A PL is transferable to a person eligible under the Act under intimation to the State Government PL grant (and transfer) for coal, atomic minerals and beach sand minerals require prior approval of Central Government. There is a transfer fee.

5.16 The condition on which a PL is issued includes:-

(i) operating as per an exploration plan which includes a six monthly detailed plan of operations and six monthly expenditure projection.

(ii) making all data available to the GSI and State Government (Section 21(1)(d)).

5.17 For PL there is a non-refundable application fee and a refundable earnest money deposit. There is also an annual licence fee of up to Rs.50/- per ha. (Section 21(1)(g)).

5.18 Applications for PL are to be decided within a period of four months (as per Section 14, with an additional 3 months in case of Central Government approval for atomic minerals, coal minerals and beach sand minerals), and an applicant can approach the Mining Tribunal in case of delay or refusal (Section 14(6)).
6.1 A mining lease is for utilization of the sub-surface, i.e. for the mineral rights. Surface rights on the land need to be acquired separately for the purpose of excavation or access by a separate lease made with the owner or surfaced rights, who in India need not be the owner of the mineral rights. In India, generally the owners of mineral bearing lands are the State Government, since most of such land falls in forest areas or government revenue lands.

6.2 The maximum area which can be held by a person (or a company or firm or cooperative) for ML for a mineral or a prescribed group of associated minerals in a State is 100 sq.km. (Section 6(1)).

6.3 There are three ways of obtaining a Mining Lease. The first way is by ‘seamless transition’ whereas a HTREL or PL holder, at the end of his prospecting operations identifies an area for mining and applies for a lease. Such a person is entitled to the lease unless he is disqualified (for not being an Indian citizen or already holding mining leases for the mineral to such an extent that fresh grant would mean that sum of all the ML areas would exceed 100 sq.km. or being disqualified on grounds of conviction for illegal mining, etc.). This includes the case where someone buys up the HTREL or PL and steps into the shoes of an original licensee and thus acquires the right to seamlessly transit to mining. All such applications need to be made within 6 months of end of the held licence (Section 25).

6.4 The second way is to bid for a mining lease for an area notified for the purpose by the State Government under Section 13(5). A notable feature is that in respect of Forest areas, the first stage clearance has to be obtained by the State Government before initiating the bid process, so that the NPV and Compensatory Afforestation (CA) costs are known to the bidders.

6.5 Bids can be invited under Section 13(5) only for areas where prospecting has been conducted and enhanced mineralization has been found as per prospecting
report and feasibility study (conforming to UNFC). Bids will give separate weightage to techno-economic and to financial criteria, so as to enable State Governments to give preference for experience or value addition etc, or for increasing revenues, as the State Government may prefer as per their policies, and the nature and location of the deposits.

6.6 The **third** way is to directly acquire a mining lease from an existing lessee for a consideration, which will be treated as transfer of lease. Such transfer requires prior approval of the State Government, and in the case of coal, atomic minerals and beach sand minerals, of the Central Government (Section 18(1)). As per 1957 Act, in the case of 10 minerals in Part C of the First schedule to the Act, prior approval of the Central Government was required, which has been replaced by an independent regulation for the sector.

6.7 The new Act does not provide for direct application for a mining lease unlike the 1957 Act, unless it is in response to a notification by a State Government inviting competitive bidding. The reason is that a mining lease can be used for extraction of minerals only when there is adequate knowledge of mineralization in the form of a prospecting report and feasibility study, and such a situation is likely to arise either because of (a) generation of data by an exploration licensee during detailed exploration or (b) generation of detailed exploration data by earlier licensees or State Agencies and possession of such data by the Government. In the former case, the licensee is eligible for seamless transition, and in the latter case the State Government would be able to obtain bids under Section 13(5), subject to adequacy of data in terms of the UNFC guidelines.

6.8 Where an application for grant of a mining lease is accepted, a Letter of Intent (LOI) is to be issued, on the basis of which Environmental Clearance is to be obtained and Forest Clearance also, if required. For this purpose the applicant is required to first prepare a Mining Plan (Section 26) based on the prospecting data, which is the basis for the environmental clearance.

6.9 For ML, there is no application fee or earnest money for seamless transition. The fees and earnest money in the case when bids are invited under Section 13(5) will be prescribed in Rules.
There is a security deposit of Rs. 1 lakh per hectare payable in equal installments over the mining plan period (Section 24(1)(iii)). This amount is for observance of all the conditions of the lease, including mine closure. Royalty and other payments are as given in the next chapter.

6.10 Mining Leases are subject to stringent conditions related to zero-waste, scientific mining and sustainable practices including the following:-

(i) Mining must commence within 2 years of the execution of the lease.

(ii) The licensee has to erect boundary marks and pillars to demarcate his lease area.

(iii) The lessee must keep accurate accounts showing the quantity and particulars of the minerals extracted and sold.

(iv) Central Government and State Government officers will be permitted to inspect the area, mines etc. at any time.

(v) All operations will only be in accordance with the mining plan as approved.

(vi) The lessee shall comply with any direction issued by the Indian Bureau of Mines (IBM), Central Government and State Directorates of Mining (Section 21(2)).

6.11 A mining lease may be extended on application made atleast 24 months before expiry of the current lease and is to be disposed off by the competent authority within 12 months of receipt. This enables the lessee to execute the Final Closure plan in case extension is refused, and to make timely investments of extension is approved.

6.12 A lessee may terminate (legally called ‘determine’) a lease with 12 months notice (Section 30(1)).

6.13 In the event of breach of any of the conditions of the lease (including the provisions of the Act and Rules thereunder) the State Government may after giving due opportunity, terminate the lease, and forfeit any part or all of the security deposit (Section 30(3)).
6.14 The State Government may prematurely terminate the lease in the public interest or in the interest of public safety for reasons to be recorded. In all such cases the lessee is entitled to compensation (Section 31(11)). The compensation provision is provided in the interest of equity and justice. There is a corresponding provision in the Model Lease Deed under the 1957 Act (Para 2 of part IV in Form K in MCR, 1960). While it is not possible to enumerate what may constitute "public interest" or "public safety", these terms are widely understood, and are subject to scrutiny of the Tribunals and the Courts.

6.15 Every mine has to have a Mine Closure Plan prepared in terms of the Sustainable Development Framework (SDF). There is a progressive Mine Closure Plan for 5-yearly periods, which is also to be disclosed to Panchayats of the area and approved after consulting them. There is also a Final Mine Closure Plan which is continuously updated throughout the period that the mining is taking place, is approved after consultation with the Panchayats concerned, and is to be executed when the lease is to be ended. The land use Plan as proposed in the Final Mine Closure Plan has to be prepared in consultation with the local Panchayats (Section 32).

6.16 If there is default in implementing the progressive Mine Closure Plan, mining operations can be ordered suspended and additional security demanded, and lease terminated in default (Section 33).

6.17 In case of abandonment or failure to implement the Final Mine Closure Plan, the closure can be effected at the cost of the lessee (funds from State Cess under Section 53(4)(f) can be used) and expenses incurred recovered from the lessee and lessee can be debarred for obtaining concessions in future.

