

Mineral and Gemstone Licensing in Myanmar

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INTRODUCTION

Myanmar's mining sector is closely linked to its evolving economy and shifting political landscape. The country accounts for most of global jade and ruby production. It has significant reserves of metallic minerals (such as gold, copper, and tin) and industrial minerals and stones (such as coal and limestone). In the eyes of many, these resources are key to national development.

However, the sector's contribution to Myanmar's economy remains underwhelming. Of the approximately MMK 3 trillion in resource revenues included in Myanmar's first Extractive Industries Transparency Initiative (EITI) report,¹ MMK 389 billion (or approximately 13 percent) corresponds to the jade and gemstone industry and only MMK 54 billion (or less than 2 percent) is accounted for by other minerals.² Together, these revenues only amounted to MMK 8,600 (or just over 8 US dollars) per person.³ Mining's estimated shares of gross domestic product and employment are less than 1 percent.⁴

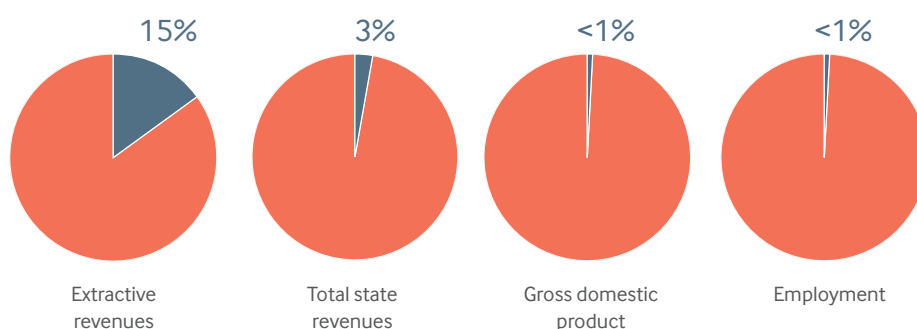


Figure 1. The mining sector's estimated contribution to Myanmar's economy, 2013-14

Source: Myanmar Extractive Industries Transparency Initiative (EITI) Reconciliation Report, 2013-14

1 The Extractive Industries Transparency Initiative (EITI) is a global effort to promote open and accountable management of natural resources. Myanmar became a candidate to the initiative in July 2014. In January 2016 it released its first EITI reconciliation report, which covers revenue flows from the oil, gas and mining industries.

2 Moore Stephens LLP, "Myanmar Extractive Industries Transparency Initiative (EITI) Report for the Period April 2013 - March 2014" Myanmar Extractive Industries Transparency Initiative, December 2015. It should be noted that, given the high materiality threshold for minerals and gemstones and the exclusion of non-emporium gemstone sales, a significant share of mining revenues are not covered by the report. The report notes that its scope is limited to 53 percent of emporium jade and gemstone companies, and 45 percent of mineral companies.

3 Calculations of per capita mining revenues are based on the Myanmar Ministry of Immigration and Population, "2014 Myanmar Population and Housing Census Report," May 2015, and historical exchange rate data published by the Central Bank of Myanmar.

4 In addition to the scoping limitations outlined in Footnote 2, the high level of informal employment in the mining sector may affect the accuracy of these calculations.

The industry has nevertheless acquired outsized importance in Myanmar due to its ties to the military and ethnic armed groups, a high degree of illegal activity and controversy over poor environmental and social practices. Billions of dollars generated by booming illicit trade remain concentrated in the hands of a few. Although Myanmar's total sales of jade and gemstones was estimated at around USD 3.5 billion in 2013/14, United Nations trade data indicate that the value of precious stone exports to China in 2014 was USD 12.3 billion alone.⁵ Independent estimates range widely, with Harvard University's Ash Center for Democratic Governance and Innovation estimating jade sales were worth USD 7.9 billion in 2011 and Global Witness calculating the value of total jade production in 2014 at more than USD 30 billion.⁶ High-profile disputes with local communities, such as the violent clashes that erupted at the Letpadaung copper mine in Sagaing region, have also propelled mining to the center of national debate.

Although the mining industry has acquired outsized importance in Myanmar, its official economic contribution remains underwhelming.

Licensing serves as the gateway into this lucrative and controversial industry. The permitting process determines, in large part, who can participate in the mining sector and under what conditions. Improving governance of the licensing regime is therefore key to elevating economic and social outcomes in the sector. In Myanmar, the functioning of this system is undermined by an underdeveloped legal framework, poor alignment between existing laws and current practices, and widespread noncompliance with national policies.

Processes of reform and revision should include participation by diverse stakeholders. Discussions on mining licensing between the government, private sector and civil society have been greatly enhanced by the publication of Myanmar's first EITI report. However, a chronic lack of data on many topics continues to limit the quality of public exchange.

