

**MINING WORKING GROUP'S POSITION PAPER IN THE CONTEXT OF
RESOLUTION No.35-2016/NQ-CP**

**FOREIGN DIRECT INVESTMENT IN MODERN MINING –
AN IMPORTANT, BUT CURRENTLY MISSING, PART OF VIETNAM'S PRIVATE
INVESTMENT AND ECONOMIC GROWTH**

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1. Introduction

Despite the admirable goals it sets out to achieve, the initiative of Resolution No35/NQ-CP to support private enterprises to become a driving force for the economy by 2020 appears to make no direct reference to, or recognition of, Vietnam's valuable, untapped mineral resources or to mining in the country. Mining, if carried out with FDI using international best practices in an efficient, environmentally responsible and safe manner, would make a major difference to Vietnam's national debt and economic growth, and contribute to many of the areas mentioned as goals to be achieved in Resolution No.35-2016/NQ-CP, including:

- Promoting industrial development in rural areas;
- Participating in poverty alleviation programs, especially in remote areas;
- Contributing to environmental protection;
- Promoting growth on the basis of technology and economic restructuring and focus on private enterprise.

2. FDI Mining contribution to economic growth and national debt reduction

Mining has historically been one of the main drivers of economic growth and infrastructure development in the world, from now-developed countries such as Australia, Canada, South Africa and USA to the newer-developed and emerging countries such as Peru, Chile, Mongolia, Indonesia and Papua New Guinea.

Vietnam is rich in mineral resources, but it is estimated that less than 10% of its base-metal and precious-metal resources have been discovered to date because the country has never been systematically explored using modern methods to find more deeply buried, large deposits. The mining industry in Vietnam has primarily been focused on outcropping or near-surface energy minerals such as coal and bulk commodities such as iron ore and bauxite.

Unfortunately, the investment and advanced technologies required to find new resources are reluctant to come to Vietnam, when there are more competitive and investor friendly destinations elsewhere. Inconsistent mining legislation in Vietnam and some of the highest royalty rates, taxes and tariffs in the world imposed on mining are powerful disincentives for such investment.

A strong, sustainable mining industry helps to reduce a country's national debt. An example of this is Peru, which assumed the chair of APEC in 2016, before Vietnam has in 2017. Compared to Vietnam, Peru encourages foreign investment in its minerals industry and since 2004 has

applied a 1-3% royalty on the commercial value of sales (recently changed to 1-12% of operating income for new projects). This approach has allowed Peru to maintain a fiscal surplus when many countries have high debt problems. There is also nearly US\$60 billion of planned future exploration and mine development investment in Peru in the pipe-line to 2020 (Ernst & Young, 2015).

3. Issues and ramification of Government Mining policies

If Vietnam's unrealistically high royalty rates are intended to preserve the country's mineral wealth for future generations or to bring in increased revenue to the Government, it is a misguided policy. Instead, the high royalty tariffs have the opposite effect which:

- Almost certainly make any modern mining operations in Vietnam unprofitable or marginal at present commodity prices, and likely lead to mine closures;
- Result in the loss of a valuable source of tax revenue for the Government; and
- Condemn Vietnam to ongoing environmental damage and safety issues associated with the outdated, wasteful mining methods and practices currently used by most Vietnamese companies and by illegal miners.

As a result, there are no major international mining companies willing to consider investing in new discovery and development of the country's mineral assets, which can only be found by advanced, environmentally friendly technologies and world best-practice methods.

Other important benefits that would come from encouraging FDI in mining in Vietnam using internationally accepted best practices and modern technologies are:

3.1. FDI Mining contribution to environmental protection

Vietnam has in place strong laws and regulations to protect the environment, but enforcement is sadly lacking at all levels of government. This applies to mining as much as to other industries in Vietnam.

As noted above, illegal mining and local companies using outdated, wasteful, unsafe and environmentally damaging methods dominate Vietnam's mining scene. The best way to eliminate environmental damage, apart from enforcing existing regulations, is to encourage FDI by mining companies that do follow internationally accepted best practices of responsible, sustainable and efficient mining, environmental protection and worker safety.

3.2. FDI Mining contribution to infrastructure development and poverty

Alleviation

Responsible mining, which is usually conducted in the more remote, undeveloped parts of a country, has long been recognized to be one of the most effective drivers of infrastructure improvement around the world. The areas where mineral deposits are found tend to also be the more mountainous, and therefore the poorest socio-economic, parts of a country, and this certainly applies to Vietnam. Modern mining cannot operate efficiently without good infrastructure and communications, and therefore responsible mining companies have a strong incentive to be a contributor to, or provider of, such infrastructure development. The other

obvious benefit of responsible mining is the contribution it can make to help alleviate poverty in the remote areas it operates in.