6.18 After conclusion of mining operation, the State Government can assess the damage to the land and determine the compensation payable to the person holding the surface rights (Section 21(2)(a)).
6.19 Application for mining leases based on seamless transition from a PL or bidding are to be disposed off in a timebound way, with a Letter of Intent (LOI) being granted within four months and after the applicant has obtained all environmental and forest etc. clearance, the lease is to be executed within three months (another 3 months in case Central Government approval is required, as in the case of atomic minerals, coal and beach sand minerals). This provision has been structured in this manner recognizing that the time period for grant of forest and environment clearance cannot be controlled through the MMDR Act since they are under different legislation with their own processing structures.
SECTION VII
ROYALTIES, CESSES AND FEES

7.1 The Act envisages a Royalty to be paid in respect of any mineral removed or consumed by the lessee from the lease area. Royalty is payment for mineral consumed or removed from the lease area, and as such it is generally computed at the point of extraction (per month) on the basis of the sale price at the point of first sale if there is no other method of valuation (in case of captive mines, sale price discovered by stand alone mines is used). Under the draft Act, a concessional rate of royalty can be charged where the mineral is beneficiated at ore stage (Section 41 (1) and (2)). The purpose is to incentivize beneficiation in line with the National Mineral Policy 2008.

7.2 The Act envisages a ‘dead rent’ for all the areas included in the lease, and the lessee is to pay the ‘royalty’ or the ‘dead rent’, whichever is higher.

7.3 It has been held by the Courts, most notably in Civil Appeal 1532-1533 of 1993 dated 15.1.2004 (State of West Bengal vs. Kesoram Industries and others) that royalty is not a tax. It is payment for the materials or minerals won from the land. ‘Dead rent’ is also not be confused with ‘surface rent’, but is in the nature of a minimum guaranteed amount payable to the State Government for holding a mineralized area calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. Surface rent is payable to the owner of the land, while dead rent is payable to the owner of the mineral.

7.4 The lessee has to pay an annual compensation (surface rent) to the person holding occupation or usufruct or traditional rights, as may be mutually agreed. If there is no agreement, the State Government may determine the amount (Section 43(1)).

7.5 Each lessee is also required to pay an amount equal to royalty each year to the District Mineral Foundation, and in respect of coal minerals, the amount is equal to 26% of profits after tax from mining operation, in the previous year (Section 43(2)). This amount is required to be paid by captive mining leases also.
7.6 The amount paid to the District Mineral Foundation may be classified as a ‘fee’. It does not become part of the Consolidated Fund of the State, and it is not subject to an appropriation in that behalf. It goes directly into a special fund earmarked for carrying out specified purposes under the Act, and there is a correlation between the amount and the purpose for which it is levied, satisfying the element of quid pro quo, which is an essential ingredient. (See State of West Bengal vs. Kesoram Industries and others). As a ‘fee’ it is covered for purposes of legislative competence by entry no 96 (read with entry no 54) of List-I of the Seventh Schedule of the Constitution.

7.7 Where the lessee is a company, it shall allot at least one (non-transferable) share at par (for consideration other than cash) to each person or the family affected by mining related operation (Section 43 (3)).

7.8 There shall be levied a Central cess not exceeding 2.5 % of the customs and excise duty payable on minerals. The State Government may also levy a cess, not exceeding 10% of the royalty (as State cess). The provision for a State cess in the Act is covered by a combined reading of entry 50 of List-II (State List) which empowers the State to levy taxes on mineral rights subject to limitation imposed by Parliament, and entry 54 of List-I (Central list) which empower Parliament to pass laws relating to mineral development.

7.9 Revision of royalty rates will be done on the basis of recommendations of the National Mining Regulatory Authority (Section 41(3)). The Act (unlike the 1957 Act) allows the Authority to recommend mechanisms to moderate royalty to support investment in remote areas for induction of special technology for promoting mineral beneficiation or to produce downstream products of strategic value or to create infrastructure (Section 68 (1) (i)).
SECTION VIII
MINERAL REGULATION

8.1 The Act states that the Central Government shall formulate a National Sustainable Development Framework (SDF) for scientific development of mineral resources and prevention and control of pollution. States can develop a State Framework in consonance with the National Framework, with the approval of the Central Government (Section 46). The SDF will contain guidelines for project level sustainable mining practices, including mineral conservation and waste reduction, environmental sustainability, protecting interests of local communities and host populations, creating sustainable livelihoods etc. (Section 46).

8.2 The Central Government may issue general directions to the State Governments or the National Mining Regulatory Authority for conservation of strategic mineral resources or any policy matter, and for scientific and sustainable development of mineral resources, and to detect, prevent and prosecute cases of illegal mining (Section 46).

8.3 The State Government may issue directions to the owner etc. of a mine in the interest of systematic development, conservation and sustainable development of minerals (Section 47). The Central Government may also authorize GSI, IBM etc. to carry out technical or scientific investigation (Section 48).

8.4 The IBM, State Directorate of Mining or other Officer authorized by the Central or State Government may inspect a mine or a prospect and may direct a mine owner to take action in case of a grave or immediate threat (Section 49).

8.5 The National Mining Regulatory Authority (Section 58) and National Mining Tribunal (Section 75) and similar institutions at State level are being created under the Act to function as regulatory authorities at arms length from the Government. While the Regulatory Authority will exercise jurisdiction in relation to ensuring ‘good governance’, the Tribunals will function quasi-judicially to address issues of delays (in relation to time lines specified in the Act) and decision-content (in relation to the provisions and intent of the Act). In addition,
the National Mining Regulatory Authority may, in case of a written complaint alleging illegal mining in respect of major minerals on a large scale or organized or inter-State basis may cause investigation and prosecution (Section 69). The State Mineral Regulatory Authority shall have the powers to authorize investigation and prosecution for offences under this Act for major or minor minerals except where the matter is under investigation or prosecution by the National Authority (Section 72).

8.6 As part of its ‘good governance’ mandate the National Mining Regulatory Authority will be responsible to

(a) Lay down standards.
(b) Advise on mineral conservation strategies and SDF.
(c) Advise on transparency and disclosures and competition.
(d) Recommended royalty and dead rent charges.
(e) Recommend strategies for attracting long-term investments etc. (Section 68).

8.7 The recommendation or advice of the National Mineral Regulatory Authority shall be submitted to the Central Government in the form of a Report. The Central Government has to take a decision within 3 months and if it is at variance with the recommendation, shall inform the National Authority (Section 68(7)). The National Authority shall include in its Annual Report, all cases where its recommendations or advice have not been accepted, along with reasons (Section 68 (8)).

8.8 The National Mining Tribunal shall function in a quasi-judicial manner (with benches, composed of three members, with at least one expert member and one Judicial member). The members of the Tribunal will be selected by a Selection Committee chaired by the Cabinet Secretary. The Tribunal shall.

(a) Decide on requests seeking disposal of applications for grant or transfer of concessions when such application for grant or transfer of concessions has not been disposed off within the time specified in the Act.
(b) Hear matters arising out of orders and direction issued in respect of preparation, approval and implementation of Mining Plan, Mine Closure Plans and SDF.

