

**O/o Minister of State (Independent Charge), Mines**

Since the day of joining in the new Ministry of Mines, I am receiving representations from various organizations on proposed Mines and Minerals (Development and Regulation) (MMDR) Bill 2011.

2. The Federation of Indian Mineral Industries (FIMI) has given most exhaustive representation. The representation submitted by FIMI, dated 23-4-2011 is attached at Annexure-I with this note. The FIMI has represented on following points:

- (i) Schedule minerals in the existing Act to be retained
- (ii) Extension of existing mining leases whose area is less than the minimum area stipulated in draft MMDR Bill, 2010
- (iii) Auction/Bids for mineral concessions
- (iv) Fiscal regime : royalties, compensation and cess
- (v) Provisions for special court for speedy trial of offences – section Nos. 104, 105, 106 and 107
- (vi) Bifurcation of first Schedule minerals in draft MMDR Bill 2010

3. I have received suggestions in the proposed MMDR Act from Hon'ble Minister of State for Steel (Independent Charge) vide letter dated. 11-3-2011, attached at Annexure-II. The Hon'ble Steel Minister has raised issues of auction system, assured allocation of captive mines to existing steel plants, rôle of Central Government in mineral concession system, reservation of areas for PSUs and 26% profit sharing with local public. All these issues other than assured allocation of captive mines to existing steel plants and reservation of areas for PSUs have also

been raised in the representation of FIMI dated 23-4-2011, therefore analyzed with the representation of FIMI. For 'Assured allocations of captive mines to existing steel plants' proposed provisions are as suggested by Hoda Committee whereby potential weightage is sought to be introduced for issues such as beneficiation, end-use, captive mining and long term ore-linkages. As far as issue of 'Reservation of areas for PSUs' is concerned Hoda Committee held that reservation for PSUs would not be permissible over areas where mineral concessions are currently held or were previously held and/or where applications have been filed for next stage concession. The new draft Act has generally been drafted in line with the Hoda Committee's recommendations, but we have made sufficient provisions to ensure that weightage can be given in manner that enables existing public sector units to hold their own in what is becoming a highly competitive sector.

4. The Hon'ble Deputy Chairman, Planning Commission has also given his suggestions on proposed MMDR Act through his note dated 4-12-2010 (immediately after last GoM meeting on 3-12-2010). The Note of Deputy Chairperson is attached at Annexure-III. He has mainly raised issue of 26% profit sharing.

5. I have perused provisions in draft Mines and Minerals (Development and Regulation) Bill 2011, draft Cabinet note, minutes of previous GoM meetings and minutes of meetings with various stake holders. The draft provisions and background of proposed provisions have also been discussed with officials of this ministry.

6. I am analyzing and giving **my viewpoints** on FIMI's representation dated 23-4-11 now as it covers most of the points.

7. The point wise analysis of various points mentioned in para 2 is as follows:

**(i) Schedule minerals in the existing Act to be retained**

At present grant of RP, PL or ML of minerals mentioned in First Schedule can be granted only after prior approval of the central government. Part B & C, First Schedule is concerning this ministry. The part C contains minerals of asbestos, bauxite, chrome ore, copper ore, gold, iron ore, lead, manganese ore, precious stones and zinc. The reason for including in the First Schedule was that these minerals are important for integrated development from national perspective. The renewal power of these minerals was given to state government as per 1999 amendment in MMDR Act. It hasn't yielded results as per the expectations of the industry.

In the proposed MMDR Act 2011, the states are to be given full powers to grant RP/PL/ML and present system of having prior approval of central government for RP/PL/ML in case of 10 minerals of Part C of First Schedule shall be done away. The CII has submitted on this issue:

*'The role of Central Government should not be drastically reduced in the control of mineral sector since the Central Government agencies like GSI, IBM etc. have tremendous knowledge which might not be there at the State Government level. Some level of control by the Central Government in the concession system for non-coal, non-atomic minerals could be considered'.*

Similarly, Hon'ble Minister of Steel and FIMI have favoured continued central government's prior approval for 10 major minerals of national importance.

**In view of above, Section 8 of proposed MMDR Act 2011 should be suitably amended to have system of prior approval of Central Government for RP/PL/ML in case of 10 major minerals of national importance with time limit of 6 months to dispose-off a complete case, received from the state government.**

**(ii) Extension of existing mining leases whose area is less than the minimum area stipulated in draft MMDR Bill, 2011**

In the new MMDR Act minimum area proposed is 10 hectare for major minerals and 5 hectare for minor minerals. At present there are thousands of operational mines having area less than proposed minimum area. These leases will require extension when their period expires. As per section 16 of the new MMDR Bill 2011, the period of these leases is not likely to be extended since the area is less than the area stipulated in the MMDR Bill, 2011. This will result in loss of huge investments made by small and medium scale mine owners and will also cause loss of employment. **To overcome this problem, following proviso may be added to the Section 16 of the proposed MMDR Act, 2011:**

*'Provided that where the area of mining lease granted before the commencement of this Act is less than the limit prescribed in this Act, the leases will be extended till the exhaustion of the deposits in these areas.'*

**(iii) Auction/Bids for mineral concessions**

In the proposed MMDR Bill 2011, bids shall be invited at Prospecting License/ Mining License (PL/ML) stage where mineralization is proved. There shall be no bidding for non-exclusive Reconnaissance Permit (RP), which shall be non-exclusive. There shall be seamless transition from RP to PL and from PL to ML, it will take care of investments made at RP or PL stage.

In most of the mineral rich countries system of '**First Come, First Get**' is followed, as followed in our country at present. The '**Hoda Committee**' had recommended bidding only where mineralization is proved due to the efforts put in by any government agency. The '**Ashok Chawla Committee on Pricing of**

**Natural Resources'** has also recommended sections on bidding in the proposed new MMDR Act.

In the present scenario, bidding system may be adopted with safeguards of seamless transition from one stage to another stage. To translate intents of Act into practice, we need to formulate transparent guidelines for '**Bidding Process**'. **So there is no need for suggesting any change on this point.**

**(iv) Fiscal regime : royalties, compensation and cess**

The Industry is very much concerned with proposal of 26% profit sharing. In the new Act it is being proposed that 26% of net profit or royalty paid during last financial year, whichever is higher shall be paid to District Mineral Foundation for sharing with people affected with mining and for Infrastructure upgradation. The apprehensions about this provision have come from other quarters also.