With the goal of informing ongoing and future reform efforts, this briefing outlines existing publicly available information on Myanmar's mining licensing regime. Key questions addressed include:

- What are the legal rules governing licensing?
- What types of licenses are granted?
- Who can acquire a license?
- What steps are required to apply for a license?
- Who reviews and approves license applications?
- How are license applications evaluated?
- What terms are included in licenses?
- How many licenses have been granted?
- Who holds mining licenses?

5 United Nations Comtrade Database, accessed 5 November 2015.

6 See David Dalpice and Nguyen Xuan Thanh, "Creating a Future: Using Natural Resources for New Federalism and Unity," Harvard Kennedy School Ash Center for Democratic Governance and Innovation, July 2013 and Global Witness, "Jade: Myanmar's Big 'State Secret,'" October 2015.

This review is far from complete. Although independent research has expanded the frontier of stakeholder knowledge on certain topics, the availability and quality of government data remains insufficient to answer many questions of public interest. Table 1 identifies the areas where complete information has been made accessible and those where transparency remains lacking.

Although gemstones are generally considered to be a subset of minerals, separate reference will be made to “gemstones” and other “minerals” throughout this document. This is in order to remain consistent with Myanmar’s legal framework and terminology. This briefing primarily covers permitting for exploration and production activities; it does not detail licensing processes for downstream activities, such as the processing or trading of minerals and gemstones. Special products overseen by the Ministry of Mines,⁷ including pearls and salts, will also not be covered.

Table 1. Completeness of public information on Myanmar’s formal mineral and gemstone licensing regime as of March 2016⁸

	Minerals	Gemstones
What are the legal rules governing licensing?	Mostly complete. The Mines Law (1994) and Mines Rules (1996) are available in Myanmar and English language via the Ministry of Mines website. At the time of this briefing’s publication, the Mines Law Amendment (2015) was only accessible in Myanmar language via the parliament’s website.	Partial. The Gemstone Law (1995) is available in Myanmar language only via the Ministry of Mines website. At the time of this briefing’s publication, the Second Gemstone Law Amendment (2015) was only accessible in Myanmar language via the parliament’s website. The Gemstone Rules (1996) and the First Gemstone Amendment (2003) have not been made accessible online.
What types of licenses are granted?	Mostly complete. The Mines Law (1994) and Mines Law Amendment (2015) specify classes of permitted activities. Additional details regarding the application and granting of permits and the duties and rights of permit holders are outlined in the Mining Rules (1996).	Partial. The Gemstone Law (1995) and Second Gemstone Law Amendment (2015) specify types of gemstone production permits but do not clearly address exploration and prospecting activities. It is unclear what additional details are specified in the Gemstone Rules (1996).
Who can acquire a license?	Complete. Restrictions on foreign investment are specified by the Foreign Investment Rules (2013) and Myanmar Investment Commission Notification 49/2014.	Complete. Restrictions on foreign investment are specified by the Gemstone Law (1995) and by the Myanmar Companies Act.
What steps are required to apply for a license?	Partial. Application procedures are not fully detailed in the Mines Law (1994), Mines Law Amendment (2015) or Mines Rules (1996). Documents available via the Ministry of Mines website outline the steps required for some, but not all, license applications.	Mostly incomplete. Application procedures are not fully detailed in the Gemstone Law (1995) or its amendments. It is unclear what additional details are specified in the Gemstone Rules (1996).
Who reviews and approves license applications?	Mostly complete. Responsibility for review of license applications is not clearly specified in the Mines Law (1994), Mines Law Amendment (2015) or Mines Rules (1996). Documents available via the Ministry of Mines website reference the entities responsible for review and approval.	Incomplete. Responsibility for review of license applications is not clearly specified in the Gemstone Law (1995) or its amendments. It is unclear what additional details are specified in the Gemstone Rules (1996).
How are license applications evaluated?	Mostly incomplete. Evaluation criteria are not clearly specified in the Mines Law (1994), Mines Law Amendment (2015) or Mines Rules (1996).	Mostly Complete. The Gemstone Law (1995) specifies that licenses be awarded to the highest bidder. No other evaluation criteria are specified in the law or its amendments.
What terms are included in licenses?	Mostly incomplete. With the exception of a sample agreement for mineral prospecting, exploration and feasibility study activities, no mineral licenses have been publicly disclosed.	Incomplete. No gemstone licenses have been publicly disclosed.
How many licenses have been granted?	Partial. Data on active mineral licenses by state and region are published from time to time via the Ministry of Mines website. However, licenses are not disaggregated by commodity. Additional information on mineral licenses is available via Myanmar’s first EITI report.	Mostly Incomplete. The Ministry of Mines has not made data on active gemstone licenses available online. However, some information on gemstone licenses is available via Myanmar’s first EITI report.
Who holds mining licenses?	Partial. Information on legal ownership for certain mineral licenses is available via Myanmar’s first EITI report. However, data on beneficial ownership remains lacking.	Partial. Information on legal ownership for certain gemstone licenses is available via Myanmar’s first EITI report. However, data on beneficial ownership remains lacking.