(c) Hear revision applications from parties aggrieved by orders of the Central/State Government under this Act. Orders of the National Mining Regulatory Authority are, however, not subject to revision by the Tribunal (Section 85).

Any appeal against orders of the Tribunal shall only lie in the High Court.

8.9 The Act gives the State Government powers to set up a State Mining Regulatory Authority for minor minerals (Section 70) with some regulatory powers for major minerals (Section 70 and 72).

8.10 The Act gives the State Government powers to set up a State Mining Tribunal with similar powers as the National Tribunal, but in respect of minor minerals.

8.11 The Act provides for constitution of Special Courts consisting of a Single Judge of rank of at least Additional District and Sessions Judge for speedy trial of offences under the Act relating to mining without a licence or not paying royalty, not implementing a Final Mine Closure Plan, disobeying a direction of the IBM or State Government under the Act or any other provision of the Act.

8.12 The Regulatory Authorities, Tribunals and Special Courts will be funded from the Central/State cess imposed under the Act.
SECTION IX
SUSTAINABILITY

9.1 The Act addresses issues of sustainability in two distinct ways. The first is the sustainability of mining, which includes issues relating to mineral conservation, zero-waste, increasing the resource base, beneficiation and process R&D, recycling, etc. The second is the sustainability of the societal structures and ecological processes given that mining does degrade the environment and adversely impact the quality of life; and what needs to be done to ensure sustainable development in these circumstances.

9.2 The Act creates two Funds, a National Mineral Fund (Section 50) and a State Mineral Fund (Section 53), funded out of cess respectively on customs/excise duties and royalty. Each of these Funds appropriately incentivizes and regulates activities to support sustainable mining as given below.

9.3 The National Mineral Fund can be used for

(a) promoting scientific management of mining activities.
(b) R&D in sustainable mining and recycling of resources.
(c) investigation for the conservation and scientific management of mineral resources.
(d) promotion of IT applications.
(e) providing grants for techno-economic studies and promotional events.

9.4 The State Mineral Fund can be used to develop capacity of the State Directorate to achieve the objects of the Act (including conservation and scientific mining), prevention and detection of illegal mining (including rewards to whistle blowers) etc.

9.5 The Act also directly promotes more sustainable mining in the following ways:

(a) Providing for systematic augmentation of mineral resources through GSI’s survey and exploration and integration of data arising from private exploration work (Section 4).
(b) Facilitating State Governments to notify areas for prospecting and mining and giving weightage to technology, mineral processing, end use and ore linkage to better utilize the run-of-the-mine (ROM) (Section 13). The run-of-the-mine is a technical term for the total ore produced from the mine, which may contain a variety of grades, and even certain impurities.

(c) Allowing transfers and amalgamation of mines to promote better utilization of the ore body (Section 7(4)).

(d) Concessional royalty for mineral beneficiation at ore stage (Section 41).

(e) Mining Plan to include scientific methods of mining, beneficiation and economic utilization (Section 26).

9.6 The Central Government may also conserve any mineral, or any grade of mineral keeping in view the strategic value (Section 40). The Central Government may also reserve an area for purposes of mineral conservation, for periods of not more than ten years at a time (Section 37).

9.7 A cornerstone of the new Act is the Sustainable Development Framework. Section 46 specifies a National Framework, with the States having the facility to prepare a State Framework in consonance with the National Framework. The Framework will contain guidelines enabling formulation of project (mine) level practices for sustainable mining and include life cycle analysis, impact assessments, mitigation interventions, socio-economic development, mineral conservation and waste-reduction and restoration and reclamation. The key factor is that the Framework will specify consultative mechanisms with stakeholder groups from pre-mining stage to post-closure, and a system of public disclosure of mining related activities and environmental parameters to facilitate sustainability audits (Section 46).

9.8 The Act specifies that the Mining Plan will be prepared within the Sustainable Development Framework (SDF) and have attached to it a Corporate Social Responsibility (CSR) document giving the proposed annual expenditure on socio-economic activities in the Panchayats adjoining the lease area (Section 26).
While the CSR itself will remain voluntary, the Act mandates that both the CSR plan and the actual CSR work done should be probably disclosed in a standard manner.

9.9 Similarly, the Act specifies that the Mine Closure Plans with be prepared in terms of the SDF (Section 32). The Mine Closure Plan consists of two components. The first is a progressive mine closure plan, prepared for each five year period, to ensure that restoration work at the mine site takes place side by side with mining activities in a planned and systematic way, and everything is not left for the last. The progressive mine closure plans have to be disclosed to the Panchayats of the area and got approved after consultation with the Panchayats.

The second is the Final Mine Closure Plan, updated in draft form through the life of the mine after deciding on the post-mining land use in consultation with the Panchayats. The Plan is finalized and approved for the last five years of the mine and executed. The lessee has to obtain a certificate that the protective, reclamation, restoration and rehabilitation work has been completed in accordance with the approved plan (Section 32 and 33).

9.10 The District Mineral Foundation, headed by the District Magistrate, and comprising the head of the District Panchayat, officials, all the lessees as well as representatives of the affected families will also execute projects for creation, management and maintenance of local infrastructure for socio-economic purposes and facilitate the implementation of the SDF (Section 56).
10.1 Illegal mining in many States is a result of a combination of many factors, including primarily:

(a) poor management of the applications received, lack of transparency, delays and inappropriate decisions,

(b) poor regulation of mining activities due to low staff strength, inadequate knowledge base and imprecise regulatory practices, leading to poor compliance,

(c) no proper system to account for ore production from source to sink, (i.e. production to consumption)

(d) difficulties in marking out lease boundaries, particularly for small leases, and

(e) inadequate public participation and public disclosure.

10.2 Cluster mining of small deposits is encouraged in the draft MMDR Act 2011 to reduce scope for illegal mining (proviso to section 6(6)).

10.3 The Act ensures speedier disposal of application for mineral concessions, with recourse to Tribunal for delays (section 75 and 89).

10.4 Every lessee, trader, stockiest and exporter to register himself with the IBM to facilitate an online ore-accounting system (Section 44(5)). Currently, this process has been started by amending the Mineral Conservation and Development Rules under the 1957 Act (Rule 45 of the MCDR).

10.5 The draft Act provides for a National Mining Regulatory Authority for large scale illegal mining and State Authority in other cases empowered to investigate and prosecute cases in Special Courts (section 69).
10.6 Persons convicted of illegal mining can have existing concession cancelled (Section 119(1)) and debarred from future concessions (Section 119(2)).

10.7 Data relating to grant of concessions will be placed on the official website (Section 8(8)). This will include geospatial data based on the cadastral land records data as well as GPS coordinates of the lease boundaries. Since minimum area for a lease will be 10 ha, it will be feasible to do GPS in areas not fully delineated in cadastral maps (being forest areas etc.)

10.8 Cess on royalty will also be used to fund capacity development in the State Directorate to strengthen capacities to prevent, detect and prosecute cases of illegal mining (section 53 (4) (g)).

10.9 Whistle blowing on illegal mining is recognized under the Act, and State cess can be used to reward whistle blowers (section 53(4)(g)).