**Deputy Chairman, Planning Commission in GoM meeting on 3-12-210** pointed out that the draft Act should provide for suitable mechanism for ensuring that the profit sharing percentage for the mining lease holders specified under the draft Act takes into account the cost-economics of various different minerals in order to keep the domestic mining sector competitive. The GoM considered this and it has concluded that an enabling provision may be included in section 43 of the draft Act to provide for the National Mining Regulatory Authority to review and recommend the profit sharing percentage mineral-wise, similar to royalty, to the Central Government for notification. It has been added as provisõ of Sec 43, after retaining clause of 26% profit sharing.

Further, immediately after GoM meeting on 3-12-2010, Deputy Chairman, Planning Commission wrote a note on 4-12-2010 on profit sharing issue

(Annexure-III) as he feared that correct position will not be reflected in the minutes of GoM meeting on 3-12-2010. The Hon'ble Steel Minister has also raised his apprehension on this issue (Annexure-II).

The profit calculation is difficult and accounts can be fudged to hide the actual profit. It shall be very difficult to calculate profit in captive mines of big Industry where final product is Steel etc. The District Mineral Foundation may find it difficult to manage such huge funds coming due to profit sharing by PSUs/Big Industry in a particular district. The details of profit and 26% of profit to be shared with District Mineral Foundation of few PSUs are given at Annexure-IV. It clearly shows that amount to be contributed by companies in district mineral fund, 26% of profit, can be beyond district's absorption capacity in certain cases. There is also possibility of state diverting funds meant for mineral rich districts to other parts of the state. Moreover, royalty is the main theme of MMDR Act. So to relieve any distress caused among local people due to mining, we may earmark funds based on royalty. By doing so locals shall also help in preventing illegal mining as royalty collection is related to mineral extracted.

**In light of the above, I feel that we can have an arrangement of Industry sharing an amount equal to 26% of royalty paid in previous year in the District Mineral Foundation. The royalty percentage shared can be reviewed by National Mining Regulatory Authority. The review can take place every 3<sup>rd</sup> year.**

In the proposed Act there are provisions for State Cess and Central Cess. The State Cess is proposed to be 10% of royalty and Central Cess is proposed to be 10% of Central Excise or Export Duty. The justification for State Cess is to Strengthen State Mining Directorates and for Central Cess is for use in National

Mineral Fund. If the states are able to control illegal mining and new proposed Act will help them, then sufficient amount can be collected for modernization of State Mining Directorates and for use of activities mentioned in National Mineral Fund with lesser rate of cess. The lack of modernization in case of certain state mining directorates is due to lack of will power rather than lack of resources.

**In my opinion, the State Cess should be 5% of royalty and Central Cess should be 5% of Central Excise or Export duty, as the case may be.**

For mining in certain cases, private land is acquired which requires payment of compensation and resettlement & rehabilitation of oustees. **In my opinion, in such cases compensation and rehabilitation should be as per State Policy.**

**(v) Provisions for special court for speedy trial of offences – section Nos. 104, 105, 106 and 107**

The Chapter XIV provides for setting of special court by the State Government for the purposes of providing speedy trial of offences referred to in sections 110, 111, 112 and 113 of the proposed Act. No such special courts have been provided for any other Industry. The FIMI feels that it can be misused due to inexperience or over-enthusiasm of a section of regulators. Although, in general, the apprehensions of FIMI on 'Offences and Penalties' may be of undue panic but it needs to be reconsidered again.

Although, having Special Courts only for mining industry is bit harsh but we can have provisions of Special Courts as it will help in controlling illegal mining which is rampant in some of the mineral rich states. We need to issue guidelines for preventing misuse of these courts against industry. At the same time we need to

modify Penalties proposed for various offences. The section wise modified penalties should be as mentioned in Annexure V.

**(vi) Bifurcation of first Schedule minerals in draft MMDR Bill 2010**

This is not a major issue and suggestions in FIMI's representation are not worth implementing on this point.

The above note is submitted for consideration on para 7. In my opinion, changes suggested in para 7 will help us in addressing apprehensions raised by different quarters.

**(Dinsha Patel)**

**Minisster of State (IC), Mines**

**08-06-2011**

**Finance Minister & chairman, GoM on MMDR, Act**





# FEDERATION OF INDIAN MINERAL INDUSTRIES

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B/8/11/32

23 April, 2011

Shri Dinsha J. Patel,  
Hon'ble Minister of State for Mines,  
Shastri Bhavan,  
New Delhi.

Dear Sir,

**Sub: Difficulties/impracticalities which have been introduced in  
the MMDR Bill, 2010**

We have been bringing to your kind notice from time to time about the difficulties/impracticalities which the industry will face if some of the provisions are incorporated in the MMDR Bill, 2010. To recapitulate, we enclose a note on each of these issues:

1. Schedule minerals in the existing Act to be retained
2. Extension of existing mining leases whose area is less than the minimum area stipulated in draft MMDR Bill, 2010
3. Auction/Bids for mineral concessions
4. Fiscal regime : royalties, compensation and cess
5. Provisions for special court for speedy trial of offences – section Nos. 104, 105, 106 and 107
6. Bifurcation of first Schedule minerals in draft MMDR Bill 2010

We hope you will kindly consider our suggestions favourably and amend the MMDR Bill, 2010 accordingly in the light of what we have submitted above.

Thanking you,

Yours faithfully,

(R.K. SHARMA)  
SECRETARY GENERAL

Encl: As above



## I - SCHEDULE MINERALS IN THE EXISTING ACT TO BE RETAINED

The power to grant and extend concessions has been given to State governments even for those minerals which were so far in Part C of First Schedule of the Act, namely, asbestos, bauxite, chrome ore, copper ore, gold, iron ore, lead, manganese ore, processing stones and zinc. **As the schedule minerals are very important from the perspective of national economy and require huge investments in exploration and development, the role of Central government is very significant.**

2. The existing provision of concurrence of the Central Government for grant of new leases in case of mineral concessions for Schedule minerals is **necessary for long-term linkages of the steel plants and other plants for base metals.** The perspective of the State Governments may differ, depending upon their own compulsions. However, for the development of nation's economy, the some kind of ~~control~~ by the Central Government is utmost necessary. Further, **keeping in view of the demand and supply scenario, it would be necessary that the existing system of concurrence by the Central Government in grant of mineral concessions of Schedule minerals should remain in tact in the new MMDR Bill, 2010.** The power to renew of the leases may continue to be with the State Governments.



