This memorandum comprises an outline of key provisions in the new Mining Act which are highly important for the mining industry. It has been prepared for the Greenland Business Association and its mining committee by Nuna Law for informational purposes only and does not constitute legal advice or a substitute for legal counsel.

MEMORANDUM

THE NEW MINING ACT (NO. 26 OF 13 JUNE 2023)

1 INTRODUCTION

The new Mining Act was passed by the Parliament of Greenland during late spring.

Although it is mainly a continuation of the provisions of the Mineral Resources Act, the draft bill for the new Mining Act included a number of new provisions and "twists" of the current provisions on a number of points.

It is crucial for the mining industry to ensure clear framework conditions, and work was initiated to ensure clarity and predictability by the mining industry and the Greenland Business Association.

On this basis, the content of a number of key provisions was adjusted, and this memo provides for an outline of these adjustments. Thus, the memorandum does not include complete description of all new provisions.

2 THE ENTRY INTO FORCE OF THE NEW MINING ACT

The new Mining Act comes into force on 1 January 2024.

All existing licences remain valid, but the Mining Act also applies to these licences. The following exceptions apply:

- Section 29 of the Mining Act (requirements for the licence holder) does not apply to prospecting licences granted prior to the entry into force of the Mining Act.

- Section 44 of the Mining Act (requirements for the preparation of terms of reference) does not apply to the extent that a licensee has had a project description approved for pre-consultation under section 87a of the Mineral Resources Act before the Mining Act enters into force.

- Section 45(2) of the Mining Act (requirement that the management must be based in Greenland) is not to be fulfilled until 24 months after the Mining Act enters into force with respect to exploitation licences granted before the entry into force.

The Standard Terms remain in force with the changes resulting from the Mining Act until they may be cancelled or replaced by new terms laid down in accordance with the Mining Act.

3 NEW LICENCE TERMS AND CONDITIONS

3.1 Prospecting licences

Sec. 29:
Previously, anyone, regardless of corporate form, could be a licence holder of a prospecting licence. As a new requirement, a licensee must be registered as either

a) a Greenlandic company (a public limited company ("A/S") or a private limited company ("ApS")), or

b) a *similar type of limited liability company* which has its registered office in another country (and such company must be registered with a CVR No. in Greenland which is also a requirement today).

In the consultation memorandum attached to the explanatory notes, the following guidance provided:

The amount of the share capital will not be decisive because of the requirements already existing for the economic capacity of the licensee, see section 66. The decisive factor is that the person(s) authorised to bind the company can be identified. In most cases, the provision is expected to be administered by an applicant sending a link to the company's registration in a business register.

In case of doubt as to whether a foreign company is similar/ equivalent to a Greenland A/S or ApS, the matter will be decided by the Government of Greenland.

3.2 Exploration licences

Sec. 35:

A new requirement is introduced for public consultation to be carried through before an applicant can be granted an exploration licence. The application is sent for consultation for 21 calendar days.

Originally, the consultation period in the bill was open with *"at least 21 days"*. After pressure, this was changed so that the deadline is clearly defined as exact 21 days, which may be extended by up to additional 21 days in special cases only. This may be the case, for example, if consultation responses are received that point to new issues that the population in the local area cannot be assumed to be familiar with already and giving them an opportunity to address such new issues.

This gives applicants certainty about the length of the consultation period.

The consultation is expected to be carried out on a website/portal or similar and not by public meetings.

The Government was not open for granting anonymity with regard to the identity of the applicant during the public consultation.

Sec. 36:
Similar to prospecting licences, the licence company of an exploration licence must be either,

a) a Greenlandic company (a public limited company ("A/S") or a private limited company ("ApS")), or

b) a *similar type of limited liability company* which has its registered office in another country (and such company must be registered with a CVR No. in Greenland which is also a requirement today).

See comments above to sec. 29.

3.3 Exploitation licences

Sec. 45(2):
A new requirement has been laid down for the management's connection to Greenland. In the original bill it was stipulated that “the de facto head office of the public limited company from where it is managed must be in Greenland.

This concept has not previously been used in Greenlandic legislation and would involve much uncertainty and misperceptions.

After pressure, the requirement was it was changed into the following:

"The management must be based in Greenland".

