

The Dilemma and Breakthrough of the Legal System for the Transfer of Exploration Rights

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Abstract: The mining rights transfer system of China is at the initial stage. There are problems such as loose qualifications for the subject of transfer, "one size fits all" for transfer conditions and lack of management supervision of transfer agents. To improve the mining rights transfer system, the legislation should adhere to the purpose of rational development of mineral resources, comprehensive application and ecological protection of mining areas, focusing on resource protection and sustainable development, strict access, classified management, and standardization of mining rights valuation and intermediary management.

1. Introduction

Mining rights are mainly a kind of property rights separated from state-owned assets. Mineral resources mainly include exploration rights and mining rights. Mineral resource mainly have two characteristics which are usufructuary and immovable property rights, because mineral resources have these two resources can be legally transferred in the mining rights market. Mineral resources are the resources on which human beings depend, and are also important assets of the country and the world. The degree of development of mineral resources represents the country's economic strength and competitiveness. Therefore, all countries in the world attach great importance to the management of mineral resources, strengthen legislation on mineral resources, formulate the mining rights law, and comprehensively analyze the mining transfer system. China's legislation on the mining rights transfer system began from the initial stage of the establishment of the market economic system. With the development of the economy, the mining rights transfer law has also been further developed, but there are still many imperfections that need to be further strengthened. According to China's mining legal system, the mining rights include two parts: the transfer and transfer. The right to sell mining rights is mainly reflected in the primary market. The state transfers the exploration rights or mining rights to the miners according to the characteristics of the mineral resources. The transfer of mining rights is mainly in the secondary market. Under the condition of obtaining exploration and mining rights, the state transfers the exploration and mining rights to others through cooperation and capital contribution under certain laws and regulations. The transfer of mining rights in the secondary market was discussed.

2. The inadequacy of the legal system for the transfer of mining rights

2.1 In the subject system, the qualification requirements of mining owners are too loose

China stipulates at present that some mines require certain qualifications to operate and that mining enterprises need approval from relevant departments. Some approval authorities shall determine the scope of mining, design mines, formulate reasonable mining plans and examine enterprises and individuals with advanced production technology and safety measures, which are examination qualifications for mining rights. The national regulations on mining qualification are the standards of an industry, and the qualification of enterprise shall be strictly required in the administrative examination. In recent years, state standards and administrative examination of the mining industry have been improved. In the secondary market of mining industry, intensive enterprises are formed through reform and reorganization. However, due to the lack of matching

funds and technologies, many small enterprises without relevant mining qualifications spring up, causing some serious problems. As it turns out, the problem of mining resources exploitation is a relatively prominent contradiction at present. These small enterprises reduce the utilization rate of resources, cause serious environmental destruction, and even lead to safety accidents in mines.

2.2 "One size fits all" stipulation on the time limit for the transfer of exploration rights is not conducive to the normal circulation of mineral rights

The exploration cycle of some small minerals and sand clay mineral is short and the reserves are small. The exploration right of such mineral has practicability in terms of transfer, with big market demand, relatively low commercial value, and available technology. Therefore, these smaller ones are often popular in the current transfer market of exploration rights. According to the provisions of the measures for the administration of mineral resources exploration, most mineral resources exploration is valid for 3 years. A prospector must have qualified license, which must be valid for two years before he can conduct an exploration.

The exploration cycle of such minerals can be achieved within two years. In order to strictly follow the period specified in the "Measures for the administration of transfer of exploration and mining rights", It is rather difficult to realize the transfer of small mineral and clay mineral exploration rights within two years, along with the inexperienced exploration funds, all of these have reduced the efficiency of prospectors' transfer and impaired the enthusiasm of prospectors. Objectively, some exploration rights cannot be transferred through due process.