**II – EXTENSION OF EXISTING MINING LEASES WHOSE AREA IS LESS  
THAN THE MINIMUM AREA STIPULATED IN DRAFT  
MMDR BILL, 2010**

There are thousands of mines in operation since years whose area is less than 10 hectares in case of major minerals and 5 hectares in case of minor minerals. For example, in Rajasthan alone, there are about 28,000 mining leases, 90% of which are less than 5 hectares. These leases will require extension when their period expires. As per Section 16 of new MMDR Bill 2010, the period of these leases is not likely to be extended since the area is less than the area stipulated in MMDR Bill, 2010. We estimate that at present almost about 40,000-50,000 small mines, below the proposed minimum ML area, are in operations all over the country. In the event of the proposed draft MMDR Bill, 2010 being passed, all the existing mining leases will face closure. This will result in loss of huge investments made by small and medium scale mine owners and will lead to unemployment of a very large number of workers. Besides, in a large number of cases, the lessees are self-employed and if the proposed MMDR Bill is passed, it will make them out of the job.

2. We therefore suggest the following proviso may be added after Section 16 of the proposed MMDR Act, 2010:

*Provided that where the area of mining lease granted before the commencement of this Act is less than the limit prescribed in this Act, the leases will be extended till the exhaustion of the deposits in these areas.*



### III - AUCTION/BIDS FOR MINERAL CONCESSIONS

The industry has serious apprehension on the provision for auction/bids to be invited for mineral concessions. The draft MMDR Bill says

- No licence required for RP/PL for GSI, Atomic Minerals Directorate, MECL, CMPDI/State DMGs/ such other Govt. agencies as may be notified by Central Government (read State/Central PSUs) for promotional work – Section 4(2):

Time limitation :      3 years for RP  
                                     6 years for PL

- ~~Setting aside this area upto 3 years for grant mineral concession under section 13 (4).~~

2. Experience shows that track record of PSUs/government agencies in exploration activities has not so far been such as to generate confidence in prospective entrepreneur(s). Hoda Committee therefore suggested for disposing of ore bodies which have been **fully prospected** by public agencies at public expense through a transparent tender / auction process.

3. Further Section 13 envisages

- (i) invite competitive offers for grant of a prospecting licence over an area where reconnaissance has been conducted, and
- (ii) invite competitive bids for a mining lease through a prospecting report and feasibility study

~~Section 13 also lists out numerous weightages in both these spheres to evaluate the bids. As we know, discretion is the breeding ground for corruption. The provision therefore leaves enough scope for dubious deals and ultimate litigation.~~

4. Further except Kyrgyzstan and Russia, no other country follows tender/auction process. Reasons for this are:

- a company would like to recover the cost as fast as it can.
- indulge in selective mining leaving low grade minerals in the ground.
- no serious exploration will be attempted.
- leads to huge wastage of mineral resources.
- may result in cartelization and monopolistic practices.

#### IV – FISCAL REGIME : ROYALTIES, COMPENSATION AND CESS

The chapter VII (Sections 41 to 45) provides for various royalties, compensation and cess. In addition there are other levies.

##### Sections 41 & 42:

- (i) Royalty/dead rent.

##### Section 43:

- (ii) Payment of compensation to owner of surface, usufruct and traditional rights, damage, etc.
- (iii) 26% of net profit or a sum equivalent to royalty paid during previous financial year, whichever is more. – In other words even if a company makes a loss, it has to pay royalty (idea taken from Black Economic Empowerment policy of South Africa).
- (iv) Allot at least one share at par to each person of the affected family.
- (v) Provide employment or other assistance in accordance with R&R policy of State Government.
- (vi) Compensation payment to the person or family or usufruct or traditional rights of surface of the land.

##### Section 44:

- (vii) Central government to levy a cess not exceeding 10% on major minerals:
  - a) as a duty of customs where the ore is exported

b) as a duty of excise where the ore is sold or otherwise disposed of

(These duties are in addition to any cess or duty leviable under any other law e.g. Finance Act)

**Section 45:**

- (viii) State government to levy a cess on major or minor minerals not exceeding 10% of royalty

**Section 24(1):**

Sub-section (e):

- (ix) Surface rent and water rate.

Sub-section (n):

- (x) Lessee to deposit security deposit of Rs.1 lakh per hectare of lease area payable in equal installments over the mining plan period.

**Section 26(3):**

- (xi) A lessee has to attach with the mining plan:

Corporate Social Responsibility document comprising of a scheme for annual expenditure by the lessee on socio-economic activities in and around the mine area for:

- host population
- enabling and facilitating employment opportunities
- give details of expenditure in Annual Report

2. In addition there are levies under various statutes such as Welfare Fund Acts, Forest (Conservation) Act, 1980 (Net present value ranging from Rs. 5.20 lakhs to Rs. 9.20 lakhs per hectare and compensatory afforestation charges per hectare), Environment (Protection) Act, 1986, Incometax Act and various states and local bodies' cesses and taxes.

3. The whole scheme of royalties, compensation and cess etc. has to be viewed in the light of nature of the mining industry as it exists in the country. The following table shows that 56% of the leases (5345 out of total 9415 leases) comprise between 0-10 hecets. another 10% between 10-20 hecets. and 14% between 20-50 hecets. Thus in total 80% of the leases are within 50 hecets. (7586 out of 9415 leases).

**Area Wise Distribution of Mining Leases( Frequency in Hect.)  
(as on 31.3.2009) (All India)**

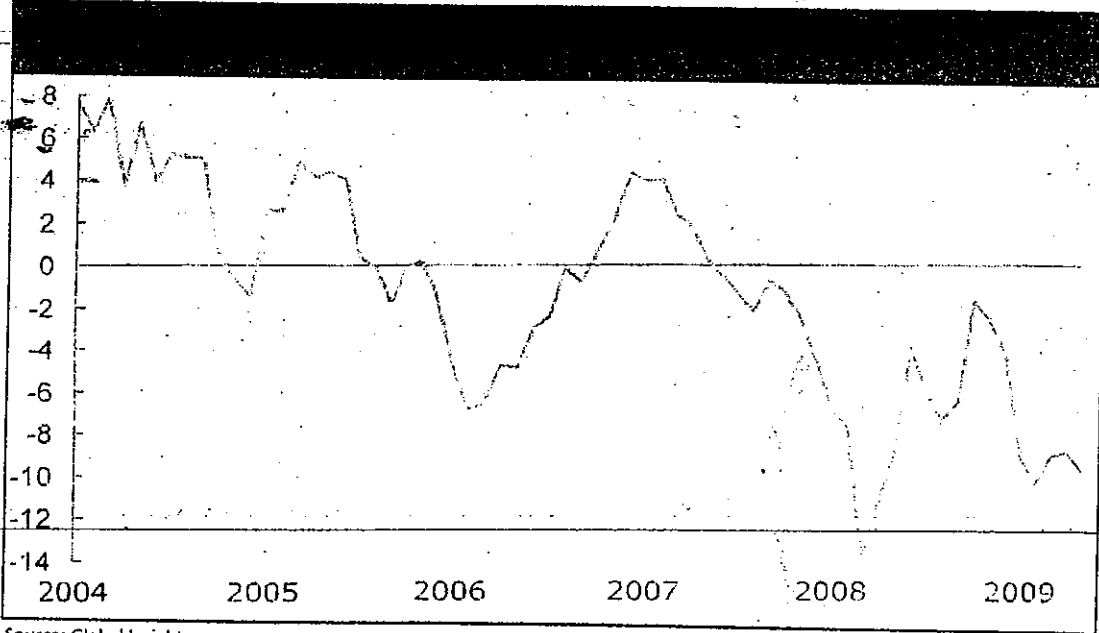
Frequency Group area in Hects	Number of Mining Leases	Percentage of Total Leases	Area in '000 Hects.	Percentage of Total Area
All Groups	9415	100	492	100
0-10	5345	56	21	4
10-20	948	10	14	3
20-50	1293	14	44	9
50-100	927	10	70	14
100-200	428	5	60	12
200-500	265	3	82	17
Above-500	192	2	202	41
<b>@ Excluding Fuel, Atomic &amp; Minor Minerals</b>				

