



MINING UPDATE

# EGYPT AMENDS MINERAL RESOURCES LAW

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In conjunction with Ashurst, we consider the recent developments in the Egyptian mining sector.

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# Introduction

On 7 July 2019, the Egyptian Parliament passed Law No. 145 of 2019 (the “Amendment”) amending Law No. 198 of 2014 on Mineral Resources (the “Existing Law”). Amendments to the executive regulation were to follow. The Prime Minister has issued a new executive regulation (the “ER”), which was officially published in January 2020[1].

New investment opportunities for exploration and exploitation are expected to arise. Egypt expects the Amendment to be well received by current and potential investors as the country is looking to garner USD 700MM worth of new investment into the sector and increase the sector’s contribution to Egypt’s GDP to USD 7BN by 2030. The Minister of Petroleum & Natural Resources (“MOP”) announced plans to launch new bid rounds in 2020. Although no official timeline has been provided, it is expected that such bid rounds will be launched soon. Several opportunities in respect of gold are expected, as well as potential opportunities in phosphate, sand, limestone, iron and aluminium.

The Government has said that the Amendment (and the implementation of it in the ER) takes account of industry concerns about the Existing Law. To date, the Amendment has received positive reactions in industry and investor circles alike. However, it remains to be seen if the Amendment (as implemented by the ER) will fulfil its core purpose of reviving investor interest in the Egyptian mining sector. Notwithstanding the Amendment, it remains important to determine whether the model provisions that will be followed in licences awarded by law will include terms and conditions that are also sector and investment friendly. The Amendment tackles several economic and regulatory issues raised previously by industry and investors in the sector regarding the previous regime.

[1] Prime Minister Decree No. 108 of 2020, which was issued in the Official Gazette dated 14 January 2020, was published on 22 January 2020.

We note that the Amendment and the ER will apply to existing concession agreements, only to the extent that they do not contradict the terms of such concession agreements.

We highlight below the most salient economic and regulatory aspects of the changes introduced by the Amendment.

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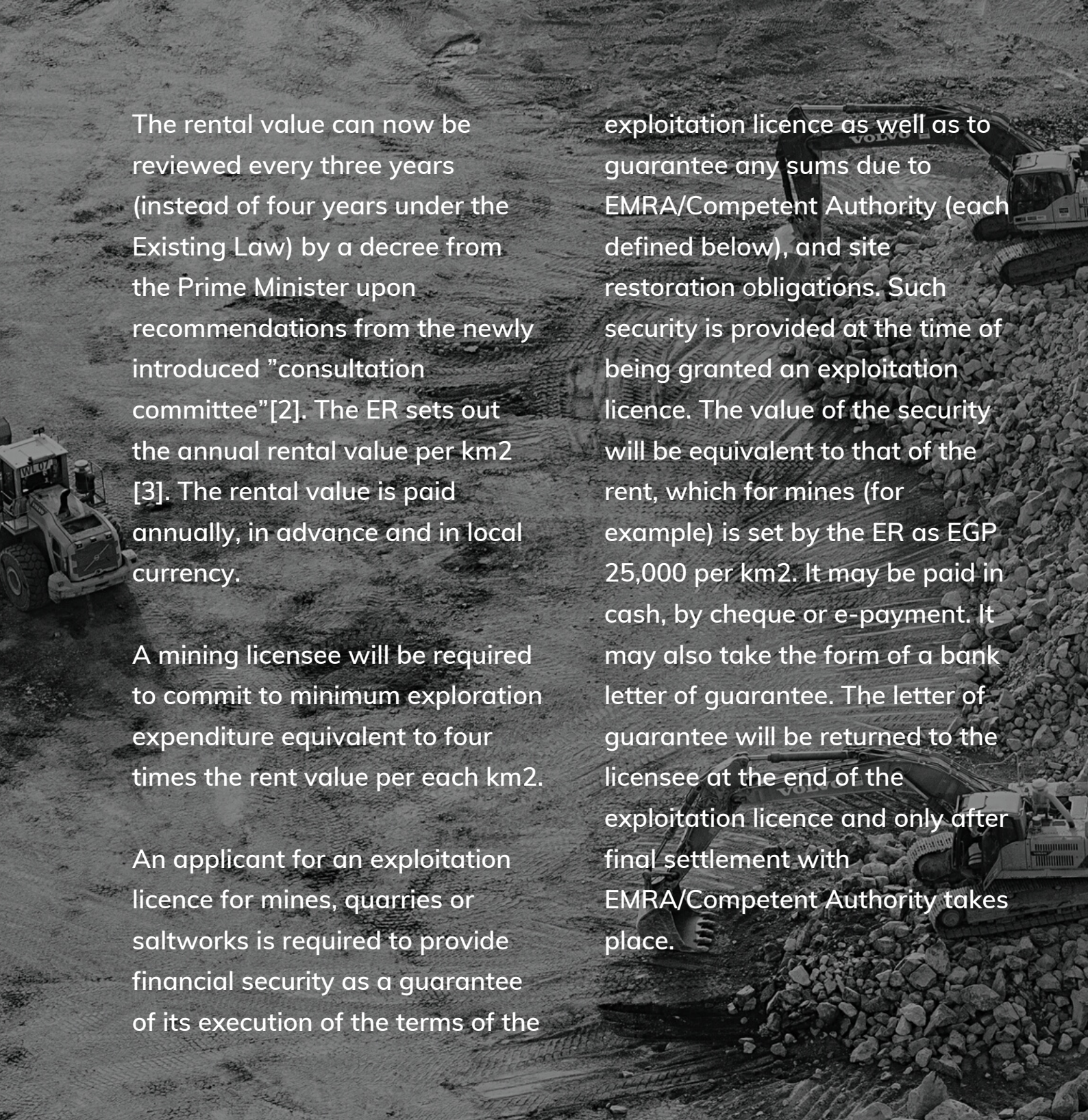
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# 1. Economic Aspects