It is stipulated under the explanatory comments that this legal concept is used under Greenlandic and Danish tax law.

On this basis, we assume that the intention of the mineral resource authorities is to apply the same approach in the Mining Act as in tax law. Thus, we assume that practice under tax law may provide guidance, but it will always be a concrete assessment.

In the Danish tax assessment guidelines, which must also be assumed to be the guidelines for Greenlandic tax law, it is stipulated:

"The decision as to whether a company's management is domiciled in this country is based on a specific assessment of the actual circumstances in connection with the decision-making in the company.

In this assessment, emphasis is first and foremost placed on the day-to-day management of the company. The company will therefore often be considered domiciled in Denmark when the executive board has its seat in Denmark or when the company's head office is located in Denmark.

To the extent that the board of directors is responsible for the actual day-to-day management of the company, the location of the board's seat is of significant importance in assessing whether the company is based in Denmark.

It is the place where the board's decisions are actually made that determines the location of the management's seat. This may be relevant in cases where, for example, the chairman of the board is actually responsible for the day-to-day management of the company, or in cases where decisions are made prior to the formal organisation of a board meeting.

Decisions that are usually made at the general meeting level are generally not decisive for whether the company can be considered resident in Denmark. The mere shareholding will therefore generally not be decisive for the assessment. However, to the extent that a shareholder actually exercises the management of the company, the shareholder's domicile may be included in the assessment of whether the company's management has its seat in this country."

Due to tax law in other countries, some companies have already very strict instructions on where board meetings are held, and whether some of the board members are physically attending the meeting in Greenland (and some are online).

Thus, each licence company must consider whether they meet the requirements with due regard to the organization of their management from time to time.

3.4 Transition from exploration to exploitation

Sec. 41-44:

Under the current Mineral Resources Act, the Government has laid down an administrative practice to the effect that a number of steps be carried through before an exploitation licence is granted. This includes preparation of Project Terms of Reference (a project description) and public pre-consultation (35 days) thereof, preparation of EIA and SIA and public consultation thereof, and enter into an IBA with the Government and local municipality.

Upon our written request, the MLSA has confirmed that this administrative practice will be changed under the Mining Act providing for that only the Project Terms of Reference (a project description) and public pre-consultation (35 days) thereof, cf. sec. 44 must be carried out before an exploitation licence may be granted, cf. sec. 41.

This means that preparation of EIA and SIA and public consultation thereof and enter into an IBA with the Government and local municipality may be carried out after grant of the exploitation licence.

However, it should still be noted that if the applicant is required to carry out a public pre-consultation on a project description concerning environmental or social aspects under section 106, such pre-consultation(s) must, *to the extent possible*, be carried out in connection with the consultation concerning the terms of reference. The MLSA has confirmed that the public consultation under sec. 44 and 106 may be made at the same time in order to avoid an additional public consultation round at a later stage. Still, it is not mandatory to do it at the same time – it is in the free discretion of the licensee.

Reference is also made to the consultation memorandum:

It should be noted, as mentioned above, that the project terms of reference document can be prepared and submitted for consultation together with the pre-consultation for any project description concerning environmental impact or social impact under section 106. The provision has been proposed at the request of the industry, which has requested the possibility of being granted an exploitation licence prior to environmental impact assessments or social impact assessments being carried out, on the assumption that it is

easier for a licensee under an exploitation licence to find the funds for such assessments. The Ministry of Mineral Resources and Justice would like to accommodate this request, but considers it inadvisable to grant exploitation licences solely on the basis of a substantiated and delineated viable deposit without the Government of Greenland and the population being aware of the contemplated project, which is why the existing wording of the provision is maintained.

Reference is also made to the consultation letter of the bill:

A statutory basis is created for the exploitation licence to be granted on the basis of a consultation on the project terms of reference, where appropriate combined with the terms of reference for the EIA (Environmental Impact Assessment) and SIA (Social Impact Assessment).

