

Part I. LEGAL DOCUMENTS

THE GOVERNMENT

Decree No. 22/2012/ND-CP of March 26, 2012, on auction of the mining right

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to November 17, 2010 Mineral Law No. 60/2010/QH12;

Pursuant to the Government's Decree No. 17/2010/ND-CP of March 4, 2010, on property auction;

At the proposal of the Minister of Natural Resources and Environment;

The Government promulgates the decree on auction of the mining right,

Chapter I

GENERAL PROVISIONS

Article 1. Scope of regulation

This Decree details Clause 2, Article 79 of the XIIth National Assembly's November 17, 2010 Mineral Law No. 60/2010/QH12, on principles, conditions and procedures for auction of the mining right.

Other auction-related issues comply with the law on property auction.

Article 2. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Auction of the mining right means a form of public sale of the mining right by increasing bids according to the principles, order and procedures provided in this Decree.

2. Auction participant means the lawful representative of an eligible bidder for the mining right under this Decree.

3. Auction guarantee means the commitment made by a credit institution to guarantee the fulfillment of financial obligations of a bidder for the mining right.

Article 3. Principles of auction of the mining right

Auction of the mining right shall be organized according to the following principles:

1. Transparency, publicity, continuity, fairness and protection of the rights and legitimate interests of auction participants.

2. An auction of the mining right may be held only when at least 3 bidders participate in the auction.

3. Auction of the mining right may only be organized for areas for which auction plans have been approved by competent state agencies.

Article 4. Reserve price

1. The reserve price shall be set before an auction by a state management agency competent to grant mining licenses provided in Article 82 of the Mineral Law.

2. The reserve price in an auction of the mining right must not be lower than the amount for granting the mining right.

3. The Ministry of Natural Resources and

Environment shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, specifying the determination of the reserve price in auctions of the mining right.

Article 5. Deposit

1. Deposit means an amount in VND which must be paid before an auction by bidders for the mining right. Deposit shall be decided by the mining right auction council (below referred to as auction council) according to the following provisions:

a/ For auction of the mining right in an area with mineral exploration results, the deposit equals 1%-15% of the reserve price;

b/ For auction of the mining right in an area in which mineral exploration has not yet been conducted, the deposit shall be determined based on mineral survey and assessment results and under Point a of this Clause.

2. Bidders may pay the deposit in cash or with auction guarantee as follows:

a/ In case of cash payment, bidders shall deposit in the custody account of the bid dossier-receiving agency provided in Article 17 of this Decree;

b/ In case of auction guarantee, bidders shall submit auction guarantee documents to the bid dossier-receiving agency.

3. The deadline for deposit payment shall be stated in the mining right bidding dossier at least 7 (seven) days before the auction. Deposits of auction winners shall be paid to the State Treasury and deducted from the auction winning amount upon grant of mining licenses.

Article 6. Refund of deposits

1. Deposits shall be refunded upon the end of the auction, except the cases provided in Clause 2 of this Article.

2. Cases ineligible for deposit refund:

a/ Bidders that have been selected for an auction and paid the deposit but are absent in such auction, except in *force majeure* circumstances;

b/ Auction participants withdraw their offered bids;

c/ Auction winners refuse to sign the auction record;

d/ Past the time limits provided at Points b and c, Clause 2, Article 11 of this Decree, auction winners fail to submit an application dossier for a mineral exploration or mining license;

e/ The mineral exploration license is revoked under law.

3. Deposits ineligible for refund in the cases provided in Clause 2 of this Article shall be remitted to the state budget.

Article 7. Charges and expenses for auction of the mining right

1. Charges for auction of the mining right comply with law on charges and fees.

2. Expenses for the compilation of bidding dossiers; evaluation and selection of bidders; and organization of auctions by auction councils comply with the law on property auction.

Chapter II

BIDDERS FOR THE MINING RIGHT

Article 8. Conditions on bidders

1. A bidder may participate in an auction when:

a/ Its bid dossier is selected by a competent state agency provided in Article 19 of this Decree; and

b/ It has paid the auction charge and deposit under regulations.

2. When there is a change in its legal status, an eligible bidder shall additionally submit related documents to the bid dossier-receiving agency before the auction.

3. An auction winner that refuses the auction winning result without the auction council's approval is prohibited from participating in any auction for 1 (one) year from the end of that auction.