2.3 Scientific evaluation system of mining right needs to be established

First, China's assessment of the value of mining rights is still unscientific. According to China's "Guidelines for the Evaluation of Mining Rights", the evaluation of mining rights is rather complicated, and the evaluation of mining rights is relatively random. The assessment method is uncertain, which may easily lead to the fact that the value of the evaluation is inconsistent with the reality. The main reason for these phenomena is that China's current assessment methods are not perfect. Most of these methods were formulated at the initial stage of market construction. At that time, the market trading volume was small with a few cases, however, the market trading needs to learn from some cases. At present, the case of exploration right and mining right is increasing gradually, and all kinds of indicators and economic indicators of national economy have some changes. Therefore, in the evaluation of exploration right and mining right, the economic indicators still adopt the method of the late 1990s, which is far from the reality. Second, the law of exploration right and mining right evaluation in our country is not perfect yet. In the mining market, various laws and regulations and charging standards have not been formulated and improved, and exploration and mining rights lack a good development environment and sound legal support. Third, the appraisal institutions and appraisal personnel do not have the management qualification, there is no unified management standard and norms, supervision is not in place, which will lead to the mining right appraisal results are not true.

3. Suggestions on perfecting the system of mining right transfer in China

3.1 The qualifications of the transferee in the transfer of mining rights shall be strictly limited

The state's legislation on mining can promote the scientific and rational exploitation of mineral resources, and can also promote the protection of the ecological environment, all of which require the main body of mining. In general, sufficient funds and advanced equipment technology, combined with a strong enterprise, can increase the utilization of mineral resources. The "three wastes" of mining resources need to be collected reasonably, so enterprises need to pay more costs and pressures. However, the waste and indiscriminate exploitation of mineral resources will not only cause a lot of pollution, but also produce dangerous accidents, which are mostly in some small enterprises lacking environmental awareness. The author believes that strengthening the scientific and rational development of mineral resources is conducive to protecting the natural environment of

the mining area, reducing the development of dangerous accidents, and promoting the transformation of China's mining industry into an intensive mode. In the legislation on mining, it is necessary to formulate mineral property rights in combination with the characteristics of mineral resources and the scale of minerals, especially the qualifications for mining rights, that is, the number of years of transferee's employment, and the amount of assets of the transferee. Whether the party has caused illegal mine accidents in resource utilization, operation management, mineral mining, etc., whether the transferee has caused major mine safety accidents, etc., can only transfer the mining rights if these qualifications are met.

3.2 Refine the conditions for the transfer of mineral rights according to different minerals

China has a relatively rich variety of mineral resources, uneven distribution of mineral resources, and incomplete laws and regulations related to mining industry. Therefore, it is necessary to start from the reality and combine the deficiencies of mineral products in development for classified management. The current mining legal system is still not perfect, and it is divided into several management levels in administrative examination and approval. The method of division does not combine specific situations. In order to enable the smooth development of state-owned assets and promote the sustainable development of mining productivity, it is necessary to transfer the types of mining, analyze the conditions of transfer, and classify the overall system of mining rights. In this case, China can learn from foreign methods. For example, the United States has many details on the transfer of mining rights. It can lease minerals and sell minerals, and adopt different management methods for different categories. The strictness of the United States to the mineral lies in that it sells mining right through auction or bid, and the mining right that sells needs to pay certain rent, but the royalty cannot be paid after applying for mining land,. Management measure of the mineral on sale is even harsher, and the government adopts the way that marks a price to sell it. Some small mining enterprises need to remove the restrictions on the transfer of exploration rights, and mineral resources can be transferred according to law if the minimum investment standard is met.

3.3 The suggestion of the ministry of land and resources issuing value assessment method of the mining right with legal effect.

In social practice, there are many kinds of evaluation methods of mining right, mainly including three categories. The first is the most widely applied, called the discount method. This method is mainly aim to get returns. Investors will buy mineral to develop, the time for development is not fixed, and net income in the production period become discount. At last, the resulting net value presents as the transfer of mineral rights. The second type is called the comparison method. This method is mainly to fix the price by finding the same mineral conditions in the market and combining with the assessed mineral resource price before a period of adjustment. The third is the comprehensive cost method. This method is rarely used in practice and is not suitable for large-scale reconnaissance. China's ministry of land and resources, together with relevant experts, has compiled A Guide to Mining Rights Assessment, which explains the mining assessment methods to some extent. Once the recent Guide to Mining Rights Assessment has been formulated, it can promote the assessment and development of mining industry. However, this guide has not been identified by the law, which indicates that there are still some imperfections in the guide. China's ministry of land and resources should combine this guide to develop a new comprehensive evaluation method for mining property rights.

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