4. Conclusions and recommendations

Although minerals are a non-renewable resource, most of the country's mineral wealth has yet to be discovered. Only a fraction of Vietnam has been explored using advanced, internationally accepted technology. Such methods will almost certainly lead to the discovery of new, major deeper ore bodies than have been found so far at or near surface.

As long as Vietnam's royalties, fees and taxes are significantly higher than world averages, international best-practice methods and investment in Vietnam's mining industry will continue to be discouraged and will go to countries with preferable investment conditions. This in turn will encourage the continuation of inefficient and wasteful mining practices and degradation of Vietnam's existing known mineral resources and its environment, and also encourage increased illegal mining and export of minerals on which little or no tax is paid.

To resolve these shortcomings, we respectfully urge the Government to improve investment confidence in Vietnam's minerals industry to encourage FDI by:

- Re-examining existing legislation and introducing more investor-friendly, competitive mining legislation which includes an equitable tax system that is fair to both the Government and the investor, and legislation that provides for consistent policies for long-term commitment; and
- Establishing a task-force to investigate the incorporation of the best elements of other successful mining legislations around the world where a balance has been achieved between attracting modern, high technology in exploration, mining and processing of mineral resources while at the same time returning equitable revenue to the host nation whose resources are extracted.

This means, as an essential first step, reducing royalty tariffs to be competitive with other countries, and will be the catalyst to:

- Encourage exploration to increase Vietnam's mineral inventory by new, deeper discoveries using modern technological methods;
- Enforce sustainable mining and processing of the country's mineral wealth by advanced high technology practices in an environmentally responsible, efficient and safe way;
- Increase revenue to government and communities;
- Accelerate development of infrastructure and service industries in the more remote and often mountainous parts of Vietnam with poor socio-economic conditions, where mineral deposits tend to be found;
- Enable the mining sector in Vietnam, which is currently almost isolated, to benefit from global integration within APEC, ASEAN and other free trade agreements.

The Mining Working Group sincerely hopes that the main concerned Ministries namely MONRE, MOIT and MOF, with the help of MPI and VCCI can cooperate to recommend to the Prime Minister the necessary steps which will lead to mining legislation and regulations that will provide the incentives to deliver a modern, vibrant mining industry to Vietnam.

APPENDIX TO MINING WORKING GROUP PAPER

Other independent assessments that the Government should consider are:

IMF Expert Opinion

It is worth referring to the words of the International Monetary Fund in its IMF Country Report No.12/219 of August 2012 requested by the Government of the Philippines. The IMF recognizes that a royalty rate of any higher than the 5%, as currently applied in the Philippines, would ***“particularly when combined with other production-based levies, make the fiscal regime uncompetitive”***. For any contemplated royalty rate higher than 5%, the IMF recommended that ***“mining companies be allowed a tax credit against their income tax for the amount of royalty in excess of 5%”***.

The IMF recommended that ***“the Philippines should adopt a fiscal regime for the mining sector that is simple, predictable and transparent. This fiscal regime should ensure a fair distribution between mining companies and the government of the economic benefits from mining with fiscal regulations that are complemented by an efficient and transparent tax administration”***.

The IMF further commented that ***“there is a market test for any mining fiscal regime - can the country attract investment in its mining sector? If not, the fiscal regime may be inappropriate for the country, given its exploration, development and production costs; the size and quality of its mineral deposits; and investor perception of commercial and political risk”***.

With royalty rates in the range of 10-17%, Vietnam cannot attract investment into its mining sector, as evidenced by the lack of any major international mining companies coming to Vietnam to carry out modern mineral exploration and mining.

APEC Meeting of Ministries responsible for Mining

At its meeting in Beijing in June 2014, the APEC Ministers Responsible for Mining (MRM), at which Vietnam was represented by MOIT as the designated mining ministry, the Ministers' joint statement recognized ***“the significance of sustainable development in mining, and believe this could be achieved through regional integration, fostering sustainable investment, increasing social responsibility, and innovation and environmental advances in mining and metallurgy”***.

The Ministers encouraged APEC economies to ***“improve their mining investment environments, administration and services”*** and stressed ***“the importance of promoting open, transparent and well-operating markets in the mining sector, as well as investment and financing cooperation for win-win development”***.

It is to be hoped that Vietnam will be keen to improve its competitive mining status by following the objectives of the APEC Ministers' joint statement, to which Vietnam was a signatory, in this its current year of chairing APEC 2017.