10.10 Public disclosures of grant of concessions and mining plans, and consultation with Panchayat is mandated under the Act (section 13(10)).
SECTION XI
FIFTH AND SIXTH SCHEDULE AREAS OF THE CONSTITUTION

11.1 Fifth Schedule and Sixth Schedule Areas are areas declared as Scheduled Areas by the President as per the Constitution of India.

11.2 In Fifth Schedule Areas, the Constitution empowers the Governor to make regulations to–

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

In making any such regulation the Governor may (with the assent of the President of India) repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

11.3 In Sixth Schedule areas the Governor is empowered to constitute District Councils and Regional councils in consultation with tribal organizations for regulating autonomous areas.

11.4 SAMATA Judgement by Supreme Court in 1997 ordered that tribals should not be alienated from their traditional land in Scheduled Areas and any development activity including mining should be carried out by PSUs or tribals themselves. Further, wherever mining activity is undertaken profits from the mining should be shared. A subsequent Supreme Court judgement in BALCO case limited the impact of the judgement to Andhra Pradesh which had land laws to this effect. However, the Apex Court recommended that in case of mining activities are undertaken in Scheduled Areas, at least 20 per cent of the net profits should
be set apart as a permanent fund as a part of Industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads etc, and this 20% allocation would not include the expenditure for reforestation and maintenance of ecology.

11.5 Parliament has passed the Panchayat (Extension to Scheduled Areas) Act (PESA) in 1996. PESA provides that consent of the local Gram Sabha/District Council is essential for grant of concessions for minor minerals.

11.6 Accordingly, grant of Mineral Concessions in Fifth and Sixth Schedule Areas requires consultation with Gram Sabha/District Council, in terms of any process defined under PESA (section 13(10)).

11.7 In Fifth and Sixth Schedule Areas, State may give preference in grant of mineral concessions to a cooperative of Scheduled Tribes (section 6(7)).

11.8 All mining lease holder are required to share their mining benefits with the local population affected by mining, including those in tribal areas. This would give mining companies “social licence” to mine in tribal areas without compromising on scientific mining.
12.1 Minor minerals means all such minerals that are not specifically mentioned in the First Schedule of draft MMDR Act 2011 (section 3 (p)).

12.2 MMDR Act is applicable for minor minerals also, and grant of concession is subject to Rules framed by the concerned State Governments within the ambit of MMDR Act (section 13(13)).

12.3 While the maximum area allowed is similar to the major minerals, minimum area allowed for minor minerals is 10 ha for non-exclusive reconnaissance licence and prospecting licence. For mining lease, the minimum area allowed shall be 5 ha normally, which can be relaxed by the State Government in consultation with the Ministry of Environment and Forests for specific deposits or specific minerals. This minimum provision of 5 ha has been made on the basis of recommendation of a Committee set up in the Ministry of Environment and Forests.

12.4 Considering that deposits of minor minerals may not yield large quantities of minerals, a mining lease for minor minerals can be granted for a minimum period of 5 years generally, and in specific cases less than 5 years in consultation with the Central Government.

12.5 Consultation with the Gram Sabha/ District Council is necessary before grant of concession for minor minerals in Fifth and Sixth Schedule areas of the Constitution respectively.

12.6 Any grievance against State Government order in case of minor minerals is to be placed before State Mining Tribunal.

12.7 Mining Plan may be exempted for certain minor minerals to be notified by the State Government; however, such cases would need to adhere to a mining
framework, which incorporates both the mining plan and the closure plan and which would have to comply with principles and guidelines of the SDF (section 46(3)).

12.8 For minor minerals amount payable to District Mineral Foundation would be prescribed by the State Government, since the royalties and dead rent payable for the minor minerals are currently set by the State and there is no uniformity (section 43 (2) (c)).
SECTION XII
TRANSITION FROM THE OLD TO THE NEW

13.1 All valid concessions under the existing regime shall continue under the New Act [proviso to Section 4(1)] and extension shall be given irrespective of the size [Section 7(7)], in accordance with the provisions of the new Act.

13.2 Except for applications which have been made for

(i) seamless transition from RP to PL and PL to ML;

(ii) applications which have received prior approval of Central Government, and

(iii) applications where a Letter of Intent (LOI) to grant a concession has been issued, all other applications shall abate [Section 4(6)]. This is because, firstly under new Act, direct ML applications are not permissible. Secondly, in the case of PL applications, some areas may need to be kept aside for bidding, and also for amalgamation to enable scientific mining.

13.3 A moratorium of upto 3 years for applying for PL [Section 137(5)] has been provided enabling the States to notify areas for inviting applications for grant of PL if they wish (with different dates for different Districts), to enable the process it to be systematically managed.
FREQUENTLY ASKED QUESTIONS (FAQ)

1. What would be the status of existing concessions under the New Mines and Minerals (Development and Regulation) Act (New Act)?

   Answer: All valid concessions under the existing regime shall continue under the New Act [proviso to Section 4(1)] and extension shall be given irrespective of the size [Section 7(7)].

2. What would be the status of applications pending with state government at the time of commencement of the New Act?

   Answer: Except for applications which have been made for

   (i) seamless transition from RP to PL and PL to ML;

   (ii) applications which have received prior approval of Central Government, and

   (iii) applications where a Letter of Intent (LOI) to grant a concession has been issued, all other applications shall abate [Section 4(6)].

3. When the New Act comes into force, what would prevent everyone to apply on Day one of new Act and create a grid-lock?

   Answer: The New Act provides that:

   ★ No direct mining lease unless area is notified by the State Government [Section 13(5) and Section 25(1)].

   ★ Moratorium upto 3 years for applying for PL [Section 137(5)] enabling the States to notify areas for inviting applications for grant of PL if they wish (with different dates for different Districts).

   ★ State may set aside an area for reconnaissance / exploration through its Directorate of Mining and Geology for a period of 3 years for reconnaissance and for 6 years for prospecting [Section 4(2)], and State Government can further set aside any area thereafter for a further period of 3 years for notification under section 13 of the new Act [Section 4(4)].
In case the State Government completes prospecting, the area can be given for ML under competitive bidding [Section 13(5)].

If the State Government does not intend to conduct /complete prospecting, it may grant PL under competitive bidding [Section 13(3)].

If after prospecting the State does not discover adequate mineralisation, it can notify the area for release [Section 13(1)], or the area can also be released on lapse of the 3 or 6 years period of reconnaissance or exploration, if not sequestered for notification [Section 4(4)].

4. What happens in case some areas are inadvertently left-out by the State Government while keeping a prospected area aside under section 4(4) for inviting competitive offers?

**Answer:**

★ Such areas would in the normal course become available for PL applications under Section 22.

★ However, State Government have powers to call for Swiss challenge on an application made for PL in such areas [Section 13(2)].

5. If applications are not processed as per time limits, what are the remedies?

**Answer:** In cases of delay, either at State Government or in some instances the Central Government level (in the case of Atomic Minerals, Beach Sand Minerals etc.), National Mining Tribunal can be approached for relief for major minerals [Section 85(1)(a)] and in case of minor minerals, the State Mining Tribunals [Section 99(1)(a)].

6. Can people/ Panchayat object to grant of concessions?

**Answer:** The New Act provides for the following

★ Before notification of an area (public land) for grant of mineral concessions, consultation with Gram Sabha/ District Council/ District Panchayat is mandatory [Section 13(10)].
★ In all areas, reporting and disclosure of CSR activities mandatory through Mining Plan [Section 26(3)].