## 1.1. Royalties, rent, exploration minimum expenditure, security and social responsibility contribution

Previously the royalty applied in respect of mines, quarries and saltworks was a minimum of 5% of the annual ore production, without a cap. The Amendment provides certainty on the maximum amount of the royalty by introducing a 20% cap. The royalty is paid in cash in local currency. The ER provides for royalty schedules. For example, the royalty for gold is 5%, phosphate is 10%, zinc is 6%, copper is 8%, iron is 9% and white sand is 18%. The royalty can be paid quarterly, in cash, or by cheque or e-payment. The royalty is valued as per the local market prices of the ore at the location of each ore and is determined by a committee that will be formed by the MOP.

For mines, a licensee is required to pay a social responsibility contribution of 1% of the royalty to the Governorate in which the mine is located. The Amendment provides that such 1% will now be deducted from the royalty amount. In a similar manner, for quarries and saltworks the Amendment increases the social contribution to 6% of the royalty, as opposed to the current 1%, which will be deducted from the royalty amount instead of being paid in addition to it. It is not clear if such contributions will be paid directly to the relevant Governorate where the social project being funded is located. This lack of clarity may represent an issue for some investors' internal compliance requirements.



The rental value can now be reviewed every three years (instead of four years under the Existing Law) by a decree from the Prime Minister upon recommendations from the newly introduced "consultation committee"[2]. The ER sets out the annual rental value per km<sup>2</sup> [3]. The rental value is paid annually, in advance and in local currency.

A mining licensee will be required to commit to minimum exploration expenditure equivalent to four times the rent value per each km<sup>2</sup>.

An applicant for an exploitation licence for mines, quarries or saltworks is required to provide financial security as a guarantee of its execution of the terms of the

exploitation licence as well as to guarantee any sums due to EMRA/Competent Authority (each defined below), and site restoration obligations. Such security is provided at the time of being granted an exploitation licence. The value of the security will be equivalent to that of the rent, which for mines (for example) is set by the ER as EGP 25,000 per km<sup>2</sup>. It may be paid in cash, by cheque or e-payment. It may also take the form of a bank letter of guarantee. The letter of guarantee will be returned to the licensee at the end of the exploitation licence and only after final settlement with EMRA/Competent Authority takes place.