Source: Indian Bureau of Mines, Nagpur



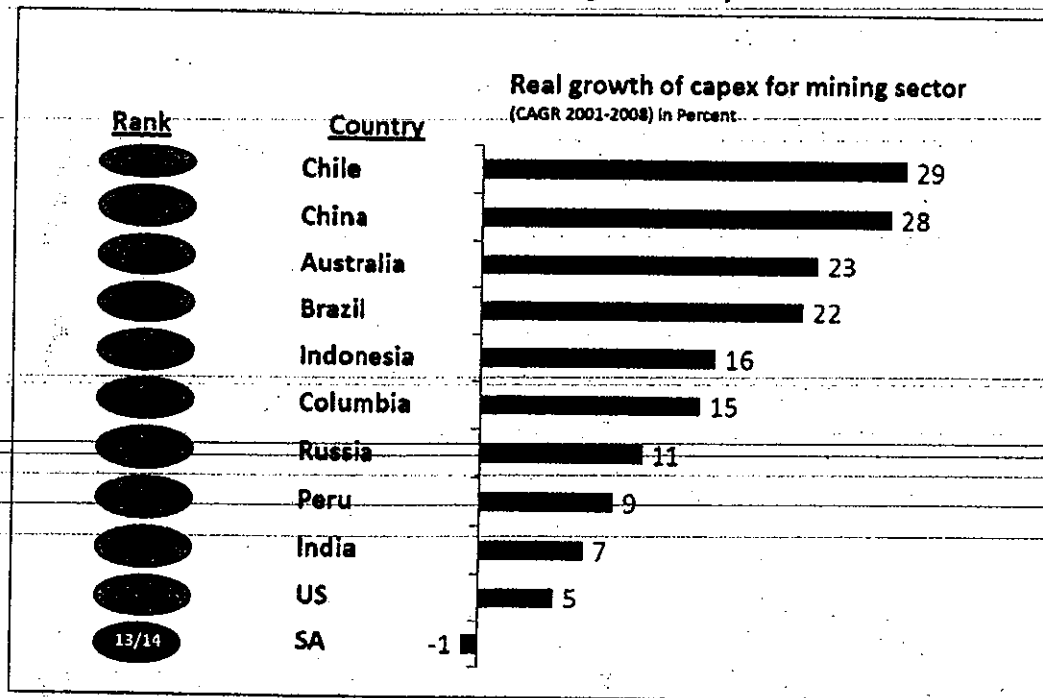
4. South African Black Economic Empowerment (BEE) scheme for 26% equity is against purchasing equity at market rate in a business unit and is applicable to all companies across all sectors whereas in India, 26% net profit is without contribution for equity and is limited to mining areas. This is against any business tenet and is tilted against only one industry. Further, since the scheme of 26% for Black Economic Empowerment (BEE) was enforced in South Africa and Namibia (from which the present allocation of 26% of net profit has been copied), no significant investment has come in the mining sector of these countries; rather there is a flight of private capital from these two countries. The following two exhibits will illustrate the debilitating effects since the promulgation of Mineral and Petroleum Resources Development Act 2002 (MPRDA) regulations in 2002 came into effect in South Africa:

**Exhibit 1. Since the MPRDA regulations in 2002, mining sector growth in South Africa has been on decline**



Source: Global Insight

**Exhibit 2. Against global trends, real capital expenditure (capex) into South Africa's mining industry has shrunk**



Source: Global Insight

5. Profit is a reward for entrepreneurship, efficiency and risk by an investor. Snatching 26% of net profit will sap his energy and entrepreneurship and deprive him of the surplus required to plough back in development of his mine, future exploration and scientific extraction. Any disbursement of expenditure on any social/CSR activities has to be a part of operating cost. Parting with 26% net profit will deprive the share-holders of their due.

6. Moreover minerals' and metals' prices are often volatile and subject to wide fluctuations, depending upon international market. This will have impact on the profitability of a mining unit; there may be year (s) when there can be a loss or no profit. Under such a situation, the whole scheme may be in jeopardy and uncertain.

7. Currently, India has the dubious distinction of being the highest ranked country on the effective tax rates in the world for mining companies (see

**Annexure**), which is ~ 52% (including royalty, corporate tax and withholding tax) against 30% (Mongolia) and 45% (Indonesia). Additional provision of 26% of net profit as proposed will make this effective tax rate go to ~ 64%. This single provision will work as a disincentive for FDI flows into the mining and exploration fields rather than attracting, which is the basic foundation of National Mineral Policy 2008 and also one of the objective of the MMDR Bill, 2010.

8. It was against this background that Federation of Indian Mineral Industries (FIMI) suggests for the royalty linked contribution as the best way to achieve the objectives which Government of India has in mind viz. provide long-term economic security, raise the standard of living and provide better hygiene, health and education to the people and their children whose land has been taken over for mining. FIMI therefore suggests that the holder of a mining lease should be liable to:

- (i) provide employment and other assistance in accordance with the Rehabilitation and Resettlement Policy of the concerned State Government,
- (ii) allocate a sum not exceeding **26% of royalty** in respect of any mineral raised from a mine and transfer the same to an institution constituted by the State Government and designated as the District Mining Area Development Trust.

