

1995-08: The Myanmar Gemstone Law



Details

Parent Category: Myanmar Laws Category: ဘဏ္ဍာ - ဝိသေသ Created on Thursday, 23 April 2009 08:26

The State Law and Order Restoration Council

The Myanmar Gemstone Law

(The State Law and Order Restoration Council Law NO. 8/95)

The 6th Waxing of Thadingyut, 1357 ME.

(29th September, 1995)

The State Law and Order Restoration Council hereby enacts the following Law:-

Chapter I

Title and Definition

1. This Law shall be called the Myanmar Gemstone Law.
2. The following expressions contained in this Law shall have the meanings given hereunder:-
 - (a) Gemstone means ruby, sapphire, jade, diamond, spinel, peridot, chrysoberyl, tourmaline, danburite, aquamarine, zircon, topaz, phenakite, garnet, moonstone, iolite, apatite, epidote, lapis-Lazuli, diopside, amber, Fluorspar or nephrite. The said expression also includes stones of gem quality of the quartz group and substances which may be declared by the Ministry of Mines by notification with the approval of the Government from time to time to be gemstone;
 - (b) Gemstone Production means all stages of operation for obtaining the naturally occurring raw gemstone;
 - (c) Jewellery means jewellery comprising polished gemstone;
 - (d) Jewellery Manufacturing means all stages of operation for making jewellery from polished gemstone;
 - (e) Permit means a permit issued under this Law to enable gemstone production;
 - (f) Licence means a licence issued under this Law to enable sale of raw gemstone or finished gemstone or jewellery in foreign currency by opening a shop;
 - (g) Royalty means tax imposed under this Law for gemstone production or for sale of raw gemstone, finished gemstone or jewellery;
 - (h) Company means a company formed as a Myanmar company under the Myanmar Companies Act or a company formed solely with Myanmar citizens under the Special Company Act, 1950;
 - (i) Society means a Primary Co-operative Society, Co-operative Syndicate, Union of Co-operative Syndicates or Central Co-operative Society registered under the Co-operative Society Law;
 - (j) Central Committee means the Central Gemstone Supervisory Committee formed under this Law;
 - (k) Valuation Body means the Gemstone Valuation Body formed under this Law.

Chapter II

Objectives

3. The objectives of this Law are as follows:-
 - (a) to establish and develop a hundred percent gemstone and jewellery market within the country in respect of gemstone produced in Myanmar;

- (b) to permit companies and co-operative societies- to operate freely production and marketing of gemstone in accordance with the market oriented economic system;
- (c) to open and maintain gem markets in order to sell gemstone and jewelleries freely at all times:
- (d) to eradicate illegal production of gemstone within the country and to prevent and suppress taking out unlawfully and sale of gemstone abroad

Chapter III

Designation of Gemstone Tract

4. The Ministry of Mines-

- (a) may, when information is received or when there is discovered an area where gemstone can be produced on a commercial scale designate such area as a gemstone tract by notification, with the approval of the Government;
- (b) shall form and assign duties to a committee consisting of skilled personnel to inquire into the affected rights of the public in the area already designated as Gemstone tract and to enable them to receive reasonable rights and benefits and to carry out the demarcation of the gemstone tract.

5. The existing gemstone tracts designated by notification before the enactment of this Law shall be deemed to be gemstone tracts designated under this Law.

6. The Ministry of Mines may, with the approval of the Government revise or cancel the designation of the whole or a portion of the gemstone tract.

7. All naturally occurring gemstone found either on or under the soil of any land, in which an individual or an organization has the right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, right of succession or transfer or all naturally occurring gemstone found in any continental shelf under the existing law shall be deemed to be owned by the State.

Chapter IV

Designation of Gemstone Blocks

In order to permit gemstone production, the Ministry of Mines-

- (a) shall designate areas within the gemstone tract where gemstone can be extracted as gemstone blocks;
- (b) may, with the exception of the gemstone tract designate other fallow and vacant land where gemstone can be extracted as gemstone blocks in co-ordination with the Ministry concerned.