★ Mining Plan to be prepared in accordance with Sustainable Development Framework (SDF) [section 26(1)]. The Framework will prescribe detailed procedure for consultation.

★ Since minimum area for mining leases is prescribed at 10 hectares for major minerals and 5 hectares for minor minerals, environmental clearance which involves public hearing compulsory [Section 6(2) and Section 6(3)]. The SDF procedures will dovetail with this process and will not be a separate process.

★ In case of minor minerals, State Government can reduce the minimum area limit further in consultation with the Ministry of Environment and Forest but in such a case the public hearing process will still continue under SDF.

★ SDF compulsory for all mines, and includes consultation process from pre-mining to post closure [Section 46(4)(j)].

★ For grant of PL / ML for minor minerals concurrence of Panchayat necessary [section 13(13)] and in view of section 4 (k) and (l) of the PESA Act read with Rules framed by State Government under the MMDR Act.

7. What are the Reporting and Disclosures requirements under the new Act? Will it lead to more transparency and better management of mineral resources?

Answer: A comprehensive framework for disclosure on website and portals for Government and concessionaires is mandated. This includes (drawing from provisions in various Sections of the Act)

★ Information relating to the various mineral resources including available resources, data regarding fines extraction and consumption [section 46(7)].

★ Information regarding management of the concession grant process, including notification inviting applications and granting concessions [section 13].
8. How will special care be taken to protect the interest of host and indigenous (tribal) population through developing models of stakeholder interest?

**Answer:** The new Act provides that:

- For all exploration activities suitable compensation shall be payable to the person or family holding occupation or usufruct or traditional rights on the area of exploration [section 43(1)]

- All Mining Lease holders to pay annually into District Mineral Foundation (DMF) [section 43(2)] -
  - a sum equivalent to royalty in case of major minerals (other than coal) and a sum equivalent to 26% of profit in case of coal minerals;
  - And in case of minor minerals a sum prescribed by the State Government (since royalty for minor minerals are set by States and vary from State to State) will be payable to DMF.

- Mining companies allot at-least one share at par to each person of the family affected by mining [section 43(3)], so as to give a sense of ownership in the enterprise.

- Mining Companies provide employment or other compensation as stipulated under R&R policy [section 43(5)]. This provision ensures that
The implementation of R&R is a condition of the lease so that violation has consequences at lease level. It does not imply any additional payments.

★ After mining is complete, mining companies need to pay for damages, if any, to affected persons [section 43(7)] as part of the mine closure and restoration process.

★ A portion of the amount paid into the DMF by the leaseholders will be used partly to making recurring payments to people affected by mining related operations [section 56(6)(i)].

★ In case a family is not already headed by a woman, half the monetary benefits distributed to the affected family, shall accrue to the eldest woman member of the family [section 43(10(c)].

★ For the purpose of identification of persons or families affected by mining operation, 1.1.1997 shall be reckoned as the cut off date [section 43(11)].

9. Can CSR spend be set off against royalty like payments to District Mineral Foundation?

Answer: The spending on the CSR activities cannot be set-off against the payment to District Mineral Fund, which is a separate cost to the lessee in the nature of a fee under the new Act whereas CSR is by its nature voluntary.

10. How will 26% profit of the tax be estimated in case of captive coal mines?

Answer: In case of captive coal mines, a mine level profit after tax for the purpose of calculation of 26% of the profits would be worked out on the basis of notional pit mouth value of coal minerals after deducting the expenses. This would require a separate mine level accounting centre to be maintained by every lessee.

11. Why should mining industry pay additionally for local area development when States are already getting royalty and should be developing these areas?

Answer: The basis for mining industry to additionally pay an amount to the District level Fund lies in the need for the mining industry to share mining benefits with the local population to obtain “social licence” to mine in the area.
While royalty paid to the State Government accrues into the State Consolidated Fund, which can be used for developmental activities in the entire State (including the mining area), the amount paid into the District Mineral Foundation shall be required to be spent in the same district itself. Further the Fund accumulated in the District Mineral Foundation cannot lapse at end of each year in case it is not spent, implying that the Fund would be allowed to grow for greater benefit of the District, and over a long term (may be beyond the life of mine itself).

12. In case R&R payments are already being paid by Industry, will paying additional amount through DMF not be a double benefit to the same people?

**Answer:** The intention of the DMF is not to compensate or provide rehabilitation or resettlement, but to give a stakeholder share to the local population affected by mining in the mining benefits, thus giving greater acceptability for mining amongst the local population. R&R payments are given under the Land Acquisition Act and R&R Policy related to land loss and displacement. Compensation through DMP is in the nature of recurring payment to persons adversely affected by mining related activities which may not involve land less.

13. Some Districts will get huge funds into the DMF, while the population may be very small. Will it not lead to needless blockage of funds? How will such funds be used?

**Answer:** The new Act provides that funds available with the District Mineral Foundation shall be used for distribution of monetary benefit to persons or families affected by mining related operations in the district; and undertaking such other activities as are in furtherance of the object of the Foundation, including creation, management and maintenance of such local infrastructure for socio-economic purposes in areas affected by mining related operations and facilitating the implementation of the Sustainable Development Framework. Where populations are small (but mining revenues are large) clearly the pressure to create/maintain mining related or mining affected infrastructure including roads is likely to be less, and also the State Government’s allocation of funds may not be high because of the low population. Funding through DMF compensates this imbalance.
14. What are the provisions for mine closure?

**Answer:** The Act provides:

- Disclosure of progressive mine closure plan of mining to Panchayats mandatory at the outset of mining and every five year period **[Section 32(4)]**.
- Consultation of the Agency approving the closure plan with Panchayats necessary **[section 32(4)]**
- Final mine closure plan to be approved by the approving agency in consultation with Panchayat with respect to land use planning which has to be in consonance with local community wishes **[Section 32(8)]**.
- SDF covers the life cycle of mine **[Section 46(4) (f) & (k)]** and includes consultative process with the Stakeholders.
- All mines to deposit a security amount of Rupees one lakh per hectare with the State Government which can be forfeited in case of default of terms and conditions **[Section 24(1)(n)]** including implementation of progressive and final mine closure plans.

15. If there is violation of mining lease conditions, can the Central Government cancel the mining lease?

**Answer:** No, it cannot do so even under the existing Act, because the State Governments are the owners of minerals and execute the lease. However, the New Act provides:

- Technical regulator to continue with powers under sub-legislation to recommend to State Government for termination of mining lease for serious violations **(to be provided in sub-legislation)**.
- In case of large scale organized illegal mining or inter-State illegal mining operations, National Mining Regulatory Authority can investigate and launch prosecution **[Section 69(2)]**.
All mineral concessions can be cancelled on conviction for mining without a licence or for disobeying a direction of the State Government under the Act [section 119 (2)].