9. We also suggest that

- (a) the Trust should be headed by the Chairman of the District Panchayat or District Council and include local representatives of the State Government, Panchayats, NGOs, Mine Owners contributing to the fund and nominees from amongst persons affected by mining operations.
- (b) the Trust funds should be used for the purposes of developing vocational skills, entrepreneurial training, income generation etc. and for payment of annuities to persons affected by mining related operations, and to any person or persons holding occupation or usufruct or

traditional rights of the surface of the land over which the lease has been granted.

- (c) the funds of the Trust and its management should be open to government/social audits.

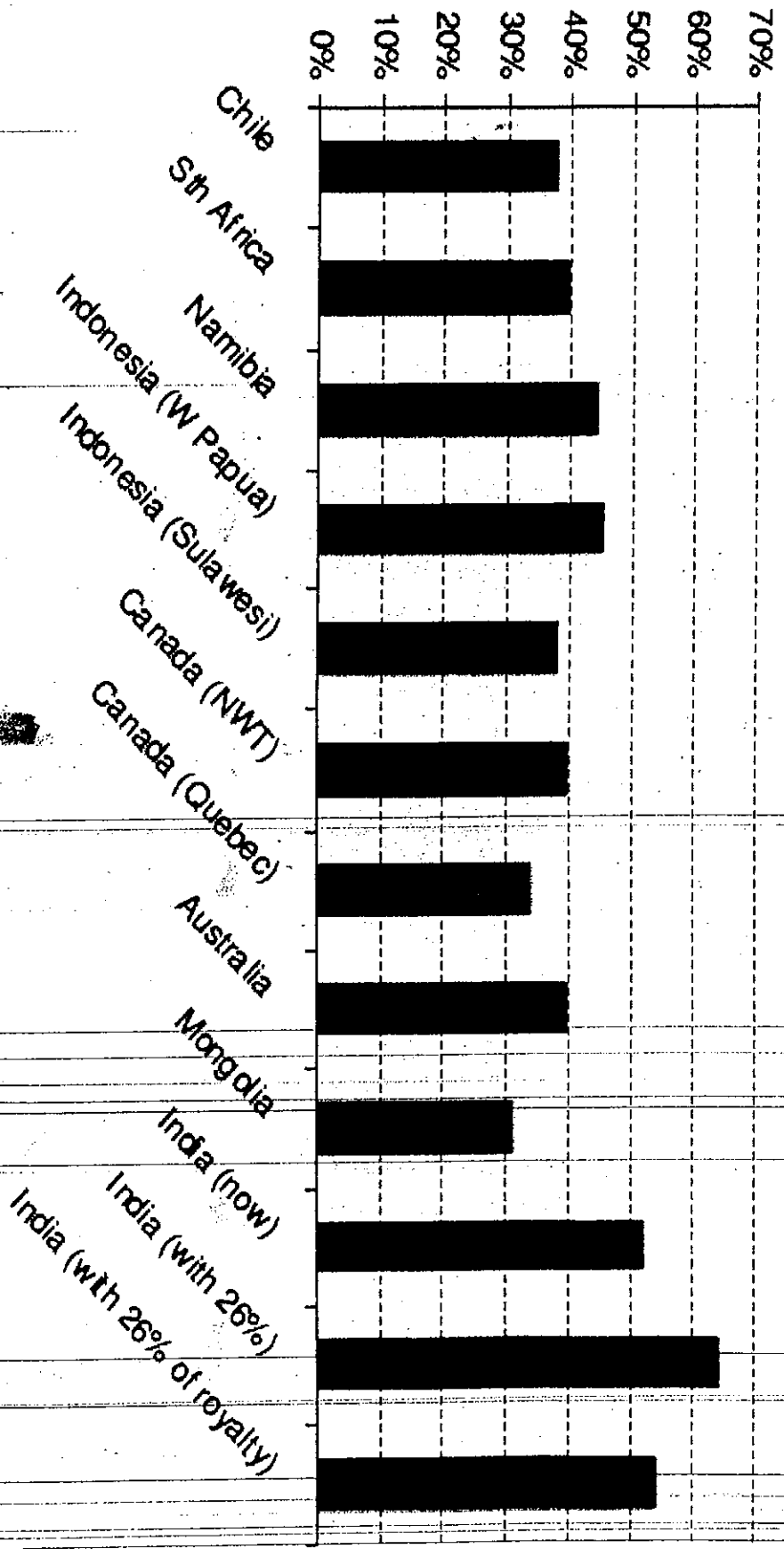
10. The royalty linked contribution is *more rational* and is the *running theme throughout the body of draft MMDR Bill, 2010*. FIMI is of the opinion that this will :

- ensure availability of funds on continuing basis.
- give the Trust maneuverability to allocate funds as per changing requirements.
- easy to calculate and no chance of manipulation.
- adjustment with change in royalty rates after three / five years.
- ensure steady flow of funds, *even if the company is making loss*, for local area development throughout the life of the mine.

11. Spectre of 26% profit each year will scare away exploration and mining companies and defeat the objective of improving the socio-economic conditions of the local area and its populace. The objective should be on capacity building and sustainable development, which would correct the inequities in mining regions.



### Effective Tax rate Across Countries



Note: The above figures include royalty, corporate tax and withholding tax and in the case of India, a proposed 26% profit share. The figures do not include any compensatory afforestation charges, net profit tax, the value of forest land diverted for mining, welfare cess, environment/forest levy, service tax, payroll tax, octroi etc. To the extent possible, the comparison is like for like and is for "mine-gate" sales of products.



V - PROVISION FOR SPECIAL COURT FOR SPEEDY TRIAL OF  
OFFENCES - SECTION 104, 105, 106 & 107

The Chapter XIII provides for a special court for speedy trial of offences. The special court will consist of a single judge who will be appointed by the State Government with the concurrences of the High Court. A statement showing the charges for offences and penalties as per existing provisions and proposed draft MMDR Bill, 2010 may be seen at (Annexure).

2. In this context, we may submit that no such special courts have been provided for any other industry. Only mining industry has been singled out not only by providing stiff penalties for various offences but also with this provision of special courts. The impression is being created of mining offences being comparable with terrorist activities. Further, since the judges are to be appointed by the State Governments, the State Governments due to inexperience or over-enthusiasm of a section regulators, can misuse their powers and harass the lessees. This harassment has been observed of late, particularly in the iron ore producing states like Karnataka and Orissa.

3. We would request you kindly to delete this provision from the draft MMDR Bill and keep the penalties for offences as per existing MMDR Act, 1957.