Article 9. Persons prohibited from bidding

1. The chairman and members of an auction council; cadres and civil servants assigned to receive and prepare mining right bidding dossiers of the General Department of Geology and Minerals of Vietnam and provincial-level Natural Resources and Environment Departments of localities which have areas put up for auction of the mining right; and fathers, mothers, spouses and children of the above persons.

2. Other persons prohibited under the law on property auction.

Article 10. Rights and obligations of bidders

1. A bidder for the mining right has the following rights:

a/ To have access to geological and mineral documents related to areas put up for auction

of the mining right under the mineral and other related laws;

b/ To conduct field surveys in areas put up for auction of the mining right and take ground samples in areas put up for auction of the mining right for which mineral exploration has not been conducted under Article 37 of the Mineral Law;

c/ To attend auction-related meetings held by competent state agencies.

2. A bidder has the following obligations:

a/ To strictly observe the rules and regulation on auction issued by the auction council and other relevant laws;

b/ To perform other obligations under law.

Article 11. Rights and obligations of auction winners

1. A mining right auction winner has the following rights:

a/ To obtain a certificate of auction winner;

b/ To use information on minerals related to the area in which it wins the mining right under the mineral law.

c/ To obtain a mineral exploration or mining license after completing mining licensing procedures under the mineral law;

d/ To have other rights under law.

2. A mining right auction winner has the following obligations:

a/ To pay the auction-winning amount under Article 24 of this Decree and fulfill other financial obligations under law;

b/ Within 6 (six) months after the auction at which it wins the mining right in an area where

no mineral exploration activities have been conducted, to submit an application dossier for a mineral exploration license to a competent licensing state agency under the mineral law;

c/ Within 12 (twelve) months after the auction at which it wins the mining right in an area with mineral exploration results, to submit an application dossier for a mining license to a competent licensing state agency under the mineral law;

d/ Not to transfer its won mining right to another organization or person for making an application dossier for a mining license;

e/ To perform other obligations under law.

Chapter III

AUCTION COUNCIL, ORDER AND PROCEDURES FOR AUCTION OF THE MINING RIGHT

Section I

AUCTION COUNCIL

Article 12. Auction council

1. For minerals to be licensed by the Ministry of Natural Resources and Environment, the auction council shall be formed by the Minister of Natural Resources and Environment to organize an auction of the mining right. The council has no more than 11 members, including:

a/ The chairman who is the General Director of the General Department of Geology and Minerals of Vietnam;

b/ Members who are a representative of the National Council for Assessment of Mineral

Deposits and representatives of the Ministries of Justice; Natural Resources and Environment; Planning and Investment; Finance; Industry and Trade; and Construction, a representative of the General Department of Geology and Minerals of Vietnam being the council secretary, a representative of the provincial-level People's Committee of the locality having the mineral area put up for auction, and some specialists;

c/ The standing body which is the General Department of Geology and Minerals of Vietnam.

2. For minerals to be licensed by a provincial-level People's Committee, an auction of the mining right shall be held by a professional auction service provider. The agency preparing dossiers and materials before and after an auction is the provincial-level Natural Resources and Environment Department.

For a mine which has a complex geological structure or in case it is impossible to hire a professional auction service provider, the provincial-level People's Committee shall decide to form an auction council to organize an auction of the mining right. An auction council has no more than 11 members, including:

a/ The chairman who is a leader of the provincial-level People's Committee;

b/ Members who are representatives of the provincial-level Departments of Natural Resources and Environment; Planning and Investment; Finance; Industry and Trade; and Construction, a representative of the provincial-level Natural Resources and Environment

Department being the council secretary, a representative of the district-level People's Committee of the locality having the mineral area put up for auction, and some specialists;

c/ The standing body which is the provincial-level Natural Resources and Environment Department.

3. The Ministry of Natural Resources and Environment shall promulgate the Regulation on operation of auction councils.

Article 13. Powers and responsibilities of auction councils and professional auction service providers

1. Auction council:

a/ Powers:

- To promulgate the auction regulation and rules of a mining right auction session;

- To set the deposit provided in Article 5 of this Decree and bid increments for an auction session;

- To deprive the right to participate in an auction session of an auction participant who causes disorder at the auction place or commits acts of collusion or compromise to reduce prices or other acts which affect the objectivity and honesty of the auction and to make a record of the handling of such person;

- To terminate or suspend a mining right auction session when detecting violations of auction order and procedures.

b/ Responsibilities:

- To conduct an auction session under this Decree and the regulation of the auction council; to take responsibility before law and the

competent licensing state management agency for the truthfulness of auction winning results;

- To settle complaints during the auction, to assist the competent licensing state management agency in receiving, settling according to its competence, or proposing the settlement of, complaints arising after the auction;

- To propose the competent licensing state management agency to approve auction winning results;

- To perform other tasks under regulations.