7 Note that the Myanmar government announced plans in early 2016 to merge the Ministry of Mines and the Ministry of Environmental Conservation and Forestry, creating a new Ministry of Natural Resources and Environment.

8 Content of the Ministry of Mines website has varied considerably over time. For the purposes of this briefing, assessments of available online information were made at various points in between October 2015 and March 2016. In a limited number of cases, searches were able to identify older content that has been later removed from the Ministry of Mines’ website.

WHAT ARE THE LEGAL RULES GOVERNING LICENSING?

The mining sector is principally governed by the Myanmar Mines Law (1994) and the Myanmar Gemstone Law (1995).⁹ The Mines Law is available in Myanmar- and English-language versions on the website of the Ministry of Mines. It was amended in December 2015 by the outgoing administration of U Thein Sein. The amendment text is accessible online in Myanmar language via the website of the Myanmar Parliament.

Only the Myanmar language version of the Gemstone Law has been made available on the website of the Ministry of Mines, although the law has been translated to English by third-party groups. The Gemstone Law was amended in 2013 and, more recently, in January 2016. The first Gemstone Law Amendment has not been made available online. The second Gemstone Law Amendment is available in Myanmar language via the website of the Myanmar Parliament.

Because many aspects of Myanmar's licensing framework are not clearly laid out in the mining laws, the government has generally relied on supporting rules to address ambiguities and provide additional detail. Mineral licensing has been regulated by the Myanmar Mines Rules (1996), which have been published online in Myanmar language and English. At the time of this writing, the Ministry of Mines is drafting new mining rules and has initiated consultation with stakeholders for this purpose.¹⁰

Governance of the gemstone industry is more opaque. The prevailing Myanmar Gemstone Rules (1995) have not been made available online in either Myanmar or English language. In contrast with the mining rules, little information has been communicated with stakeholders to date regarding the drafting of new gemstone rules.

Many aspects of Myanmar's licensing framework are not clearly laid out in the mining laws.

WHAT TYPES OF MINING LICENSES ARE GRANTED?¹¹

Myanmar's legal framework establishes a basic typology of mineral exploration and production permits based on the nature and scope of proposed activities. The amendment of the Myanmar Mines Law and reform of accompanying rules has introduced several modifications to the preexisting legal framework, which are summarized in Table 2.

These changes have addressed certain gaps in the prevailing regime. The Myanmar Mines Amendment affirms the priority right of investors undertaking exploration to mine any mineral deposit discovered, which had previously been stipulated in rules rather than the law itself. It also increases the maximum tenure for many licenses and provides more specific criteria for determining the size of production permit areas.

9 A number of other laws bear on mining governance, including the Pearl Law, Foreign Investment Law, Citizen Investment Law, Environment Conservation Law and State-owned Economic Enterprises Law. The Ministry of Mines has publicly indicated that new laws regarding mine safety and the use of explosives will be forthcoming.

10 NRGi has begun providing technical assistance for the drafting of the Mines Rules at the request of the Ministry of Mines since February 2016. Discussions with the Ministry of Mines in the context of this assistance were not used as the basis for this report.

11 As previously noted, this briefing does not detail licensing procedures for downstream activities, such as the processing or trading of minerals and gemstones.

Table 2. Summary of mineral exploration and production permits

Source: Author's elaboration based on the Myanmar Mines Law (1994), the Myanmar Mines Rules (1996), the Myanmar Mines Amendment (2015) and presentations by officials from the Ministry of Mines.

Strikethrough indicates policies which are expected to be revised. Italics and shading indicate anticipated changes under the amended Myanmar Mines Law and forthcoming Mines Rules.¹²