Special Courts will be constituted [Section 105]

Lease can be determined on direction of Central Government for unlawful activities [section 30(4)]

16. Does Central Government has powers to issue directions to State Governments?

Answer: Yes. The Central Government can issue directions:

- In cases of illegal and unscientific mining to State Governments [Section 127(2) and section 127(3)].
- In cases where mining activity is related to organized crime or anti-national activities, Central Government can direct the State Government to determine the mining lease [Section 30(4)].

17. What are the penalties for illegal mining?

Answer: The penalties include:

- Fine extending to 10 times the value of mineral mined or 3 years imprisonment or both [Section 110(1)(ii)].
- Debarment for obtaining future concessions [Section 119(1)].
- Cancellation of mineral concessions held by the convicted person [Section 119(2)].

18. How will the New Act prevent illegal mining?

Answer: The New Act provides:

- Minimum lease size increased to 10 hectares (major) and 5 hectares (minor) [Section 6(2) and Section 6(3)] making it easier to detect and demarcate.
- Registration of person in mining or dealing with minerals [Section 5(2) and Section 44(5)] to help track ore movement.
★ Deterrence due to cancellation, ineligibility of all leases on conviction for violation of lease conditions [section 12 and section 119(1) & (2)]

19. How can we restrict mining so that our scarce natural resources are not exported in raw form?

**Answer:** The Act provides:

★ All direct MLs to be given on competitive bid and State can put a condition which gives preference to value adders [Section 13(6)].

★ Central Government can impose restrictions on mining of strategic minerals in the interest of conservation [Section 46(6)].

★ Central Government may reserve area for conservation restricting grant of concessions [Section 37] for at least 10 years, on extendable basis.

★ In public interest lease can be prematurely determined with appropriate compensation [section 31]

20. How does New Act prevent large areas from being blocked, which may not be in National interest or interest of mineral development?

**Answer:** The New Act provides that:

RP is non-exclusive [Section 8(1)], and so in that sense, the area granted under RP is not blocked as multiple applicants can obtain licence for conducting RP over the same area.

HTREL holders are required to relinquish area each year and exit within six years [Section 6(5)].

High licence fees will restrict non-serious players – fees will be between Rs.50 per square Km and Rs.500 per sq. km for RP [Section 19(1)(j)] and upto Rs.50 per hectare for PL and Rs.5000 per sq. km for HTREL [Section 21(1)(g)].

★ In case of HTREL, this could mean an annual licence fee of Rs 2.5 crore per year for the maximum area of 5000 sq km that a concessionaire can get in a State.
RP and HTREL concessionaires need to complete their survey and investigation efficiently, relinquishing areas with less potential for mineralization as early as possible and narrowing down their area of interest for which they are eligible for purposes of PL (in case of RP holder) or ML (in case of HTREL holder) as the case may be, i.e. up to 500 sq. km for PL and up to 100 sq. km for ML.

The concessionaire has to complete his PL within 3 years, extendable by 2 years and narrow down to his eligibility for ML [section 7(3)].

Holders of PL or HTREL would be entitled to ML (upto the maximum area provided in the Act) only to the extent that he prepares a Mining Plan to extract minerals [section 26(2)]. As such the areas will not get blocked.

21. How can royalty evasion be prevented?

**Answer:** End-to-end accounting of minerals can be possible through reporting systems enabled under this Act and to be laid down in sub-legislation [Section 5(2) and Section 44(5)].

22. Will the Act address the perception of Industry that mining is highly taxed?

**Answer:** The new Act provides:

- clear revenue outflow for a miner in the form of royalty [section 41], dead rent [section 42], payment to DMF [section 43] and cess [section 44 and 45].
- National Mining Regulatory Authority can review royalty and other rates and also suggest mechanisms to moderate royalty to incentivise investment in remote areas or for induction of technology, beneficiation, value addition, production of strategic materials and infrastructure creation [section 68(1) (g) to (k)]

23. What happens to existing small deposits?

**Answer:** All small leases will continue [Section 4(1)]. They are also allowed to be extended [Section 7(7)] till the deposit is exhausted.
24. What happens to new small deposits?

**Answer:** Small deposits can be given as clusters [Section 6(6)] and in scheduled areas to cooperatives [Section 6(7)].

25. How will the New Act achieve the objective of attracting more investment for finding deeper deposits, particularly base metals (like copper, lead, zinc), precious metals (like gold, silver, platinum) and strategic minerals (like Rare Earth elements)?

**Answer:** The New Act provides for:

- A new concession instrument for technology and investment intensive exploration exclusively for deep deposits called High Technology Reconnaissance cum Exploration licence (HTREL) to be granted on first-in-time basis [section 22(3)]
- HTREL to be granted over a maximum area 5000 Sq.Kms in a State [Section 6(1)(b)] and minimum area of 100 Sq Kms [section 6(2) (a)]
- HTREL would be given for a single tenure upto six years which can be extended by two more years [section 7(2)].
- HTREL would be subject to rigorous requirements of technology inputs, financial investments and data disclosure and will only enable highly professional agencies to apply [section 21(1)(b)(vi) and (vii)].
- HTREL cannot be granted for iron ore, bauxite, limestone, coal minerals or other bulk minerals [section 6(1)] but will be available for base metals, precious metals and precious stones only.
- The HTREL licence would be required to use high technology including advanced geophysics to locate deep seated and concealed minerals and can apply for a direct mining lease based on the data [section 25(1)].
- The data generated by HTREL in respect of relinquished areas would facilitate public agencies to do exploration or allow applications for PL [section 21(1)(d)]
26. How will the new Act promote the concept of zero waste mining to promote conservation and economic extraction of minerals?

**Answer:** The new Act provides that:

- The State Government may give preference to value adders and mineral beneficiation in grant of PL/ML for areas of known mineralization through competitive bidding.\[section 13(3 (c) and section 13 (6) (c)]

- Stringent regulation through Mining Plan will ensure scientific methods of mining including beneficiation, economic utilisation, and induction of technology to ensure extraction and best use of run-of-mine [section 26(1)]

- Feasibility studies based on process R&D will be insisted upon in Mining Plan so that by-product metals can also be economically extracted from poly-metallic ores [section 26(1) and (10)].

- Independent Authority will oversee the effectiveness of regulation of Indian Bureau of Mines [section 68(1)].

27. How will regulatory environment be improved to make it more transparent in allocation of concessions?

**Answer:** The new Act provides that:

- Where State Government is aware of mineralization because of availability of data as per prescribed and internationally accepted methods (United Nations Framework Classification or UNFC compatible method), the deposit will be put to bid for prospecting or mining after assessment of the deposit as per norms in the UNFC standard.

- In case the State is not aware of mineralization because no public agency (like the GSI or the State Directorate of Geology) has done the general exploration work in the area, it is not possible to notify the area. As such, these areas are left open for applications. Applications can be for reconnaissance (i.e. a Reconnaissance Licence), deep exploration (a High Technology Reconnaissance cum exploration licence), or prospecting (Prospecting Licence for relatively shallow deposits).
In mineral exploration, there are two paradigms. One is of people (and investments) competing for scarce mineral resources. The bidding process is an appropriate (subject to many caveats) way of dealing with this situation. The other paradigm, which has not been analysed so well is of countries and areas with inadequate or no data of these mineral resources competing for scarce knowledge (e.g. technology) and scarce financial resources (exploration budgets). In the latter case, bidding for the area is totally inappropriate because the scarcity value attaches not to be land or a possible mineral bearing area but to the investment. This is particularly issue of global exploratory budgets, which flow to countries and jurisdictions which offer most facilities and security for investment. In such cases, a transparent ‘first-in-time’ principle works best to attract investments and technology at exploration stage (it is of course inappropriate to apply it to mining stage and this Act does not do so).