2. Professional auction service provider:

a/ Powers:

- To request the provincial-level Natural Resources and Environment Department to provide information on the area put up for auction of the mining right; bid dossiers of eligible bidders; and the reserve price;

- To request the provincial-level Natural Resources and Environment Department to pay expenses for organizing the auction of the mining right.

b/ Obligations:

- To organize an auction session according to the principles, order and procedures provided by this Decree and take responsibility for auction results;

- To provide the auction record to the provincial-level Natural Resources and Environment Department;

- To pay damages for faults made by its auctioneer and other employees during the auction session;

- To perform other obligations under the **auction law**.

Section 2

ORDER AND PROCEDURES FOR AUCTION OF THE MINING RIGHT

Article 14. Planning and notification of areas put up for auction of the mining right

1. Bases for auction planning:

a/ Mining areas under the mineral master plans provided at Points b, c and d, Clause 1, Article 10 of the Mineral Law, which have been approved by competent state agencies;

b/ Areas not put up for auction of the mining right provided in Clauses 3 and 4, Article 78 of the Mineral Law, which have been approved by competent agencies;

c/ Results and practical situation of mining and intensive processing of minerals in localities and nationwide; mineral demands for local, regional and national socio-economic development in the subsequent year.

2. Responsibilities for elaboration and approval of auction plans

According to the mining licensing competence provided in Clauses 1 and 2, Article 82 of the Mineral Law; and Clause 1 of this Article, annually, the General Department of Geology and Minerals of Vietnam shall elaborate and submit to the Minister of Natural Resources and Environment for approval, and provincial-level Natural Resources and Environment Departments shall elaborate and submit to provincial-level People's Committees for approval, plans on auction of the mining right.

3. After being approved, lists of mineral areas put up for auction and annual plans on auction of the mining right shall be publicly notified and posted on the websites of the Ministry of Natural Resources and Environment and provincial-level People's Committees of localities having minerals.

Article 15. Mining right bidding dossiers

1. Based on approved annual plans on auction of the mining right, the General Department of Geology and Minerals of Vietnam and provincial-level Natural Resources and Environment Departments shall compile mining right bidding dossiers.

2. A mining right bidding dossier must contain the following principal contents:

a/ Name of the mineral, location of the mineral area put up for auction;

b/ Expected place and time of the auction;

c/ Basic geological and mineral information; mining conditions in the area put up for auction; method of reference to information and documents on the current state of infrastructure and land use in the mineral area put up for auction;

d/ Reserve price and deposit;

e/ Provisions on criteria for evaluation of bid dossiers;

f/ Forms required in a bid dossier (auction application; basic econo-technical requirements, etc.).

3. For auction of the mining right in an area with mineral exploration results, the bidding dossier-making agency provided in Clause 1 of

this Article shall enclose a dossier of requirements on mining technology, intensive processing and use of minerals, covering:

a/ Minimum requirements on methods, technology and equipment for mineral exploitation and processing to be satisfied;

b/ Minimum requirements on mineral quality after mining and processing;

c/ Purposes and addresses of mineral use for supply to mining projects determined under the approved master plan on exploitation and use of such mineral.

Article 16. Contents and form of mining right bid dossiers

1. A bidder shall make a mining right bid dossier and submit it to an agency mentioned in Article 17 of this Decree.

2. Documents in a mining right bid dossier shall be submitted in one copy each according to the following provisions:

a/ The original application for auction of the mining right;

b/ The original or certified true copy of the business registration certificate; written introduction of capacity and experience in mineral exploration, mining and processing; introduction of financial capacity and fund raising capacity;

c/ For an area with mineral exploration results, a preliminary investment program on mining, intensive processing and sale of the product and a written commitment to implementing such program if winning the auction.

d/ For an area without mineral exploration

results, a preliminary investment plan on exploration, mining, intensive processing and sale of the product and a written commitment to implementing such plan if winning the auction.

3. The Ministry of Natural Resources and Environment shall provide forms of the application and other documents of the mining right bid dossier.