License type	Licensing authority	Foreign investment permitted?	Maximum area	Maximum tenure	Maximum tenure of extension
Mineral prospecting permit	Ministry of Mines (metallic or industrial minerals) or Department of Mines (stones)	[not specified]	4200 square kilometers <i>700 square kilometers</i>	1 year	1 year
Mineral exploration permit	Ministry of Mines (metallic or industrial minerals) or Department of Mines (stones)	[not specified]	3150 square kilometers <i>500 square kilometers</i>	3 years	1 year; a maximum of 2 extensions may be granted ¹⁰
Large-scale mineral production permit	Ministry of Mines	Yes	None	25 years <i>50 years</i>	5 years
Medium-scale mineral production permit	<i>Ministry of Mines (metallic or industrial minerals) or Department of Mines (stones)</i>	<i>Yes, but only when partnering with a local firm to expand a preexisting mine to large scale</i>	<i>1 square kilometer (industrial minerals and stones); 50 acres (metallic minerals); 20 acres (gold)</i>	<i>15 years</i>	<i>[not specified]</i>
Small-scale mineral production permit	Ministry of Mines <i>State or region scrutinizing board (metallic or industrial minerals) or Department of Mines (stones)</i>	No <i>Yes, but only when partnering with a local firm to expand a pre-existing mine to large scale</i>	<i>1 square kilometer- 20 acres (industrial minerals and stones); 50 acres 10 acres (metallic minerals); 20 acres-1 acre (gold)</i>	<i>5 years 10 years</i>	1 year; a maximum of 4 extensions may be granted
Subsistence mineral production permit	Relevant mining enterprise or the officer empowered by the Ministry State or region scrutinizing board	No	1 acre	1 year	1 year; extensions may be granted
Integrated mineral permit for three or more activities	Ministry of Mines	[not specified]	[varies]	[varies]	[varies]

The licensing structure for gemstones is less clear. The 1995 version of the Myanmar Gemstone Law established a single category of gemstone production permits to be awarded through competitive bidding. The law empowers the Ministry of Mines to prescribe the size and tenure of permits.

The Second Myanmar Gemstone Amendment (2016) indicates that large-, medium-, small- and subsistence-scale licenses may be granted, and, with the exception of subsistence-scale permits, indicates the maximum tenure of each.¹³ No extension of tenure may be granted. In practice, however, the Ministry of Mines offers the current license holder an opportunity to beat the highest offer from competitive bidding rounds.

¹² A loophole has allowed the Ministry of Mines to regularly grant more than two extensions when it deems it in the "state's interest" to do so.

¹³ Global Witness, "Jade: Myanmar's Big 'State Secret,'" October 2015.

Strikethrough indicates previous text. Italics and shading indicate anticipated changes under the amended Myanmar Gemstone Law.¹⁴

License type	Licensing authority	Foreign investment permitted?	Maximum area	Maximum tenure
Large-scale gemstone production permit	Ministry of Mines	No	[not specified]	[not specified] 10 years
Medium-scale gemstone production permit	Ministry of Mines	No	[not specified]	[not specified] 5 years
Small-scale gemstone production permit	Ministry of Mines State or region scrutinizing board	No	[not specified]	[not specified] 3 years
Subsistence ² gemstone production permit	Ministry of Mines State or region scrutinizing board	No	[not specified]	[not specified]

Table 3. Summary of mineral exploration and production permits

Source: Author’s elaboration based on the Myanmar Gemstone Law (1995), First Myanmar Gemstone Amendment (2003) and the Second Myanmar Gemstone Amendment (2016).

WHO CAN ACQUIRE A MINING LICENSE?

Foreign investment is permitted in large-scale mining of minerals. However, small- and medium-scale mining have been designated “restricted activities” by Myanmar Investment Commission (MIC) Notification 49/2014, meaning that investment in these activities is limited to Myanmar companies only.

Under the amended Myanmar Mines Law, international firms may partner with local companies for the purpose of scaling small- or medium-scale mines into large-scale operations. This measure will need to be harmonized with MIC investment rules.

Foreign firms appear to remain wholly excluded from the gemstone sector. The Myanmar Gemstone Law indicates that only “a company formed as a Myanmar company under the Myanmar Companies Act or a company formed solely with Myanmar citizens under the Special Company Act, 1950” may be awarded a gemstone production permit. Under the Myanmar Companies Act (1914), Myanmar (or, in the original version, “Burmese”) companies must be wholly owned and controlled by Myanmar citizens. However, it is unclear how more recent changes to the legal framework will be interpreted, or how these will impact barriers to gemstone mining by foreign companies.

Mineral licenses may be transferred with the review and approval of the Ministry of Mines. The Myanmar Gemstone Law prohibits the “sublease or in any way transfer” of gemstone permits. These guidelines notwithstanding, stakeholders indicate that mineral and gemstone licenses are often transferred without the knowledge or consent of the Ministry of Mines.

14 Alternately, this may be translated from Myanmar language to English as “very small-scale production permit.”

WHAT STEPS ARE REQUIRED TO OBTAIN A LICENSE?

How mineral and gemstone license applications are processed and evaluated remains poorly understood by most stakeholders in Myanmar. Though recent efforts to amend the mining framework will provide some useful clarifications, to date the requirements for investors or the responsibilities of government institutions in the licensing process have not been clearly specified. As a result, it appears that practices within the Ministry of Mines have evolved over time in response to changing institutional priorities.

Licensing practices within the Ministry of Mines have evolved over time in response to changing institutional priorities.