Chapter V

Gemstone Production Permit

The Ministry of Mines shall

- (a) determine the tenure of a permit for each gemstone block designated under section 8; -
- (b) determine the floor price for each gemstone block for which tenure of a permit has been determined;
- (c) invite competitive bids in accordance with bidding terms for the gemstone blocks for which the floor price has been determined.

10. A company desirous of carrying out gemstone production shall have the right to operate such gemstone production according to its Memorandum of Association or if a society according to its bye-laws. In addition, it shall also be in conformity with the conditions prescribed by the Ministry of Mines.

11. A company or society which is in conformity with the provisions of section 10 has the right to submit bids for one or more gemstone blocks in accordance

with the stipulations when competitive bids for the issuance of a permit are invited by the Ministry of Mines.

12. The Ministry of Mines shall issue the gemstone production permit to the company or society which has submitted the bid with the highest price.

13. The Ministry of Mines shall-

- (a) redetermine the tenure of a permit for each gemstone block whenever the tenure of a permit expires;
- (b) redetermine the floor price for each gemstone block for which the tenure of a permit has been redetermined;
- (c) invite bids in accordance with the stipulations for the gemstone blocks for which the floor price has been redetermined.

14. (a) The Ministry of Mines shall from time to time designate by notification areas where discovered blocks for gemstone production operation would be permitted;

(b) If a person who, under the existing law has the right of cultivation, right of possession, right of use and occupancy, beneficial enjoyment, right of succession or transfer of a land which is situated within the designated area under sub-section (a), is desirous of carrying out gemstone production on the said land, application may be made to the Ministry of Mines in accordance with the stipulations for the issuance of a permit for the discovered block.

15. The Ministry of Mines shall-

- (a) scrutinize the application made for the discovered blocks in accordance with the stipulations and if it is of the opinion that it should be permitted shall fix the tenure of a permit and the price;
- (b) issue the permit if the applicant pays the determined price;
- (c) redetermine the tenure of a permit and the price for each discovered block whenever the tenure of a permit expires.

Chapter VI

Duties and Rights of Company or Society Holding a Permit

16. A company or society holding a permit shall-

- (a) abide by the rules, procedures, orders and directives issued under this Law;
- (b) abide by the conditions contained in the permit;
- (c) show the raw gemstone produced to the relevant Valuation Body and register them in accordance with the stipulations;
- (d) pay royalty in accordance with this Law;
- (e) not sub-lease or in any way transfer the permit obtained;
- (f) abide by the rules, procedures, orders and directives issued under this Law in respect of the following matters:
 - (1) appointment of personnel and workers, assignment of work, determination of age, wages, salaries and other remuneration in respect of gemstone production;
 - (2) determination of working days and working hours for the above and underground work relating to gemstone production;
 - (3) making provisions for safety and the prevention of accidents relating to gemstone production;
 - (4) formulation and implementation of plans relating to the welfare, health, sanitation and discipline of personnel and workers in a gemstone production operation;
 - (5) making provisions for the prevention of detrimental effects on the environmental conservation works due to

gem stone production operation;

(6) reporting of accidents, loss of life and bodily injury received due to such accidents in gemstone production operation;

(7) submission to the inspection of the Chief Inspector and inspectors.

17. If it has completed registration of the raw gemstone produced and payment of royalty a company or society holding a permit:-

(a) has the right to cut and polish the said raw gemstone, and make finished gemstone and manufacture jewellery;

(b) has, in respect of the said raw gemstone, or cut and polished finished gemstone or jewellery

(1) the right to carry freely the same within the country in accordance with the stipulations;

(2) the right to sell freely in Myanmar currency to Myanmar citizens;

(3) the right to sell in foreign currency to persons who are entitled to hold foreign currency;

(4) the right to export and sell abroad in foreign currency;

(5) the right to sell at the Gem Emporium sponsored and conducted by the Government, at the Gem Markets opened by those concerned and at the shops and places permitted under the licence;

(6) the right to sell to gem merchants from abroad in accordance with prescribed conditions by inviting them on its own arrangement.