[2] Art. 14 of the ER provides that the MOP will form a consultation committee. The committee will include representatives from EMRA, New Urban Communities Authority (NUCA), Ministries of Petroleum & Natural Resources, Defense, Trade & Industry, Finance and Urban Development, as well as Egyptian Industries Union, among others. The committee will be also tasked with considered necessary amendments to the ER, hearing disputes with licensees, setting the method of measuring the amount and value of extracted production as well as determining resources that may not be exported.

[3] Art. 21 of the ER provides for the rental value for mines to be as follows: EGP 5,000 for the 1st exploration period, EGP 10,00 for the 2nd exploration period, EGP 15,000 for the 3rd exploration period, and EGP 20,000 for the 4th exploration period. The rental value for mines under exploration is EGP 25,000 per km<sup>2</sup> and for white sand it is EGP 9 per km<sup>2</sup>.

## 1.2. Investment law incentives

The Amendment offers investors in the mining sector the opportunity to benefit from the investment incentives provided by Law 72 of 2017 (the “Investment Law”). An investor can choose to setup its licence-holding company within the investment areas established by the Investment Law[4] (such as the Golden Triangle Area)[5]. In doing so, those companies will be entitled to benefit from financial and logistical incentives under the Investment Law.

## 2. Regulatory Aspects

### 2.1 Regulatory agencies

The Existing Law and the Amendment both provide for the operation of public bodies, which between them have varying regulatory roles in the granting of exploration and exploitation licences for mines, quarries and saltworks.

The Existing Law defined the Egyptian Mineral Resources Authority ("EMRA") as the entity responsible for operating and managing mineral resources activities. The Governorates enjoyed the same rights as EMRA in respect of quarries and saltworks within their respective borders. The Amendment attempts to implement a more streamlined approach by introducing two new terms; a “Competent Entity” and “Competent Authority”.

[4] There are currently 16 investment areas. The Investment Law grants various types of incentives depending on the area where the project will be located. For more details on such incentives please see S&S short video here: <https://sharkawylaw.com/stay-informed/video-new-investment-law-in-egypt-2/>

[5] The Golden Triangle is located between Qena, Safaga and Al Qusair and is considered to have high minerals potential.

A “Competent Entity” is a public body responsible for operating and managing quarries and saltworks. There are two Competent Entities in this regard - depending on the location of a quarry or saltworks area, the Competent Entity could be the Governorate or the New Urban Communities Authority (“NUCA”). This is the first time NUCA has been entrusted a role within the regulatory framework of mineral resources. Technical supervision of the project is delegated to EMRA.

The Amendment provides that, in respect of the issue of exploration and exploitation licences, the MOP is the “Competent Authority” for mining. The Governor or the Chairman of NUCA is the “Competent Authority” for quarries and saltworks, depending on the location of the quarry or the saltworks.

## 2.2 Licensing mechanism and term of licenses

An important change introduced by the Amendment and the ER concerns the way exploration and exploitation licences will be granted.

Exploration licences will be granted as follows:

- exploration licences for precious metals and precious stones will be licensed by the MOP, without the need to issue a law; and
- exploration licences for small mines (less than 1 km<sup>2</sup>) will be licensed by EMRA’s board without the need to issue a law.


Exploitation licences will be granted as follows:

- exploitation licences for quarries, mines and saltworks up to 16 km<sup>2</sup> will be issued by the Competent Entity; and
- exploitation of precious metals, precious stones, as well as mines, quarries and saltworks exceeding 16 km<sup>2</sup> must be licensed by a special law.

The Amendment grants relative freedom to EMRA (subject to MOP approval) as to the tendering and contracting terms in a way that is less restricted by public tender laws. It appears that direct awards for mining plots could be used, provided a special law is issued authorising MOP to conclude an agreement with the private mining company.