**Statement showing the charges for offences and penalties as per existing provisions and proposed draft MMDR Bill, 2010**

Existing provisions in MMDR Act, 1957 1	Proposed provisions in draft MMDR Bill, 2010 2	FIMI's suggestions 3
I. Contravention of Section 4 (Sec. 21(1)) :	( Section 104) (a) Exploration without Licence :	Existing provision should Continue
(i) Imprisonment upto 2 years; or	(i) Imprisonment upto 3 years; or	
(ii) Fine upto Rs. 25000/-; or	(ii) Fine upto Rs.25000/- per hectare or part thereof; or	
(iii) Both	(iii) Both	
	(b) Mining without a lease:	Existing provision should Continue
	(i) Imprisonment upto 3 years; or	
	(ii) Fine upto 10 times the value of mined mineral; or	
	(iii) Both	
II. —	<b>Non-Implementation of Final Mine Closure Plan (Section 105)</b>	Rule 23(F) (2) of MCDR, 1988 provides for financial assurance for mine closure. There are guidelines for this. The whole scheme is a part of mining plan approved by IBM. IBM inspects mines every year. If a lessee does not take timely action, IBM has enough powers to rectify the lapse. No need for this provision.
	Rs. 10,000/- per day for the period of default	
III. —	<b>Penalty for disobeying directions of State</b>	There are enough safeguards in the existing law

	<b>Government / IBM (Sec. 106)</b>	to take care of such offences, which should continue.
	Rs. 10,000/- per day for the period of such disobedience	
<b>IV. Contravention of any provisions of Act or Rules (Sec 21 (2)) :</b>	<b>(Section 107)</b>	Existing provision should continue
(i) Imprisonment upto 1 year; or	(i) Imprisonment upto 1 year; or	
(ii) Fine upto Rs. 5000/-; or	(ii) Fine upto Rs. 5000/-; or	
(iii) Both	(iii) Both	
	<b>In case of continuing contravention :</b>	
	Additional fine upto Rs. 1000/- per day till contravention continues after conviction of first contravention.	





## VI—BIFURCATION OF FIRST SCHEDULE MINERALS IN MMDR BILL, 2010

It may be submitted that the proposed draft MMDR Bill, 2010 has been drafted keeping in mind the big mines of Iron Ore, Bauxite, Coal etc and is not all friendly to the industrial minerals being mined by small and medium scale lessees who will be greatly affected, if their issues are not addressed in this proposed MMDR Bill, 2010.

2. It may also be submitted that certain industries are confined in certain part of the country basically due to occurrences of specific mineral in that area only. For example, soda ash manufacturing units in the country are confined in Saurashtra region of Gujarat only due to availability of chemical grade limestone ( $\text{CaCO}_3 > 92\%$ ) and salt in that area. It is therefore submitted that first Schedule of draft MMDR Bill, 2010 may be bifurcated as per annexure enclosed.

## THE FIRST SCHEDULE

(See section 3)

## PART C- Major Minerals

Metallic Minerals		Non-metallic (Industrial) minerals	
-	-	1.	Asbestos
-	-	2.	Andalusite
3.	Antimony	-	-
4.	Agate	-	-
5.	Alexandrite	-	-
-	-	6.	Apatite
-	-	7.	Ball Clay
8.	Bauxite	-	-
-	-	9.	Barytes
-	-	10.	Calcite
11.	Cadmium	-	-
-	-	12.	Chalk
-	-	13.	China clay / Kaolin
-	-	14.	Clay (Others including white shale and white clay)
15.	Chromite	-	-
16.	Cobalt ore	-	-
17.	Copper ore	-	-
18.	Corundum	-	-
19.	Diamond	-	-
-	-	20.	Diaspore
-	-	21.	Dolomite
-	-	22.	Dunite
23.	Emerald	-	-
-	-	24.	Feldspar
-	-	25.	Felsite
-	-	26.	Fireclay (including plastic, pipe, lithomargic and natural pozzolanic clay)
-	-	27.	Fluorite (fluorspar)
28.	Garnet (gem)	28.	Garnet (abrasive)
29.	Gold ore	-	-
-	-	30.	Graphite
-	-	31.	Gypsum
32.	Iron ore (including BIF)	-	-
33.	Jasper	-	-
-	-	34.	Kyanite
-	-	35.	Laterite
36.	Lead ore	-	-
37.	Limekankar (but other than notified as minor minerals)	-	-
-	-	38.	Limeshell (but other than notified as minor minerals)

	<b>Metallic Minerals ( Major)</b>		<b>Non-metallic-(Industrial) minerals</b>
39.	-		Limestone (but other than notified as minor minerals)
40.	Magnesite		-
41.	Manganese ore		-
		42.	Marl
		43.	Mica
44.	Molybdenum ore		-
45.	Nickel ore		-
	-	46.	Ochre
47.	Opal		-
		48.	Perlite
		49.	Phosphoric rock phosphate
50.	Potash		-
51.	Pyrites		-
	-	52.	Pyrophyllite
	-	53.	Pyroxenite
	-	54.	Quartz
	-	55.	Quartzite (including fulschite but other than notified as minor minerals)
	-	56.	Rock Salt
57.	Ruby		-
58.	Sapphire		-
	-	59.	Silica Sand moulding sand (but other than notified as minor minerals)
60.	Selenite		-
	-	61.	Shale (but other than notified as minor minerals)
	-	62.	Sillimanite
63.	Silver ore		-
	-	64.	Slate (but other than notified as minor minerals)
	-	65.	Steatite/Talc/Soapstone
66.	Sulphur (Native)		-
67.	Tin ore		-
68.	Titanium ore and concentrates (ilmenite, rutile and leucoxene)		-
69.	Tungsten ore		-
70.	Vanadium ore		-
	-	71.	Vermiculite
	-	72.	Wollastonite
73.	Zinc ore		-
		74.	Any other mineral (with industrial use not listed above (but other than notified minor minerals)



बेनी प्रसाद वर्मा  
BENI PRASAD VERMA



इस्पात राज्य मंत्री  
(स्वतंत्र प्रभार)  
भारत सरकार  
नई दिल्ली

MINISTER OF STATE FOR STEEL  
(INDEPENDENT CHARGE)  
GOVERNMENT OF INDIA  
NEW DELHI

D.O.No. 16(1)2009-RM-1/172  
11<sup>th</sup> March 2011

Dear Shri Dinsha Patel ji,

May I draw your attention to some of the issues regarding the provisions contained in the Draft MMDR Bill proposed by Ministry of Mines, which may have substantial implications on the process of allocation of mineral concessions for strategic minerals.