As such the Act provides that where there is no knowledge of mineralization, PL can be granted on first-in-time basis. However to prevent misuse of this provision, a swiss challenge system has also been provided in the interest of scientific development of mineral resources [Section 13(2)]

28. Why does the draft Bill include provisions for bidding at PL level, when Hoda Committee did not recommend it?

Answer: The Hoda Committee has recommended that tender/auction system may be applied to ore bodies in respect of which prospecting data has come into the public domain after the lock- in period has expired without the prospector having filed a ML application. Further the Committee also recommended that the tender/auction system should be used for disposing of ore bodies prospected by State agencies at public expense.

In discussions with the State Governments, it emerged that in case of surfacial deposits it is possible to identify mineralization occurring in an area even without detailed exploration on the basis of existing mines around the area or old historical workings. Due to this reason, the State Governments felt that allowing competitive bidding for PL in case where
there is sufficient evidence of enhanced mineral potential, enabling the State Governments to get better value for such deposits in a transparent manner. This was accepted by the Government. Needless to say, ‘sufficient evidence’ would have to be on the basis of the UNFC system.

★ Competitive bidding for PL would be for financial bid quoted as a lumpsum or sharing a percentage of royalty or a profit sharing of mineral production.

★ The present provision is also in accordance with the recommendation of the Ashok Chawla Committee on Allocation of Natural Resources.
ADDITIONAL FAQS

(Based on interaction on the MMDR Bill 2011 with FIMI, Civil Society Groups and State Government in Bangalore on 15.10.2011)

1. In the 3rd June 2010 version of the MMDR Bill, 26% equity was proposed. However, now an amount equal to royalty is being proposed for non-coal minerals. Why has this provision been modified?

Answer:

★ In the draft MMDR Act put on the website of Ministry of Mines on 03.06.10, it was envisaged that 26% of profits after tax (PAT) would be distributed by the mining lease holders to the persons affected by mining related operations, primarily by giving them free equity of 26% in the case of mining companies. In the case of firms and individuals, the provision proposed that 26% of the PAT will be given as annuity to the mining affected population.

★ Concerns have been raised by the Industry that this method of sharing of profits of mining would be difficult to administer. Also, grant of equity would have entailed stakeholder right to the affected population but not necessarily a financial benefit, since dividend payout was linked to a profit which is an accounting creation, and determined by a company based on a number of considerations.

★ Concerns were also raised with regard to computation of profits from mining operations in the case of integrated units (with captive mines) who used transfer pricing.

★ It was also pointed out that some companies may not report profit, or may suspend operations for some reasons, and in such case the stakeholder would get nothing. Profits are dependent on the economics of the mineral, while the adverse effect of mining impact was related to the nature of the mining rather than the mineral. Thus in the case of diamonds, equity might give huge returns while in limestone or bauxite, the returns may be low though the adverse effects may be high.
Accordingly, as an alternative it was proposed to link the benefit to the mineral rather than to the mining operation, and also to intermediate the flow of benefits through a Fund so that in case of loss making companies or in event of suspension of mining, such situations are taken care of. It was therefore suggested that royalty paid, which is easily determined on basis of mineral production, should be the basis, particularly also as it established a kind of relationship between the host people and the mineral, rather than with the mining operation. Such an arrangement also took care of the possibility of an unstated understanding between the mining company and the beneficiaries to certain mutually profitable but environmentally unsustainable practices.

This concern was considered by the Group of Ministers and it was agreed that there should be two streams of benefits- firstly a dedicated amount to be paid to a district level mechanism (Fund) for paying annuities to the local population affected by mining related operations and for developmental activities in the district, and secondly, ensure a stakeholder right through making it mandatory for every mining company to grant at least one share per person affected by mining operations.

In respect of the amount to be paid to the district level mechanism (Fund), in case of non-coal minerals royalty paid was fixed as the basis. However, in case of coal minerals, since the royalty paid did not reflect the actual coal prices and sale price of coal minerals was not determined by the market restricting the coal companies from realizing profit linked to operations, it was agreed to allow coal companies to share 26% of their PAT with the local population through the district level mechanism.

Accordingly, the new Act provides that all Mining Lease holders to pay annually into District Mineral Foundation (DMF) [section 43(2)] -

- a sum equivalent to royalty in case of major minerals (other than coal) and a sum equivalent to 26% of profit in case of coal minerals;

- And in case of minor minerals a sum prescribed by the State Government (since royalty for minor minerals are set by States and vary from State to State) will be payable to DMF.
Mining companies allot at-least one share at par to each person of the family affected by mining [section 43(3)], so as to ensure a sense of accountability of the enterprise.

Mining Companies provide employment or other compensation as stipulated under R&R policy [section 43(5)]. This provision ensures that implementation of R&R is a condition of the lease so that violation has consequences at lease level. It does not imply any additional payments.

After mining is complete, mining companies need to pay for damages, if any, to affected persons [section 43(7)] as part of the mine closure and restoration process.

A portion of the amount paid into the DMF by the leaseholders will be used partly to making recurring payments to people affected by mining related operations [section 56(6)(i)].

In case a family is not already headed by a woman, half the monetary benefits distributed to the affected family, shall accrue to the eldest woman member of the family [section 43(10(c)].

For the purpose of identification of persons or families affected by mining operation, 1.1.1997 shall be reckoned as the cut-off date [section 43(11)].

2. The draft MMDR Bill 2011 allows the State Government to give preference to the tribal cooperatives in grant of concessions over small deposits in tribal areas and for minor minerals. Why are cooperatives not being made eligible for all major minerals in general?

**Answer:** While mineral occurrence in the small deposits are largely surfacial in nature, and not necessarily requiring use of high technology for exploration and mining and of course, mine closure, in case of deep seated deposits and large mining activities, the technology and investment component increases. This would require the expertise, resources and capital base which are more easily available and manageable through institutions registered under the Companies Act.
3. These seem to be some overlap between the project-affected families under LARR Bill and mining affected families in MMDR Bill, at least such persons/families which stand to lose their livelihood. How will overlap of benefits be avoided?

**Answer:**

★ The intention of the draft MMDR Bill 2011 is to specifically to address the loss of livelihood or displacement or reduction in quality of life caused by the mining activities.

★ Since most of the mining lease areas are in Forest areas or Government land or managed through direct purchase in parcels less than 100 acres, the displacement or other adverse impact due grant of mining lease may not be directly covered under the R& R provisions of the LARR Bill.

★ The Ministry would, however, take up the matter with the D/o Land Resources to avoid any duplication of intent.

4. The Bill provides for grant of benefits to persons from a particular date. What is the protection against retrospective application of this provision?

**Answer:**

★ The draft MMDR Act 2011 provides that all mining lease holders, including the existing lease holders and the beneficiaries of fresh mining leases would be required to pay an amount to the District Mineral Foundation in terms of section 43 (2).