The Amendment adds a third optional exploration period for mining exploration licences exceeding 1 km<sup>2</sup>, as opposed to the single renewal period under the Existing Law. Under the Amendment, the term of each of the second and third periods is the same as the initial exploration period (being two years) with the possibility of having a fourth period, subject to technical justifications that are acceptable to EMRA. The duration of the fourth period is not clear from the Amendment or the ER, however the assumption is that it is also for two years.

Exploitation licences can be granted for up to a combined total of 15 years.



The Amendment provides EMRA with the right to reoffer a mining area with proven economic reserves to a third-party investor, in case the original licensee refuses to exploit it. The mechanics for re-offering such areas will need to be clarified by EMRA. EMRA may also decide to exploit such areas itself (or through one of its companies), instead of re-offering them to a third-party investor[6].

[6] This option for EMRA to undertake the exploitation by itself or through one of its affiliated companies existed under the Existing Law.



## 2.3 Introducing an exception to single ore license

Originally the scope of a mining exploration licence would cover only one ore. The ER provides for the possibility to obtain an expanded scope, subject to EMRA's approval, in cases where the licensed ore is mixed with another unlicensed ore and it is not possible to extract the licensed ore without extracting the unlicensed ore with it. In such a case, the licensee must notify EMRA within thirty days of such occurrence to discuss an amendment to the scope of the licence.

## 2.4 Relaxing the ban on quarry licenses for agricultural lands

The issuance of exploitation licences for quarries on agricultural lands was prohibited under the Existing Law, however the Amendment provides an exception to this prohibition where the approval of the Ministry of Agriculture is obtained. The Amendment also expands the scope of the Existing Law to apply to reclaimed lands.



## 2.5 Assignment

The ER provides clarification regarding direct and indirect assignment. Full or partial direct assignment requires the pre-approval of the MOP and most likely of EMRA too. A licensee seeking to fully or partially assign its rights needs to submit a request using EMRA's form for assignment of licences.

There are a number of conditions to be satisfied in order to obtain regulatory approval to an assignment, which are as follows:

- **For the licensee (assignor):**
  - i. fulfillment of all obligations up to the date of submitting the request to assign the licence; and
  - ii. payment to EMRA/Competent Authority (as the case may be) of an amount equal to twice the amount of the rental value, when submitting the assignment request. This amount appears to effectively be an assignment bonus paid in

exchange for the approval to the assignment by EMRA/Competent Authority (similar to that found in oil and gas concessions).

- **For the prospective licensee (assignee):**
  - i. it must be registered in EMRA's pre-qualified investors registry (the criteria to be met in order to be registered are not provided);
  - ii. it must have the required technical and financial capability, subject to EMRA/Competent Authority's discretion;
  - iii. it must pay the security determined by EMRA/Competent Authority. This security appears to be different from the security amount paid when the exploitation licence is initially granted. This point needs to be further clarified by EMRA because if our reading is correct then it creates a situation where there are two securities provided to EMRA/Competent Authority in respect of the licence; and

iv. it must submit a work program for the remaining period of the licence.

Indirect assignment in the form of a change of control of the shares of the licensee must be notified to EMRA or the Competent Authority, as the case may be. There is no 'change of control' threshold (which is similar to the position found in oil and gas concessions).

## 2.6 Broadening definitions

The Amendment expands on the definition of several terms. For example, the Existing Law defined quarry ores as material used in construction whereas the Amendment provides a precise definition of quarry ores clarifying that they are construction sand, dolomite, basalt, clay, limestone, granite and marble of various types. Additional forms of mine ores can be added by a decree from the MOP.

### About Ashurst



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We are pleased to have collaborated with Yann Alix, Quentin Robinson and the rest of the team at Ashurst.

# Our Energy & Natural Resources team welcomes your questions



**Naila Ramsay**

Partner

[n.ramsay@sharkawylaw.com](mailto:n.ramsay@sharkawylaw.com)



**Heba Raslan**

Managing Associate

[h.raslan@sharkawylaw.com](mailto:h.raslan@sharkawylaw.com)