Gemstone concessions are awarded through a competitive bidding system. The Myanmar Gems Enterprise (MGE) publishes new opportunities to tender in local newspapers and allows prospective investors one month to survey the concession site. The Ministry of Mines has not made additional information on the application process available on its website.

Mineral licenses are currently awarded on a first-come, first-served basis, although the Myanmar Mines Amendment opens the door for future tenders. A document published by the Ministry of Mines in July 2012¹⁵ outlines procedures for foreign investors interested in conducting mineral prospecting, exploration or feasibility study activities, including:

- Submission of letter of interest to the Ministry of Mines
- Completion of site visit with the Ministry of Mines
- Submission of proposal to the Ministry of Mines and Department of Geological Survey and Mineral Exploration
- Negotiation of mining agreement with Department of Geological Survey and Mineral Exploration
- Approval of mining agreement by the Ministry of Mines Scrutinizing Committee
- Review of mining agreement by the Union Attorney General Office and Office of the Auditor General
- Acquisition of recommendation letters from relevant government departments
- Approval of mining agreement by the Myanmar Investment Commission
- Approval of mining agreement by the Union Cabinet

It is unclear whether, or how significantly, this process has been modified since 2012. The Ministry of Mines has not published the application procedures established for other types of permits, including prospecting, exploration, and feasibility study activities with citizen investment and mineral production permits of any scale.

15 Myanmar Ministry of Mines, "Facts of JV Procedures," July 2012.

Forms made available online by the Ministry of Mines indicate that applicants should provide the following types of information in their proposal:

	Form 1 (Mineral prospecting and exploration)	Form 3 (Large- and small-scale min- eral production)	Form 5 (Subsistence mineral production)
Applicant identifying information	X	X	X
Information on proposed mining area	X	X	X
Mineral to be extracted	X	X	X
Proposed timeframe	X	X	
Evidence of financial standing	X		
Evidence of technical competency	X		
Ownership information	X	X	
Details of any mineral permit held within the preceding four years in Myanmar	X		
Work plan for exploration, extraction or processing operations	X	X	
Financial estimates for exploration, extracting or processing operations	X	X	
Measures for mitigating negative environmental, health and social effects	X	X	
Measures for land and water rehabilitation		X	
Measures for hiring, training and promoting Myanmar citizens		X	
Plans for sale of mineral extracted			X
Plans for disposal of mining waste			X

Table 4. Mineral permit application requirements under Forms 1, 3 and 5

Source: Forms 1, 3 and 5, as published on the website of the Department of Mines

Some of these components may need to be harmonized with ongoing reforms. Following the approval of Myanmar's Environmental Impact Assessment (EIA) procedures, for example, mining companies will be obliged to complete an EIA or initial environmental examination (IEE) based on the size of the project.¹⁶ But it remains uncertain at what stage of the licensing process investors should complete an EIA or how this requirement will impact the Ministry of Mines' evaluation of proposed environmental mitigation and/or rehabilitation measures.

Mining commodity	Environmental assessment required	
	EIA	IEE
Industrial minerals	≥247.1 acres	<247.1 acres
Gold	≥20 acres	<20 acres
Gemstones	≥20 acres	<20 acres
Other minerals	≥20 acres	<20 acres

Table 5. EIA/IEE requirements for mining operations

Source: Environmental Impact Assessment Procedures, 2016

¹⁶ EIA procedures do not appear to include guidelines for environmental impact assessment of mining prospecting and exploration operations. A sample contract for prospecting, exploration and feasibility study activities from the Department of Geological Survey and Exploration indicates that companies must undertake environmental assessment and draft an environmental management plan.

Further attention will also be needed to address long delays, insufficient data, poor coordination and clientelism, which continue to discourage formal participation in the mining sector. Private sector stakeholders estimate that the approval of a new license often entails at least 45 steps and takes six months or more on average to complete. During this period, illegal mining at the proposed site—which stakeholders report is sometimes undertaken in collusion with local officials—can significantly depreciate the value of the mineral deposit.¹⁷

A lack of up-to-date geological data remains another major obstacle to high-quality investment. The geological maps utilized by the Ministry of Mines in the licensing process date back to the 1940s and have yet to be fully converted to a digital format. This prevents investors and the government from accurately assessing mineral deposits or easily determining the geographic boundaries of a licensed area.

Multiple external approvals are required throughout the licensing process. Applicants must generally seek the endorsement of the relevant state or regional government, township administrative department, township forestry department and township land record department. Other entities such as the Ministry of Agriculture and Irrigation or the Ministry of Finance may also be required to sign off on the project.¹⁸

Uncertainties over authority undermine the integrity and efficiency of the licensing process. For example, government stakeholders report uncertainty over how proposed mining activities on forest lands should be approved. The 1996 Mining Rules stipulate that additional approval for such projects should be obtained from the Ministry of Environmental Conservation and Forestry (MOECAAF). However, how lands are classified, how approval from MOECAAF should be sequenced in the licensing process and the extent of MOECAAF's authority to block mining activities on forest lands are disputed in practice.¹⁹ These ambiguities increase the incentives for officials to engage in *ad hoc* decision-making.