18. The company or society, if dissatisfied with the value of the gemstone determined by the Valuation Body has the right to submit to the Central Committee for revaluation within 30 days from the date of such valuation.

19. If a company or society holding a permit is desirous of making the raw gemstone produced into finished gemstone or manufacturing jewellery for sale.

it has the right to apply to the relevant Ministry for the import of actually required raw materials or machinery and equipment, free of customs duty.

Chapter VII

Permission for Marketing of Row Gemstone, Finished Gemstone and Jewellery

20. Any person desirous of opening a jewellery shop for sale of raw gemstone, or finished gemstone or jewellery with foreign currency shall apply to the Ministry of Mines in accordance with the stipulation for obtaining a licence.

21. The Ministry or Mines-

(a) may, after scrutinizing the application submitted under section 20 in accordance with the stipulations issue the licence or refuse to issue the licence;

(b) shall determine the tenure of a licence and the licence fee as may be necessary.

22. The holder of a licence shall-

(a) abide by the rules, procedures, orders and directive issued under this Law;

(b) abide by the conditions contained in the licence;

(c) pay the prescribed licence fee;

(d) sell only at the Gem Emporium sponsored and conducted by the Government, Gem Markets opened by those concerned and at shops and places permitted under the licence;

(e) not sub-lease or in any way transfer the licence obtained.

23. The holder of a licence-

- (a) has the right to purchase, keep in possession, make finished gemstone, manufacture jewellery in respect of raw gemstone on which the company or society holding a permit has already paid the royalty;
- (b) has in respect of raw gemstone purchased under sub-section (a), finished gemstone and jewellery
- (i) the right to carry freely the same within the country in accordance with the stipulations;
- (ii) the right to sell freely in Myanmar currency to Myanmar citizens;
- (iii) the right to sell in foreign currency to persons who are entitled to hold foreign currency.

Chapter VIII**Formation of Valuation Body and Functions and Duties Thereof****24. The Ministry of Mines-**

- (a) shall form Valuation Bodies as may be necessary comprising gem experts, technicians and other suitable persons at various regions;
- (b) may reconstitute the Valuation Body as may be necessary.

25. Members of Valuation Bodies who are not government servants are entitled to receive remuneration perscribed by the Ministry of Mines.

26. The functions and duties of the Valuation Body are as follows:

- (a) registering the quality, quantity, weight and size of the raw gemstone brought and shown to it by the company or society holding a permit under section 16 sub-section (c) in accordance with the stipulations;
- (b) determining the value of the registered raw gemstone in accordance with the stipulations;
- (c) co-coordinating with the department concerned to collect the royalty on the valuation under sub-section (b);
- (d) taking action in accordance with this Law if information is received that a company or society holding a permit, has unjustly disposed of the raw gemstone produced without bringing and registering the same with the Valuation Body;
- (e) carrying out the functions and duties assigned by the Ministry of Mines from time to time.

Chapter IX**Payment of Royalty****27. A company or society holding a permit shall**

- (a) after registering the raw gemstone produced and based on the value assessed by the Valuation Body under section 26 sub-section (b) pay royalty in Myanmar currency according to the following rate of percentage:
 - (i) 20 per cent in the case of ruby, sapphire, jade and diamond;
 - (ii) 10 per cent in the case of gemstone other than gemstones mentioned in clause (i); /
- (b) when sale is effected in Myanmar currency, following the payment of royalty under sub-section (a), have the right to be exempted from payment of taxes under any other existing law in respect of the sale of the said gemstone.

28. If a company or society holding a permit sells raw gemstone on its own in foreign currency after payment of royalty under section 27, 10 per cent royalty shall be paid in foreign currency on the actual sale value.

29. If a company or society holding a permit sells in foreign currency cut and polished finished gemstone or jewellery derived from the raw gemstone on which royalty has already been paid under section .27, 10 per sent royalty shall be paid in foreign currency on the actual sale value.

30. If a licence holder sells raw gemstone on which royalty has already been paid under this Law or finished

gemstone or jewellery in foreign currency, 10 per cent royalty shall be paid in foreign currency on the actual sale value.

