

**AUGUST 7, 2023**

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## India to Promote Mining of Lithium and Five Other Critical Minerals

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On 2 August 2023, India's Parliament passed the Mines and Minerals (Development and Regulation) Amendment Bill, 2023 ("**Amendment Bill**") to amend the Mines and Minerals (Development and Regulation) Act, 1957 ("**Act**").<sup>1</sup> The Act regulates the mining sector in India and includes the conditions and requirements for obtaining leases to conduct mining operations within India. The Amendment Bill, which now awaits the President's assent, will allow commercial mining of several critical minerals in India, including lithium, beryllium, titanium, niobium, tantalum and zirconium. Such minerals are essential in the production of mobile phones, electric vehicles, solar panels, semi-conductors and wind turbines. The Amendment Bill follows the discovery of large reserves of lithium in Jammu and Kashmir, a union territory of India.<sup>2</sup> As the Amendment Bill seeks to allow private companies to mine lithium for the first time, these developments are of particular interest to mining companies looking to invest in India.

It is premature to know with certainty how the Amendment Bill will impact the mining of lithium in India. Nevertheless, the Amendment Bill's swift passage in Parliament is consistent with India's prior announcements of mining reform to encourage private sector participation, and with India's aspirations of becoming a green industrial power.<sup>3</sup> The passage is also good news for mining companies wishing to invest in India.

The passage of the Amendment Bill recalls India's opening of petroleum exploration and production operations to private companies under the New Exploration Licensing Policy (NELP) in the late 1990s. However, private companies' experiences under the NELP regime, which was arguably inconsistently enforced compared to original expectations and created more uncertainty than initially anticipated,<sup>4</sup> also serve as a reminder to approach investment in lithium mining in India with tempered optimism. The conditions of India's recently-discovered lithium deposits also appear to present unique engineering and environmental



challenges.<sup>5</sup> Ultimately, such necessary and prudent caution should not detract from the exciting potential for investment in extraction of a mineral widely dubbed “the new gasoline.”<sup>6</sup>

### THE CURRENT ACT AND RULES

The current regime governing the mining of lithium in India restricts appraisal and production to the Central and State governments, and government-controlled entities. “Lithium-bearing minerals” are defined as “atomic minerals” under Part B of the First Schedule of the Act. Currently, only government agencies are permitted to carry out exploration and mining activities in relation to these essential minerals where their grade meets or exceeds a threshold value notified by the Central Government.<sup>7</sup> The Act also empowers the Central Government to make rules to regulate the grant of mining leases or other mineral concessions relating to atomic minerals.<sup>8</sup> The concerned State Governments must comply with the rules set by the Central Government in granting a mineral concession in respect of atomic minerals.<sup>9</sup>

On 11 July 2016, the Central Government exercised its rule-making power and passed the Atomic Minerals Concession Rules, 2016 (“**Rules**”). The Rules regulate the granting of reconnaissance (exploration) permits, prospecting licenses and mining leases in relation to atomic minerals, which satisfies the Central Government’s grade threshold value.<sup>10</sup> The Rules permit only certain governmental agencies to carry out prospecting activities, namely “Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government, and the Mineral Exploration Corporation Limited., a Government company.”<sup>11</sup>

Under these 2016 Rules, where a prospecting report indicates that the grade of atomic minerals will satisfy the Central Government’s threshold, the State Government (a) identifies and demarcates the area for which a mining lease is proposed; and (b) submits a proposal for the grant of a mining lease over that area to the Central Government. The State Government also makes a request to nominate a Government company or corporation owned or controlled by the Government for the grant of such mining lease.<sup>12</sup> Where a mining lease is granted and operated, the “lessee” is required to pay to the State Government “yearly dead rent at the rates specified in the Third Schedule to the Act.”<sup>13</sup>

### THE AMENDMENT BILL

The Amendment Bill seeks to introduce an improved regime that would allow the auctioning of single exploration licenses for lithium and other critical minerals. State Governments will be authorized to grant exploration licenses for any minerals listed in the new Seventh Schedule proposed by the Amendment Bill, which includes “lithium bearing minerals.”<sup>14</sup> These licenses will allow companies, including successful private bidders, to undertake fuller reconnaissance and prospecting operations,<sup>15</sup> and once mineral resources are established and the mine is auctioned, private companies can bid for mining leases.<sup>16</sup> Additionally, the Amendment Bill allows granting of an exploration license for an area of up to 5,000 sq. km of a single block.<sup>17</sup> The Amendment Bill also allows holders of exploration licenses to obtain a share of the premium the Government will receive upon auctioning explored blocks for mining leases.<sup>18</sup> Royalties and dead rent under the regime will continue to accrue to the concerned State Government.<sup>19</sup>



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<sup>1</sup> See The Mines and Minerals (Development And Regulation) Amendment Bill, 2023, available at <https://prsindia.org/billtrack/the-mines-and-minerals-development-and-regulation-amendment-bill-2023>; Times of India, "Bill allowing private companies to mine lithium gets Parliament nod," 3 August 2023, available at: <https://timesofindia.indiatimes.com/india/bill-allowing-private-companies-to-mine-lithium-gets-parliament-nod/articleshow/102363964.cms?from=mdr>

<sup>2</sup> BBC, "Jammu and Kashmir: India's first big lithium find boosts electric car hopes," 10 February 2023, available at: <https://www.bbc.com/news/world-asia-india-64592700>

<sup>3</sup> Government of India, National Mineral Policy, 2019, available at: <https://mines.gov.in/admin/storage/app/uploads/64352887bcfa41681205383.pdf>

<sup>4</sup> See e.g., *Union of India v Reliance Industries Ltd & Anor* [2022] EWHC 1407 (Comm).

<sup>5</sup> The Telegraph, "As geopolitically important as oil': Lithium mining could transform India – but is trouble looming?," available at: <https://www.telegraph.co.uk/global-health/climate-and-people/lithium-mining-india-precious-metal-batteries-carbon/>

<sup>6</sup> USA Today, "The 'white gold' rush: Why lithium demand is skyrocketing and what it means for consumers," available at: <https://eu.usatoday.com/story/money/2022/10/10/lithium-gold-rush-why-important/8170196001/>

<sup>7</sup> Mines and Minerals (Development and Regulation) Act, 1957, Section 5.

<sup>8</sup> Mines and Minerals (Development and Regulation) Act, 1957, Section 11B.

<sup>9</sup> Mines and Minerals (Development and Regulation) Act, 1957, Section 11B.

<sup>10</sup> Atomic Minerals Concession Rules, 2016; Schedule A.

<sup>11</sup> Rules, Section 4 read with second proviso to Section 4(1) of the Act.

<sup>12</sup> Rules, Section 5.

<sup>13</sup> Rules, Section 10.

<sup>14</sup> Amendment Bill, Section 9(2).

<sup>15</sup> Amendment Bill, Section 9(2).

<sup>16</sup> Amendment Bill, Section 9(14).

<sup>17</sup> Amendment Bill, Section 6(b)(i).

<sup>18</sup> Amendment Bill, Section 9(8).

<sup>19</sup> Amendment Bill, Section 10(3).