★ However, in order to avoid legacy issues (since several mining leases were granted several decades ago) arising out of claims on identifying affected persons and families, that would be administratively difficult to establish, it is proposed that the cut-off date would be taken as 1.1.1997 (the year of SAMATA judgment) for identification of such persons/families. This does not mean that there is any retrospective payment on this account.

5. Some companies have several mines and leases in several districts. What will be impact of the company having to allocate its share in all such leases to those affected by its differently located operations?
Answer:

The draft MMDR Bill provides that every mining company shall allot at least one share to persons affected by mining operations, which includes persons affected in all the mining operations in several mines located in several districts or States. It is assumed that the equity capital of a Company having many mines in one or more States would be sufficiently large to ensure that the allotment of shares to affected persons would not change the ownership pattern.

6. The industry is being consulted in November 2011, after the Bill has been approval by Cabinet. What is expected out of this consultation?

Answer:

The intention of the Government has been to transparently consult the stakeholders at every stage of preparing of the draft MMDR Bill, 2011. As such 9 rounds of consultation were held and the revised version of the MMDR Bill was published on the website, on 5.8.2009, 17.9.2009, 17.11.2009, 8.1.2010, 31.3.2010, and 3.6.2010.

After the draft MMDR Bill was uploaded on the website on 3rd June 2010, the draft Bill was referred for Cabinet decision, and as per the Government of India procedures the draft Bill was under Cabinet process, which included the Group of Ministers consideration and recommendation. By its very nature, external consultation during Cabinet process is not feasible.

Now after the Cabinet has cleared the proposed draft MMDR Bill, 2011, on 30.9.2011 for laying in the Parliament, it was imperative to inform the stakeholders on the decision taken and clarify the intentions of the Government. The Ministry has undertaken the consultation process at the earliest opportunity, and without prejudice.

The consultation with FIMI, civil society representatives and State Government was undertaken with the stated objective that further suggestions, properly documented could always be taken to the Parliament for consideration during the process of examination of the MMDR Bill by the Parliamentary standing Committee.
Ministry of Mines is committed to ensuring that the process of consultation produces the Bill which optimizes on stakeholder expectations, in the most transparent and dispassionate manner. At the same time it is realized that not all aspirations of all stakeholders can be met.

7. Section 17 and 18 of MMDR Bill, 2011, are retrograde since they only permit transfer of the concession to an adjoining concession holder?

**Answer:**

- Section 17 allows transfer of exploration concessions (RL, PL AND HTREL) under intimation to the State Government.
- The only restriction is that the transferee should be eligible under the MMDR Act.
- In case of Mining lease, approval of the State Government is necessary, and since it is a time bound process with adequate relief in the Tribunal for delays, the transfer is suitably protected.
- Section 6(4) provides that an area smaller than that permissible under the Act in other circumstances, can be taken as a concession by a concessionaire holding an area immediately adjoining such area. This is not a restriction but is included in the interest of scientific and zero waste mining.
- There are no other restrictions.

8. The Indian Mining industry is the highest taxed industry in the world. It also has the highest rates for surface rent and in order to protect the interest of host population charging an additional amount for the District Mineral Fund is being justified.

**Answer:**

- It is hoped that with clear benefit streams flowing to the State towards Royalty and District level development for population affected by mining operations, rationalization of all other taxes and levies and charges, including railways and port charges would be possible. Ministry of Mines has already set up a Study Group for the purpose of recommending the royalty regime under the new Act.
GENERAL BODY: POWERS AND FUNCTION

The General Body shall do all such things and perform all such acts as may be necessary for effectively carrying out the aims and objectives of the Society. The General Body shall lay down broad general policy for the guidance and implementation by the Governing Council. The General Body would pass the annual accounts, consider the performance of the Society and transact any other business as may be necessary. The General Body shall have powers to frame, amend or repeal the Rules and Regulations of the Society.

COMPOSITION OF GENERAL BODY OF C-TEMPO (2011-12)

1. Shri S. K Srivastava
   Additional Secretary to Government of India
   Ministry of Mines
   Chairman

2. Prof. B. B. Dhar
   Former Director, CMRI, New Delhi
   Vice Chairman

3. Shri G. Srinivas
   Joint Secretary to Government of India, Ministry of Mines
   Institutional Member

4. Shri A Sundaramoorthy
   Director General, Geological Survey of India, Kolkata
   Institutional Member

5. Shri C.S. Gundeswar,
   Controller General, Indian Bureau of Mines, Nagpur
   Institutional Member

6. Shri B L Bagra
   Chairman-Cum-Managing Director
   National Aluminium Company Limited, Bhubaneswar
   Institutional Member

7. Shri Shakeel Ahmed
   Chairman-Cum-Managing Director
   Hindustan Copper Limited, Kolkata
   Institutional Member

8. Dr. B. K. Mishra
   Director, IMMT, Bhubaneswar
   Institutional Member

9. Ms T. Angeline Premlatha
   Under Secretary, Ministry of External Affairs, Govt. of India
   Institutional Member

10. Shri Gaurav Dave
    Joint Secretary
    National Manufacturing Competitiveness Council (NMCC), New Delhi
    Institutional Member

11. Shri L. Pugazenthy
    Executive Director, ILZDA, New Delhi
    Member

12. Prof. K K. Chatterjee
    Former Chief Mineral Economist, Indian Bureau of Mines, Nagpur
    Member

13. Shri H.S.M. Prakash
    Director (Technical), Ministry of Mines, Govt. of India
    Member

14. Shri A. K. Bhandari
    Sr. Advisor, C-TEMPO, New Delhi
    Member-Secretary
GOVERNING COUNCIL: POWERS AND FUNCTION

The affairs of the Society shall be managed and administered directly and controlled, subject to Rules and Regulations and orders of the Society, by the Governing Council. For this purpose, the Governing Council shall have the power subject to these Rules and Regulations, to frame ByeLaws.

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1. Shri S. K Srivastava
   Additional Secretary, Ministry of Mines, New Delhi
   President

2. Prof. B. B. Dhar
   Former Director, CMRI, New Delhi
   Vice –President

3. Shri G. Srinivas
   Joint Secretary, Ministry of Mines, New Delhi
   Institutional Member

4. Shri A Sundaramoorthy
   Director General, Geological Survey of India, Kolkata
   Institutional Member

5. Shri B.L. Bagra
   Chairman-Cum-Managing Director
   National Aluminium Company Limited, Bhubaneswar
   Institutional Member

6. Shri Shakeel Ahmed
   Chairman-Cum-Managing Director
   Hindustan Copper Limited, Kolkata
   Institutional Member

7. Dr. B.K. Mishra
   Director, IMMT, Bhubaneswar
   Institutional Member

8. Ms T. Angeline Premlatha
   Under Secretary, Ministry of External Affairs, Govt. of India
   Institutional Member

9. Shri Gaurav Dave
   Joint Secretary,
   National Manufacturing Competitiveness Council (NMCC) New Delhi
   Institutional Member

10. Shri L. Pugazenthy
    Executive Director, ILZDA, New Delhi
    Member

11. Shri H.S. M. Prakash
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