4 USE OF GREENLANDIC MANPOWER AND ENTERPRISES; PRODUCTION OUTSIDE GREENLAND

Sec. 52:

Under the bill, the licensee's duty to use local workers and local suppliers of goods and services were open and thus "flexible" (in principle both ways), but without specific statutory rights for exemption:

***(BILL) 52.**–(1) In a mineral exploitation licence, the Government of Greenland will set terms governing the licensee's duty to use local workers.*
(2) In a mineral exploitation licence, the Government of Greenland will set terms governing the licensee's duty to use local suppliers of goods and services.

After expression of concerns, the Mineral Resources Committee supported the concern, and in the adopted Mining Act, the wording is aligned with the current provisions to the following:

"52.–(1) A mineral exploitation licence must stipulate the extent to which the licensee must use local labour. However, to the extent necessary for operations, the licensee may use labour from outside Greenland when similarly qualified labour is not found or available in Greenland.
(2) A mineral exploitation licence must stipulate the extent to which the licensee must use local companies for contracts, supplies and services. However, other companies may be used if local companies are not technically or commercially competitive.

(my underlining)

Sec. 53:

Under the bill, the licensee's right to process minerals outside Greenland was specifically subject to the condition that "*the advantages to society will not be significantly affected thereby*":

(BILL) 53.–(1) For an exploitation licence, the Government of Greenland may set provisions and terms to the effect that a licensee wanting to process the minerals extracted under the licence must process such minerals in Greenland and that the licensee may process exploited minerals outside Greenland only to the extent that processing in Greenland will result in significantly greater costs or disadvantages for the licensee and the advantages to society will not be significantly affected thereby, and this is approved in advance by the Government of Greenland.

After expression of concerns, the Mineral Resources Committee supported the concern, and in the adopted Mining Act, the wording is aligned with the current provisions to the following:

53.–(1) A licence under section 16 may stipulate the extent to which the licensee must process exploited mineral resources in Greenland. However, processing may take place outside Greenland if processing in Greenland would result in significantly greater costs or disadvantages.

5 MISCELLANEOUS

After the dialogue, a number of others provisions were deleted or adjusted:

5.1 No outstanding debt in excess of DKK 100,000

Sec. 66(3) *(Bill - deleted):*

The general requirement that the licensee must not have outstanding debts to the Government of Greenland or other public authorities in Greenland in excess of DKK 100,000, unless the licensee provides security for payment of the part of the debt which exceeds DKK 100,000 or has entered into and complied with an agreement to pay the debt, was deleted.

5.2 Important public considerations and interests

Sec. 129 *(Bill - deleted)*:

The provision on important public considerations and interests were deleted (also prior to our dialogue):
(BILL) 126.–(1) A licence or an approval under this Greenland Parliament Act cannot be granted to an applicant or licensee if incompatible with important public considerations and interests, including important foreign, defence or national security policy considerations or interests. The decision in this regard rests with the Government of Greenland.

5.3 Conservation of specific sites and establishment of zones

Sec. 128:

The provision on conservation of specific sites and establishment of zones was amended to the effect that the Greenland Parliament may by statute set provisions on the conservation of one or more specific sites in the interest of safeguarding geological conditions and their protection and on prohibition or restriction of activities in one or more areas for the purpose of protecting public interest.

Thus, such provisions may only be laid down by the Parliament by statute and not by a decision of the Government.

5.4 Default fines

Sec. 140:

Concerns were expressed in terms of the Government's right to impose daily or weekly default fines (penalty payment) to:

1) Any person who fails to provide, within the relevant time-limits, any information which must be provided or may be required by the Government of Greenland to be provided under section 32(1), section 39(1), section 50(2), cf. section 39(1), section 55(1), section 63(1), section 68(1), section 68(2), section 77(4), section 81(5), section 82(4), section 101(1), section 101(3) and (4), section 104(1), section 104(3) and (4) or section 124.
2) Any person who fails to comply with an enforcement or prohibition notice issued under section 68(3), section 123 or 125.
3) Any person who fails to provide security under section 82(4) within the Any person who fails to provide security under section 82(4) within the relevant time-limits.

Especially, we were concerned about the level of such fines which will be imposed administratively by the Government. Thus, we suggested the fines be

imposed by the prosecution service. The provision was adopted by the Parliament with a right for the Government to impose such default fines, however subject to the obligation to set out such specific rules on the fine level in an executive order.

* * *