31.(a) When the royalty has been paid in foreign currency under section 28 or section 29 a company or society holding a permit shall have the right to be exempted from payment of taxes under any other existing law in respect of the sale of the said gemstone;

(b) When the royalty has been paid in foreign currency under section 30 a licence holder shall have the right to be exempted from payment of taxes under any other existing law in respect of the sale of the said gemstone.

Chapter X

Formation of the Central Gemstone Supervisory Committee and Functions and Duties Thereof

32. Ministry of Mines shall-

(a) form the Central Gemstone Supervisory Committee consisting of the following persons:

- | | |
|---|-----------|
| (i) Deputy Minister, Ministry of Mines- | Chairman |
| (ii) persons from the relevant Government-
Department and Government Organizations | Members |
| (iii) Gemstone Experts and Technicians- | Members |
| (iv) A person assigned responsibility-
by the Ministry of Mines | Secretary |

(b) designate a Deputy Chairman and Joint Secretary of Committee if necessary.

33. A member of the Central Committee who is not a government servant is entitled to receive remuneration prescribed by the Ministry of Mines.

34. The functions and duties of the Central Committee are as follows:-

- (a) tendering advice to the Ministry of Mines regarding measures to be taken for the hundred percent establishment and development of the gems and jewellery market within the country, in respect of gemstone produced in Myanmar;
- (b) tendering advice to the Ministry of Mines regarding designation of gemstone tract, determination of gemstone blocks and determination of floor price;
- (c) tendering advice to the Ministry of Mines on the assistance the Government should give for the smooth and successful operation of the production and sale of gemstone;
- (d) submitting recommendation to the Ministry of Mines regarding determination of rates of percentage which should be fixed from time to time for the imposition of royalty according to the different kinds of gemstone;
- (e) giving a final decision in case of application made by a person dissatisfied with the valuation of gemstone by the Valuation Body for the purpose of assessment of royalty;
- (f) re-assessing as may be necessary the value of gemstone by the Valuation Body if it is found that the determined value of the gemstone is less than or more than the actual value;
- (g) tendering advice to the Ministry of Mines on ways and means to eradicate illegal production of gemstone within the country and to prevent and suppress taking out unlawfully and sale of gemstone abroad;
- (h) scrutinizing the cases assigned by the Ministry of Mines as may be necessary and tendering advice and recommendations.

Chapter XI

Functions and Duties of the Chief Inspector

35. The Director General of the Planning and Inspection Department of the Ministry of Mines shall be the Chief Inspector for the purpose of this Law:

36. The functions and duties of the Chief Inspector are as follows:-

- (a) inspecting in order to ascertain as to whether or not the provisions of this Law and the rules, orders and directives made there under are observed and conditions contained in the permit or licence are complied with by the holders of the permit or licence;
- (b) inspecting the health, sanitation, safety, prevention of accident, welfare, disciplinary measures of the personal and workers engaged in gemstone production operation;
- (c) determining the functions and duties of the inspectors and supervising the same;
- (d) carrying out the duties as may be assigned from time to time by the Ministry.

37. The Chief Inspector may:-

- (a) assign any suitable officer from the Planning and Inspection Department as an Inspector for the purpose of this Law;
- (b) delegate his powers to the Inspector.

Chapter XII

Taking of Action by Administrative Means

38. If any director of a company or society holding a permit or a manager, managing on behalf of such company or society or holder of a licence fails to comply with any order or directive issued under this Law or violates any condition of a permit or licence, the Ministry of Mines may pass one or more of the following administrative orders:-

- (a) suspension of the operations carried out under the permit or licence;
- (b) allowing continuation of the operation after causing payment of fine to be made;
- (c) cancellation of the permit or licence;
- (d) informing the Ministry concerned to blacklist the company or society or any director of such company or society.

Chapter XLII

Offences and Penalties

39. Whoever takes out unlawfully raw gemstone or finished gemstone or jewellery to a foreign country shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 10 years to a maximum of transportation for life and shall also be liable to a fine.