Uncertainty over authority among government ministries increases the incentives for officials to engage in ad hoc decision-making.

Furthermore, weak oversight creates opportunities for rent-seeking during the approval process. Stakeholders estimate that investors routinely pay as much as USD 10,000 in order to secure and expedite the necessary endorsements for a small-scale mineral production permit.²⁰ This is enabled, in part, by a lack of clear criteria and transparency in the review process. External approvals are negotiated directly by the applicant rather than being handled by the Ministry of Mines, reducing accountability for these transactions.

WHO REVIEWS AND APPROVES LICENSE APPLICATIONS?

It appears that mineral and gemstone licenses are currently reviewed and approved by a leading committee from the Ministry of Mines, which includes the Minister, Deputy Minister and directors general from the Ministry's various departments and state-owned enterprises. Stakeholders indicate that the Ministry of Mines accepts input from the Department of Mines, the Department of Geological Survey and Exploration and the relevant mining enterprise during its evaluation. However, the respective roles of Myanmar's mining departments and enterprises are not specified in the legal framework or other documents available on the Ministry of Mines website.

17 Stakeholder interviews conducted in November 2015

18 Ministry of Mines, "Facts of JV Procedures," July 2012 and stakeholder interviews conducted in January 2016.

19 Stakeholder interviews conducted in October 2015

20 Stakeholder interviews conducted in November 2015

In the case of gemstones, Global Witness indicates that the recommendation of the Ministry of Mines is subject to approval from a cross-ministerial committee at the cabinet level, which includes the Minister of Mines, the Deputy Minister of Mines, the Deputy Minister of Home Affairs, the Deputy Minister of Finance, the Deputy Minister of National Planning and Economic Development, the Deputy Attorney General, the Director General of the Directorate of Water resources and Improvement of River Systems, the Director General of the Department of Forestry and the Director General of the Department of Mines.²¹ The composition of this committee could not be cross-checked against documents made available online by the Ministry of Mines.

The 1996 Myanmar Mines Rules stipulate that subsistence production permit applications be submitted to the relevant state-owned mining enterprise or to “the person empowered by the Ministry.” However, it is unclear based on available information what other entities, if any, have been engaged in subsistence mineral production licensing to date.

Under the amended Myanmar Mines Law and amended Myanmar Gemstone Law, review of these and most small-scale mining permits will be devolved to the state and regional level. Officials have indicated that permits will likely be approved by a scrutinizing committee composed of officials from the Ministry of Mines and possibly other ministries.²² It is believed that members of the state or region scrutinizing committees will be appointed by the Union Ministry of Mines or other relevant ministries. It remains unclear how these subnational entities will be incentivized and capacitated to efficiently carry out their duties, or how their activities will be coordinated with the Union-level ministry.²³

Operating outside the formal system, ethnic armed groups and local officials also exercise significant de facto control over mineral and gemstone licensing. In many jurisdictions, these actors regulate who may enter the mining sector and shield illegal operations from central government oversight or taxation. These influences undermine formal procedures that promote accountability and best practices, while diverting mining revenues from the public sector.

Amendments to the Myanmar Mines Law and Myanmar Gemstone Law will devolve approval of most small-scale and subsistence-scale mining permits to state and regional level.

HOW ARE LICENSE APPLICATIONS EVALUATED?

Myanmar’s first EITI report indicates that committees within the Ministry of Mines take into account a number of factors when scrutinizing mineral license applications, including:

- Exploration data
- Minimum investment capital
- Infrastructure plan
- Extraction and processing methods
- Fiscal terms
- Bank guarantee

21 Global Witness, “Jade: Myanmar’s Big State Secret” October 2015.

22 Stakeholder interviews conducted in November 2015.

23 For more on challenges associated with subnational mineral licensing, see Varsha Venugopal, “Assessing Mineral Licensing in a Decentralized Context: The Case of Indonesia” Natural Resource Governance Institute (NRGI), October 2014.

However, how these data should be weighed and measured is unclear. Neither the original nor the amended version of the Myanmar Mines Law specify what financial, technical or other criteria should be evaluated for the allocation of mineral permits. Myanmar currently lacks a clear national strategy to guide the development of the mining sector.

The Myanmar Gemstone Law indicates that gemstone production permits should be awarded to the bidder offering the highest price. In practice, however, opaque procedures have favored vested interests. In an interview conducted by Global Witness, one jade businessman indicated that companies owned by or associated with figures in Myanmar's armed forces have a "90 percent chance" of being awarded a gemstone permit over other bidders.²⁴ The details of gemstone bidding rounds are not disclosed.

