

B. POLICY AND LEGAL CONTEXT

Mining Jurisdiction in India

The division of powers between the federal government of India (the "centre") and the states is defined in the Constitution of India, 1950. A key feature of the constitution is the vesting in the centre of a much greater range of powers than is the case in Canada. This relates in part to the much greater fiscal capacity of the national government, and its role in nation-building.

The national government exercises direct control over industrial development and management of the economy. Infrastructure such as ports and transportation, as well as the development of "basic industries" including steel, electricity, and heavy machinery, have all been vested with the central government. This is changing with the economic reform program.

The large role reserved for the 'centre' extends to mining. The Government of India exercises control over most mineral development by virtue of the Mines and Minerals (Regulation and Development) Act, 1957 (MMRD Act), as amended up to January 1994. Except for Coal mining and Atomic minerals, this Act and related statutes define the respective roles and responsibilities of the two levels of government. Environmental and labour legislation pertaining to mining also rests with the central government.

Despite this legislative framework, mineral resources (except offshore minerals) are owned by the states. Moreover, states exercise significant control over land use within their boundaries. In the mining context, this reality is reaffirmed in the MMRD Act. Specifically, States have authority to issue prospecting licenses and mining leases pursuant to rules set centrally under the Mineral Concession Rules, 1960, as amended to March 1994. Royalties are also payable to the State governments, though at rates which are set by the central government.

For the investor, this structure means that consultation with, and approval from, both levels of government would be required in advance of most mining projects. Though potentially cumbersome, streamlining of approvals is a priority of the Government of India as well as several state governments. In recent years, some states have been pressing for increased powers generally. Some devolution to the states is reflected in the 1993 mineral policy and subsequent amendments to the MMRD Act. (see below)

The 1993 National Mineral Policy

In the short space of four years, India has reduced the number of industries restricted to the public sector from 17 to less than eight. One of the most important steps in this deregulation process, from an Indian public policy perspective, was the opening of major parts of the mining industry to private investment. These changes were given effect in the 1993 National Mineral Policy, and subsequent legislative changes.