40. Any director of a company or society holding a permit or a manager, managing on behalf of such company or holder of a permit of discovered block who commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 7 years to a maximum of 15 years and shall also be liable to a fine:-

- (a) Production of gemstone in a block or area other than in the gemstone block permitted;
- (b) failure to register the raw gemstone produced or failure to register the raw gemstone actually produced and instead registering a substituted raw gemstone.

41. Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term

which may extend from a minimum of 7 years to a maximum of 15 years and shall also be liable to a fine;-

(a) producing gemstone without obtaining a permit;

(b) prospecting and exploration of raw gemstone without permission.

42. Whoever commits any of the following acts shall, on conviction be punished with imprisonment for a term which may extend from a minimum of 1 year to a maximum of 7 years and shall also be liable to a fine:-

(a) illegally keeping in possession of raw gemstone, transporting, marketing or transferring the same by any means;

(b) selling of raw gemstone or finished gemstone or jewelry

(i) with foreign currency by opening a shop without obtaining a licence;

(ii) with foreign currency and failure to pay royalty in accordance with the stipulations.

43. If any director of a company or society holding a permit or manager, managing on behalf of such company or society or holder of a permit of discovered block fails to comply with the rules, procedures, orders, and directives of section 16 sub-section (f) he shall be punished with imprisonment for a term which may extend to 3 years or with fine or with both.

44. Whoever attempts, or conspires, or abets in the commission of an offence under this Law shall be punished with the punishment provided for such offence in this Law.

45. The convicting Court shall, in respect of any legal proceeding instituted under this Law, award punishment for the relevant offence and in addition:-

(a) shall pass an order for confiscation of the gemstone, jewellery and money involved in the offence;

(b) may pass an order for confiscation of vehicles/vessels, animals and other machinery, tools and implements used in the commission of the offence.

Chapter XIV

Miscellaneous

46. Notwithstanding anything contained in the Myanmar Mines Law, matters relating to gemstone shall, in so far as they are relevant to this Law be complied with only under this Law.

47. All sums of money receivable under this Law shall be recovered as if they were an area of land revenue. The Officer assigned responsibility by the Ministry concerned for this purpose shall have the powers of a Collector under the existing laws.

48. (a) A licence or permit granted under any of the existing laws for production of gemstone before the enactment of this Law shall be valid only until the date of expiry;

(b) Joint Venture Enterprises and private individuals who have been undertaking gemstone production during the unexpired tenure under sub-section (a) shall, for the purpose of the provision of this Law continue their operation in accordance with the directives issued by the Ministry of Mines.

49. With the exception of provisions contained in section 9 to section 13 of this Law relating to a company or a society, the other provisions relating to a company or a society shall apply to holders of permit issued under section 15 for discovered blocks.

50. If an exhibit involved in any offence prosecuted under this Law is not easily produce able before the Court, such exhibit need not be produced before the Court. However, a report or other relevant documentary evidence

as to the manner of custody of the same may be submitted. Such submission shall be deemed as if it were a submission of the exhibit before the Court and the relevant Court may dispose of the same in accordance with Law.

51. The Ministry of Mines may, with the approval of the Government, permit an individual or an organization, desirous of making finished gemstone, manufacturing jewellery and selling raw gemstone, finished gemstone and jewellery, with foreign investment to do so.

52. The Ministry of Mines may delegate its powers conferred under this Law to the department or enterprise under its control and cause the same to be exercised.

53. Notwithstanding any provisions contained in this Law, the Government may, in the interest of the State permit with prescribed conditions any company or society:

(a) to undertake gemstone prospecting and exploration operation in any appropriate area within a region where gemstone may be found;

(b) to undertake gemstone production operations in the appropriate blocks within the designated gemstone tract.

54. For the purpose of carrying out the provision of this Law:

(a) the Ministry of Mines may, with the approval of the Government issue such rules and procedures as may be necessary;

(b) the Department of Planning and Inspection, Ministry of Mines or the Myanmar Gems Marketing Enterprise may issue such orders and directives as may be necessary.

Sd./ Than Shwe

Senior General

Chairman

The State Law and Order Restoration Council