Article 17. Bid dossier-receiving agencies, method and time of receiving mining right bid dossiers

1. Agencies receiving mining right bid dossiers are provided as follows:

a/ The General Department of Geology and Minerals of Vietnam is the agency making, notifying and selling mining right bidding dossiers and concurrently the agency receiving mining right bid dossiers, for minerals to be licensed by the Ministry of Natural Resources and Environment;

b/ The provincial-level Natural Resources and Environment Department is the agency making, notifying and selling mining right bidding dossiers and concurrently the agency receiving mining right bid dossiers, for minerals to be licensed by provincial-level People's Committees.

2. Mining right bid dossiers shall be submitted directly to the bid dossier-receiving agencies provided in Clause 1 of this Article.

The time limit for receiving mining right bid dossiers is 30 (thirty) days counting from the date of closing the notification of an auction of the mining right provided in Clause 1, Article 18 of this Decree.

Article 18. Notification and publication of information on an auction of the mining right

1. Based on an approved plan on auction of the mining right, an agency competent to organize auction of the mining right provided in Article 12 of this Decree shall publicly notify an auction of the mining right at its office and on the website of the competent licensing agency.

The time for notification and publication of an auction is 30 (thirty) consecutive days before the date of receiving mining right bid dossiers. Information on an auction of the mining right shall also be published in the central mass media or the mass media of the locality having the area put up for auction at least twice with an interval of 3 (three) days.

2. Information on an auction of the mining right includes:

- a/ Name of the mineral, location of the mineral area put up for auction;
- b/ Reserve price, deposit;
- c/ Place and time of the auction;
- d/ Starting date of receipt of bid dossiers;
- e/ Other relevant information.

Article 19. Selection of mining right bid dossiers

1. After the deadline for receiving mining right bid dossiers, a bid dossier-receiving agency shall consider dossiers to select eligible bidders.

After 3 times of notification and by the deadline for receiving mining right bid dossiers, if the number of bidders is smaller than that provided in Clause 2, Article 3 of this Decree,

the bid dossier-receiving agency shall report such to the competent licensing agency and shall not organize the auction.

2. A bidder selected for an auction of the mining right must fully satisfy the following requirements:

a/ Its bid dossier has the documents and materials made under Clause 2, Article 16 of this Decree;

b/ It satisfies requirements on mineral exploration or mining under Articles 34 and 51 of the Mineral Law;

c/ It commits that its mining and processing equipment and technology and product sale plan conform with the requirements set in the bidding dossier.

3. Within 30 (thirty) days after the deadline for receiving bid dossiers, the bid dossier-receiving agency shall complete the selection of bidders' dossiers for reporting to the auction council chairman.

For an auction conducted through a professional auction service provider provided in Clause 2, Article 12 of this Decree, past the above mentioned time limit, the provincial-level Natural Resources and Environment Department shall transfer bid dossiers of bidders selected for auction to that service provider for organizing an auction under this Decree and the law on property auction.

Within 30 (thirty) days after receiving a report on selection of bid dossiers, the auction council chairman or the professional auction service provider shall organize an auction of the mining right.

4. For disqualified bid dossiers, the bid dossier-receiving agency shall notify concerned organizations and persons in writing, clearly stating the reason.

5. The bid dossier-receiving agency shall publicly notify a list of eligible bidders and publish it on the website of the competent licensing agency before the auction is held; and notify in writing the time and venue of the meeting providing auction-related information; time of field survey in the area put up for auction; and time of payment of the auction charge and deposit to eligible bidders.

Section 3

ORGANIZATION OF AUCTION OF THE MINING RIGHT

Article 20. Rules of an auction of the mining right

1. Before an auction is held, an auction participant shall produce a letter of reference made by an eligible bidder to the auction council or the professional auction service provider; his/her identity card; receipt of auction fee; and receipt of deposit or written auction guarantee.

A bidder may send to the auction no more than 3 auction participants including a representative who will make bids.

2. During an auction, auction participants shall observe the following provisions:

a/ To exchange relevant information only within their organization, not with other organizations and persons;

b/ Not to use means of communications throughout the auction;

c/ Not to cause disorder to, obstruct or disturb the auction or to infringe upon the lawful rights of other auction participants;

d/ Not to buy off in order to eliminate other auction participants or to collude with others to reduce prices.

3. When an auction participant violates Clause 2 of this Article, the auction council chairman or the auctioneer may suspend the auction, make a handling record and resume the auction only after the violation is handled under regulations.