2. Iron ore and coking coal are the two most important raw materials for steel industry. Though there are constraints regarding availability of good quality coking coal in the country, the domestic steel industry has got the strategic advantage of availability of quality iron ore in the country. Huge investments have been planned in steel sector in the country through greenfield and brownfield capacity expansions. It is projected that the crude steel capacity in the country, which is about 78 million tonnes per annum at present, may reach about 115-120 million tonnes per annum by the end of Year 2012-13 and may exceed 200 million tonnes per annum by the Year 2020. The level of production is indeed necessary in view of the rapidly rising demand in the country due to its high growth trajectory. However, these planned capacities can be achieved only if a favourable climate is provided for investment in steel sector through measures such as expeditious allocation of mining leases for critical raw materials like iron ore on priority basis.

3. The draft MMDR Bill proposed by Ministry of Mines prescribes a mechanism of auction for allocation of prospecting licenses and mining leases for major minerals like iron ore. This provision of auction mentions some criteria for possible weightage to the value addition and end-use industry. While my Ministry is not opposed to the mechanism of auction for mineral resources, however, considering that the steel industry is the only end user of iron ore and that iron ore is strategically important for development of domestic steel industry, the mechanism of allocation of prospecting licenses/ mining leases for iron ore should provide for assured allocation of captive mines to existing steel plants first and after that, allocation may be made to upcoming steel plants. The remaining areas, thereafter, may be made available for stand-alone miners.

4. I would also highlight that mineral wealth of strategic major minerals like iron ore should be treated as sovereign assets and should be utilized in the overall national interest for value addition within the country. For this, intervention of Central Government is very important in the matter of allocation of mineral concessions. At present, for coal and lignite, Central Government

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decides allocation of Prospecting License (PL)/ Mining Leases (ML), while for major minerals like iron ore, State Governments allocate PL/ ML after taking prior approval of Central Government. However, in the proposed Draft MMDR Bill, prior approval of Central Government for minerals like iron ore has been done away with, which in our view is not proper. On the other hand, the provisions for intervention by Central Government should be further strengthened. There is no remedy in the present MMDR Act 1957 for the inaction by State Governments in the matter of allocation of mineral resources. This lacuna should be properly addressed in the new MMDR Bill by making provision for intervention by Central Governments in such cases in form of binding directives to the State Governments. Central government intervention is also necessary for preventing illegal mining.

5. Another important issue on which I would seek your intervention is regarding the provision for reservation of areas for allocation of mineral concessions to PSUs for prospecting/ mining operations. Existing MMDR Act, 1957 provides for such reservation, while Draft MMDR Bill proposed by Ministry of Mines has no such provision. You would agree that the PSUs of Government of India as well as of the State Governments are playing an important role in the social and economic development of the country and therefore, there is a need for continued support to these PSUs, in order to help them in contributing to equitable growth of various areas of the country and also in the larger public interest. Ministry of Steel feels that the reservation in grant of mineral concessions for prospecting and mining operations for Central Government as well as State Government PSUs should be continued. If there is any apprehension regarding misuse of this provision through backdoor entry by private parties, we may incorporate suitable safeguards by imposing restrictions on Joint Ventures with private parties by PSUs in case of concessions allocated through provision of reservation and only joint ventures with other State or Central Government PSUs may be allowed.

6. A provision has been made in Draft MMDR Bill for payment of annuity of 26% of net profit of last year from mining activity or equal to the royalty paid during last year, whichever is more, as compensation to land owners. Though the intention behind the provision is appreciable, the provision itself is not free from confusion. Calculation of profit for an individual mine of a company, having multiple mines, or in case of captive mines will be difficult. In the case of steel companies as also other manufacturing companies, whose raw materials are from captive mines, sometimes mining activity is not a separate profit centre and, therefore, it is difficult to calculate profits in mining. Unless a clear cut methodology is worked out for defining profits from mining, the concept may become difficult to implement. The intention of the Government is also to

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encourage exploration in mining and investment in metals industry for sustaining the rapid pace of economic growth that India has embarked upon. Therefore, the investible resources will come down substantially, if 26% of the net profits becomes payable in the form of annuity and this would in the long run lead to import dependence which would not be desirable for a mineral rich country like India. To avoid this confusion, it would be more prudent to fix this amount of annuity based on royalty only. Besides, it may also be deliberated whether making such a provision only for mining companies would not be discriminatory. It would have been more appropriate if such a provision is uniformly applied to all the companies acquiring land, including mining, manufacturing, SEZ and for other commercial purposes, either through R & R Policy or through some other legislation.

7. I would, therefore, request you to get these issues examined in detail and resolved before moving ahead with the draft MMDR Bill proposed by Ministry of Mines.

With regards,

Yours sincerely,



(Beni Prasad Verma)

**Shri Dinsha Patel,**  
Minister for State for Mines (Independent Charge),  
Ministry of Mines,  
Shastri Bhawan,  
New Delhi





**LIKELY OUTGO OF MAJOR PSUS IN COMPLIANCE WITH PROVISIONS IN DRAFT MMDR ACT ON PROFIT SHARING**

(in Rs. crore)

ITEM	CIL (COAL)	NALCO (BAUXITE)	NMDC (IRON ORE)	SAIL (IRON ORE)	MOIL (MANGANESE)	HCL (COPPER)
GROSS PROFIT PER ANNUM (IN CRORE)	52,564.00 (GROSS SALES)	159.00	4,496.00	1,001.85	706.70	371.51
PROFIT AFTER TAX AT 33.22% (IN CRORE)	9,622.00	106.18	3,002.43	669.03	466.35	247.69
26% PROFIT ON PAT (IN CRORE)	2,501.72	27.60	780.63	173.95	121.25	64.20
ROYALTY PAID (IN CRORE)	4,982.50	46.41	62.79	57.10	MP- 14.30 MAH- 20.16 TOTAL - 34.46	36.53

## NOTE:

- Profits of coal for CIL are based on administered prices @ Rs1219 per tonne, while the market rate of similar coal (landed cost of import) averages at Rs.4500- Rs6000 per tonne.
- Profits for bauxite in case of NALCO are based on an assumed price @ Rs675 per tonne, as the entire mineral mined is used for captive purposes.



Office of the Deputy Chairman  
Planning Commission

Draft Bill on Mining

There is a report in today's newspapers quoting Minister Mines and Minerals as saying that the draft Minerals Bill was finally cleared at the GOM meeting yesterday. My recollection is that while there was consensus on the issue of expanding the competitive bidding regime to all areas where direct PL and ML applications are received, there were several questions related to the issue of 26% profit sharing which remain to be resolved.

2. I had suggested in the GOM that some further information should be provided to make an informed decision. In order to elaborate my concerns, I am submitting this note for FM's consideration.

3. The draft Bill proposes that the existing royalty rate, which is typically around 10% ad valorem, could be increased through the following steps:

- By upto one percentage point on account of a central cess.
- Another one percentage point on account of a state cess.
- A further 10 percentage points (double the existing royalty), the amount to be earmarked for a district development fund. (The actual provision for the district fund is 26% of profits or double the royalty, whichever is higher).