In both the mineral and gemstones industries, it is unclear how rigorously the government screens potential investors against court records, sanctions lists, or other law enforcement information. Based on available information, it does not appear that companies' or their principals' past operational, financial, or social performance are comprehensively assessed in the review of new license applications.

The lack of clear criteria for license allocation generates uncertainty for potential investors and can enable favoritism or corruption. In the absence of clear rules to guide decision-making, the government's tendency to approve most mineral and gemstone licenses has allowed relatively "low quality" investors to proliferate in the mining sector while leaving the overall pace of mineral extraction unchecked.

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WHAT TERMS ARE INCLUDED IN LICENSES?

Once a license application is approved, the investor is expected to negotiate and sign agreement with the Department of Geological Survey and Mineral Exploration (in the case of prospecting, exploration, or feasibility study permits) or with the relevant mining enterprise (in the case of production permits).

The Department of Geological Survey and Mineral Exploration has made public and since updated a sample agreement for prospecting, exploration and feasibility study operations.²⁵ The agreement includes information on fiscal terms and operational commitments. It also outlines the company's administrative and legal responsibilities and the formation of a joint coordination committee for oversight of mining operations.

The first available version of the sample agreement, which appears to date to 2012 and is no longer accessible via the Ministry of Mines website, is almost completely lacking in environmental, social, health and safety content (the parties to the agreement would have remained subject to generally applicable laws and rules on these issues, which were in need of significant enhancements). A later version has been revised to include information on environmental assessment and management plans. However, this more recent document still does not make fully clear social or labor standards for mining operations.

²⁴ Global Witness, "Jade: Myanmar's Big State Secret" October 2015.

²⁵ Department of Geological Survey and Mineral Exploration, "[Sample] Agreement for prospecting, exploration and feasibility study of __ and associated minerals at __ area, __ township, __ region" (web date 2012) and Department of Geological Survey and Mineral Exploration, "[Sample] Agreement for prospecting, exploration and feasibility study of __ and associated minerals at __ area, __ township, __ region" (web date 2016).

Year of sample agreement	Fiscal terms	Operational commitments	Environmental obligations	Health and safety obligations	Social commitments
2012	Complete	Complete	Mostly incomplete	Incomplete	Incomplete
2016	Complete	Complete	Mostly complete	Mostly incomplete	Partial

Table 6. Completeness of license terms for mineral prospecting, exploration and feasibility study activities

Source: Author's elaboration based on sample agreements from the Department of Geological Survey and Mineral Exploration

Less information is available regarding production contracts. Myanmar’s first EITI report and documents released by the Ministry of Mines provide general ranges for key fiscal terms, including production sharing ratios, government equity participation, taxes and signature bonuses.²⁶ Interviews conducted by Global Witness have identified key aspects of gemstone production contracts in the jade industry.²⁷

This information cannot be verified via official sources, as the Ministry of Mines does not disclose the terms of existing licenses and contracts. It is believed that most agreements contain confidentiality clauses. For example, the sample agreement published by the Department of Geological Survey and Mineral Exploration notes that “all information pertaining to the Operations under this Agreement shall be confidential and shall not be released to any third party except as to that information which is required by law to be disclosed to financial institutions for the purpose of funding Operations or as may be required by any applicable regulatory authority or laws and regulations.” This language does not necessarily prevent the government from making contracts publicly available—in several countries, similar clauses preventing disclosure of “operational information” have not been interpreted to be obstacles to contract disclosure.

In the absence of strong legal framework, contracts play a key role in regulating company behavior. But Myanmar stakeholders often report violations of license and contract terms—including mining beyond the term defined in the permit, extracting minerals not specified by the permit and operating outside of the geographic area stipulated in the permit. Continued secrecy over investors’ operational, financial and environmental obligations complicates efforts by the government and other stakeholders to improve compliance.

Continued secrecy over companies' operational, financial and environmental obligations complicates efforts to improve compliance.

HOW MANY LICENSES HAVE BEEN GRANTED?

The Ministry of Mines maintains data on active mineral mining licenses by type and location, which are published from time to time on its website. It does not yet include more detailed information of interest to stakeholders, such as a breakdown of licenses by commodity or a list of mines where production is ongoing. No data has been publicly disclosed regarding the number or type of active gemstone permits.

Myanmar’s first EITI report includes the most complete public accounting of mining licenses to date. Covering active licenses as of March 2014, the report includes information on the commodity mined, mining area, investor, location, date of award, method of award and date of expiration. Although data remains incomplete, unclear or poorly synchronized in some areas, this represents a major step forward in license transparency.

26 Moore Stephens LLP, “Myanmar Extractive Industries Transparency Initiative (EITI) Report for the Period April 2013 - March 2014” Myanmar Extractive Industries Transparency Initiative: December 2015.