Article 21. Sequence and principles of conducting an auction of the mining right

1. At the beginning of an auction, the auction council secretary shall introduce auction council members and representatives of related agencies and organizations; notify auction rules; announce the list of eligible bidders; call the roll of auction participants and bid makers; and answer inquiries (if any).

2. The auction council chairman or auctioneer shall conduct the auction by direct secret bid through uninterrupted bidding rounds. The auction only closes after the auction winner is determined.

The auction winner is the single organization or person offering the highest bid compared to the reserve price after all bidding rounds or the organization or person winning the draw in the case specified at Point a, Clause 5 of this Article.

3. After each bidding round, the auction council chairman or auctioneer publicly notifies the highest bid of the round. When two or more equal highest bids are offered, the auction

council chairman or auctioneer continues dispatching auction votes for another bidding round

The reserve price of the next bidding round is the highest bid of the previous round. The bid written in an auction vote is valid when it equals the reserve price plus the bid increment multiplied by an integer.

4. All developments of an auction of the mining right shall be recorded in writing. Closing an auction, the auction council chairman or auctioneer shall publicly notify the council's conclusions and the auction winner. The auction winner shall sign the auction record right at the auction.

5. **Special cases**

a/ If after three consecutive bidding rounds, there are still two or more participants offering the same highest bid, the auction council chairman or auctioneer shall organize a draw to select the auction winner;

b/ When the auction winner refuses the auction winning result, the next highest bidder shall be considered and approved by the auction council to be the extra winner;

c/ When the extra winner refuses the auction winning result, the auction council shall issue a document canceling the auction result and report such in writing to the competent licensing agency for consideration and decision.

Article 22. Approval of auction winning results

1. Within 5 (five) working days after an auction of the mining right closes, the bid dossier-receiving agency provided in Article 17

of this Decree shall submit to a competent licensing state agency a dossier for approval of auction winning results. A dossier comprises:

a/ An auction record;

b/ The auction winner's bid dossier;

c/ A draft written approval of the auction winning result.

2. Within 5 (five) working days after receiving a dossier for approval of auction winning result, a competent licensing agency shall issue a written approval of the auction winning result. In case of disapproval, it shall issue a notice clearly stating the reason and additional requirements (if any).

A written approval of the auction winning result must indicate the full name and abbreviated name of the auction winner; name of the mineral; position, coordinates and acreage of the area put up for auction of the mining right; rights and obligations of the auction winner, and the winning bid; commitments of the auction winner.

3. The written approval of the auction winning result serves as a legal ground for a competent licensing agency to consider and license mining activities for the auction winner under the mineral law.

Article 23. Notification of auction winning results

1. Auction winning results shall be notified publicly at the office of the bid dossier-receiving agency and the website of the competent licensing agency right after an auction closes.

A notification of auction winning results covers:

- a/ Name of the auction winner;
- b/ Name of the mineral; location of the area for which the mining right is won;
- c/ Winning bid.

2. The time limit for notifying and publishing auction winning results is 5 (five) days after an auction closes.

3. Results of winning an auction of the mining right to be licensed by the Ministry of Natural Resources and Environment shall also be published on the websites of provincial-level People's Committees of the localities with mineral areas put up for auction.

Section 4

AMOUNT OF WINNING AUCTION OF THE MINING RIGHT

Article 24. Mining right auction winning value

1. The mining right auction winning value for an area with mineral exploration results is the bidder's auction winning amount calculated in VND.

2. The mining right auction winning value for an area without mineral exploration results is a percentage of the mineral deposit in that area.

The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, detailing the calculation in VND of the amount of winning an auction of the mining right in an area without mineral exploration results.

Article 25. Time of determination the

mining right auction winning amount

1. For auction of the mining right in an area with mineral exploration results, the time for determining the auction winning amount is right after the auction closes.

2. For auction of the mining right in an area without mineral exploration results, the time for determining the auction winning amount is before granting a mining license.

3. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, detailing the collection method and regimes on management and use of mining right auction winning amounts.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 26. Effect

1. This Decree takes effect on May 15, 2012.

Article 27. Implementation responsibilities

1. The Ministry of Natural Resources and Environment shall assume the prime responsibility for, and coordinate with the Ministry of Finance in, guiding the implementation of this Decree.

2. Ministers, heads of ministerial-level agencies, heads of government-attached agencies, chairpersons of provincial-level People's Committees and related organizations shall implement this Decree.-

On behalf of the Government

Prime Minister

NGUYEN TAN DUNG