4. The following issues arise which have not been addressed by the Ministry, and which I feel should be examined carefully before a final view is taken.

(i) The above proposals could take the effective royalty from 10% at present to 22%. If we end up with too high a cumulative royalty burden compared with international standards, this will only make our industry competitive and discourage future investment in mining. It has to be kept in mind that we cannot assume that the additional burden can simply be passed on to the consumer, since these minerals are freely importable and users will switch to imports. This suggests that we should first determine the total royalty burden that is reasonable, and then earmark some of it for compensation and local development, leaving the rest for the state government. The approach in the present Draft is to obtain additional funds for the district by simply adding to the existing royalty burden, without regard to the impact it will have on profitability and investment.

(ii) The proposals will apply not only to future mines but also to all existing mines including coal mines, iron mines, bauxite mines, copper mines etc. I had therefore asked for an estimate of the impact

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of these proposals on the existing public sector mining companies (Coal India, SAIL, NMDC, NALCO, HCL). This would give us an idea of (a) the extent of the transfer that would occur from the profits of the central public sector to the proposed district funds and (b) the corresponding reduction in the corporate tax accruing to the Centre since the additional burden on each company would reduce profits. Both (a) and (b) should be quantified to get an idea of the financial impact of what is being proposed.

(iii) If the proposal is implemented, a very large amount of revenue will be generated resulting from a cess, which will be used to make compensation payments to individuals for lost income, with the surplus being invested in the district. In the case of long established existing mines, it will be difficult if not impossible to determine who was displaced and most of the cess will therefore be available for investment in the district. However there would be no plan discipline on the use these resources and the funds will be invested without reference to any development plan for the region. In effect, we will be diverting resources from the CPSUs and also the Centre (via loss of corporate tax) for expenditure by district authorities. More importantly, there is no guarantee this expenditure will be additional since State Governments can divert resources they would have spent on the district to other areas.

(iv) There seems to be an undercurrent of feeling that the direct transfer of part of profits to a District Fund is necessary to redress a perceived wrong practice of the State Government using royalty revenues from mining areas to develop other parts of the State. It would seem more rational to address these concerns directly rather than increase the burden on the mines to what may prove to be unsustainable levels. One approach would be that the scale of compensation to be paid to those displaced should be clearly laid down and could be charged to the mining company, and the company would effectively take this into account in submitting a competitive bid. There may be other ways of resolving the problem which should also be explored.

(iv) Another area of concern is that the proposals seem to concede that a part of the profit or turnover of any activity which involves some displacement of people associated with land acquisition, should be earmarked into such a fund. Would this not lead to a similar demand for all other non-mining projects including hydro projects and thermal power projects and indeed even the Railways? The developmental impact of such an interpretation leading to the, and the possible extension of the law to non mining areas, has to be considered.

5. In view of the above, I would suggest that the Ministry should prepare a paper addressing these concerns. This should perhaps be discussed in a Committee of Secretaries, including especially the Secretaries of the concerned Ministries, representatives of the Finance

Ministry, including the Chief Economic Adviser and also a representative of the Planning Commission. The outcome of this meeting could then be submitted to the GOM for final consideration of the Draft Bill. This consultation could be completed in 15 days.

6. I am sending a copy of this note to Minister Mines for necessary examination

(Montek Singh Ahluwalia)  
December 4, 2010

Finance Minister

Copy also forwarded for information to Minister of Mines.

RECEIVED  
12/10/10

SECRETARY  
12/10/10

12/10/10



**Statement showing the charges for offences and penalties as per existing provisions and proposed draft MMDR Bill, 2010**

Existing provisions in MMDR Act, 1957	Proposed provisions in draft MMDR Bill, 2011	<u>Provision Should be Further Revised To</u>
1	2	3
<p>I. Contravention of Section 4 (Sec. 21(1)) :</p> <p>(i) Imprisonment upto 2 years; or</p> <p>(ii) Fine upto Rs. 25000/- ; or</p> <p>(iii) Both</p>	<p>( Section 104)</p> <p>(a) Exploration without Licence :</p> <p>(i) Imprisonment upto 3 years; or</p> <p>(ii) Fine upto Rs.25000/- per hectare or part thereof; or</p> <p>(iii) Both</p> <p>(b) Mining without a lease:</p> <p>(i) Imprisonment upto 3 years; or</p> <p>(ii) Fine upto 10 times the value of mined mineral; or</p> <p>(iii) Both</p>	<p>( Section 104)</p> <p>(a) Exploration without Licence :</p> <p>(i) Imprisonment upto 1 year; or</p> <p>(ii) Fine upto Rs.25000/- per hectare or part thereof maximum up to Rs. 15 lacs; or</p> <p>(iii) Both</p> <p>(b) Mining without a lease:</p> <p>(i) Imprisonment upto 3 years; or</p> <p>(ii) Fine upto 10 times the value of mined mineral confiscated at site and seizure of vehicles, machinery used in illegal mining; or</p> <p>(iii) Both</p>
<p>II. —</p>	<p>Non-Implementation of Final Mine Closure Plan (Section 105)</p> <p>Rs. 10,000/- per day for the period of default</p>	<p>Non-Implementation of Final Mine Closure Plan (Section 105)</p> <p>Rs. 1000/- per day for first 30 days, Rs. 5000/- per day from 31<sup>st</sup> to 90<sup>th</sup> days and Rs. 10,000/- per day</p>

		<b>thereafter for the period of default</b>
III. —	<i>Penalty for disobeying directions of State Government / IBM (Sec. 106)</i>  <i>Rs. 10,000/- per day for the period of such disobedience</i>	<b>No separate penalty is required.</b>
IV. Contravention of any provisions of Act or Rules (Sec 21 (2)) :	(Section 107)	(Section 107)
(i) Imprisonment upto 1 year; or	(i) <i>Imprisonment upto 1 year; or</i>	(i) <b>Imprisonment upto 1 year; or</b>
(ii) Fine upto Rs. 5000/-; or	(ii) <i>Fine upto Rs. 5000/-; or</i>	(ii) <b>Fine upto Rs. 5000/-; or</b>
or	(iii) <i>Both</i>	(iii) <b>Both</b>
(iii) Both	<i>In case of continuing contravention :</i>  <i>Additional fine upto Rs. 1000/- per day till contravention continues after conviction of first contravention.</i>	<b>In case of continuing contravention :</b>  <b>Additional fine upto Rs. 1000/- per day till contravention continues after conviction of first contravention.</b>