27 Global Witness, “Jade: Myanmar’s Big ‘State Secret’,” October 2015.

Room for improvement remains when it comes to the timeliness and completeness of licensing information. Officials have indicated that much data on mining permits have not yet been systematically numbered or digitized.²⁸ The Ministry of Mines is now working with support from international development partners to develop a mining cadastre, which will help to alleviate the most critical information constraints weighing on stakeholders. Developing a cadastre is one of several requirements which with Myanmar’s government must comply in order to be recognized as compliant with the EITI Standard.

	Exploration	Feasibility study	Large-scale production	Small-scale production	Subsistence-scale production	Small-scale processing	Total
Ayeyarwaddy			3	3			6
Bago	1			1			2
Chin	7						7
Kachin	62		4	71			137
Kayah	16		1	18			35
Kayin	12		6	34	17		69
Magway	33	1	3	36			73
Mandalay	64	3	46	261	102	67	543
Mon	1	4	5	19	8		37
Naypyitaw			3				3
Rakhine	3		1				4
Sagaing	40	6	24	217	2	2	291
Shan (East)	54	4	1	75			134
Shan (North)	42	2	19	50	10		123
Shan (South)	71	2	16	97	2		188
Tanintharyi	43	2	19	40			104
Total	449	24	151	922	141	69	1756

Table 7. Mineral mining permits issued as of December 2015²⁷

Source: Presentation by the Director General of the Department of Mines at the Myanmar Mining Development Summit on 28 January 2016.

WHO HOLDS MINING LICENSES?

Firms applying for mineral exploration, small-scale and large-scale mineral production licenses in Myanmar are required to list the “shareholders who own or have a beneficial interest in more than 5 percent of the [company’s] shares.”³⁰

The term “beneficial owners” refers to the individuals or entities that ultimately control or profit from a company. These are distinct from “legal owners,” who are the shareholders legally entitled to a share of company profits. Identifying and publicly disclosing beneficial ownership allows stakeholders to identify who benefits from resource extraction and helps governments to expose conflicts of interest. Companies’ beneficial ownership may be obscured through multiple means, including establishing complex chains of legal ownership or using “nominee shareholders” who collect company profits on behalf of the ultimate beneficiary. In 2016 and beyond, disclosing beneficial ownership will be a requirement for countries seeking to comply with the EITI Standard.

28 Stakeholder interviews conducted December 2015.

29 Although not specified in figures prepared by the Department of Mines, it appears that these statistics reflect active permits only.

30 See Form 1 and Form 3, as published on the website of the Department of Mines.

Although progress has been made in recent years, ownership information remains incomplete and is not disclosed in a regular or timely manner. Myanmar's first EITI report includes shareholder information on mining companies included within the study scope.³¹ However, the information provided generally appears consistent with “legal ownership” rather than “beneficial ownership.”

Several mining firms included in the scope of Myanmar's first EITI report, including Ya Da Nar Taung Tan and Max Myanmar Manufacturing Co., list other companies as their majority shareholders. Military holding company United Myanmar Economic Holdings Ltd. (UMEHL) is identified as the owner of Myanmar Imperial Jade (100 percent), Kayah State Mineral Production Co. (100 percent) and Xie Family (40 percent).³² Based on the commonality of many Myanmar names, it may also be difficult for officials to verify the identity of listed owners without access to additional identifying information. Stakeholders recognize that, in practice, opaque ownership has allowed Chinese and other foreign entities to quietly acquire control of mineral and gemstone licenses.

LOOKING FORWARD

The challenges facing Myanmar's mining sector are well known to stakeholders. Environmental and social impacts remain unacceptably high in many cases, while few benefits of mining are captured by the government or local communities. Yet the coming period also presents multiple opportunities for improving resource governance. Myanmar's incoming government may expand on initial reforms undertaken by the U Thein Sein administration and strengthen the country's participation in EITI. Careful consideration of the licensing regime will be a necessary component of these efforts.

A robust discussion of mineral and gemstone licensing issues must be underpinned by sound information on policies and practices. Myanmar's new administration can demonstrate much-needed leadership by increasing transparency of the mining and gemstone industries. In the short term, committing to greater transparency can improve trust and encourage stakeholder participation in the reform process. By making complete information on mining licenses and contracts and their beneficial owners publicly accessible, the new government can also enhance national dialogue on mining issues.

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31 As previously noted, this scope includes only the largest 45 percent of mineral companies and the largest 53 percent of emporium jade and gemstone companies.

32 See the Appendix of Moore Stephens LLP, “Myanmar Extractive Industries Transparency Initiative (EITI) Report for the Period April 2013 - March 2014” Myanmar Extractive Industries Transparency Initiative: December 2015.