

Newsletter

**LAWYERS:**

Peter Schriver

Finn Hansen

Jesper Müller

Anita Strauss Sørensen

Charlotte Pedersen

Michael Thumand, junior ass.

Lise Mørup Dalsgaard, junior ass.

Secr.: Sofie Josefsen

sj@nuna-law.gl

File No.: 212983 PES/HKI

Nuuk, 22 December 2009

**Re: The new Mineral Resources Act comes into force on 1 January 2010**

The bill for a new Mineral Resources Act which the Greenland Self-Government introduced during this Autumn was finally passed in the Greenland Parliament on 27 November 2009 (EM 2009/120). Subsequent to our newsletter circulated in October no substantial changes to the bill were made. I kindly enclose a copy of the new Act (unofficial translation provided by the Bureau of Minerals and Petroleum) and the explanatory notes (which are still only available in Danish).

Below an introduction to the new Act and the novelties introduced hereby is given.

**1. Commencement date**

The new Mineral Resources Act comes into force on 1 January 2010 and replaces the present Mineral Resources Act.

Prospecting licences and licences to explore and exploit mineral resources in Greenland that have been granted when the new Act takes effect remain valid, but will be governed by the new Act after 1 January 2010.

The application procedures and standard licence terms applicable on minerals (excluding hydrocarbons) of 16 November 1998 issued by the Bureau of Minerals and Petroleum remain in

force with the amendments concerning the administrative authority that follow from the new Act until the said regulation is repealed or replaced by new regulation laid down in accordance with the new Act. A consequence of the Greenland Self-Government's take over of the mineral resource area is, among other things that the Joint Council of representatives of Denmark and Greenland has been abolished, and new licences will be granted by approval of the Greenland Government ("Naalakkersuisut").

## **2. Administrative authorities**

A "one-stop" administration of mineral resources by the Bureau of Minerals and Petroleum is still the aim. New is that health and safety for off shore installations is now governed by the Mineral Resources Act, see Section 79 to 82 of the new Act, and administered by the Bureau of Minerals and Petroleum as the relevant authority. The administration of working environment on land is still the responsibility of the Working Environment Authority according to the Working Environment Act in Greenland, see Section 9(2) of the new Act.

Please also note that the marine environment area has not been taken over by the Greenland Self-Government from Denmark. The provisions on the environment under the Mineral Resources Act do not apply to the continental shelf area and in the exclusive economic zone off Greenland insofar as the Marine Environment Act provides otherwise, see Section 9(3) of the new Mineral Resources Act.

Similarly, approvals under the Mineral Resources Act do not completely exempt the licensees from obtaining the necessary approvals or permissions under other legislation, e.g. the Aviation Act and the Land Use Act (when constructing houses and installations).

## **3. News under the Act**

The Act is a framework act according to which the Greenland Government may issue rules and regulation, model licences, standard terms and terms for specific licences.

### **3.1 General**

The rules and precedents applicable until today are generally carried on under the new Act. However, a number of important new rules are introduced, including the following:

**- The scope of the new Act**

The Mineral Resources Act also governs the use of the underground for storage or purposes related to mineral resource activities, e.g. storage of natural gas, storage of heat and CO<sub>2</sub> etc. as well as use of energy from water or wind.

**- Social sustainability and protection of the environment**

The new Act introduces new principles and rules for protection of the environment and social sustainability.

By the application and administration of the provisions on protection of the environment, including prevention, reduction and control of pollution, great emphasis is placed on what is obtainable by use of the “*best available techniques*” for the activities, see Section 52 and 53.

Also, specific rules on climate protection, see Section 55-58, and nature protection, see Section 59-62, have been laid down. The Greenland Government may issue specific regulation on climate and nature protection, including provisions on the application of national or international rules, agreements or guidelines concerning climate protection, see Section 58 and 61, and concerning protection of the environment, see Section 54.

Exploitation of hydrocarbons and minerals as well as use of the underground for storage in relation to mineral activities etc. now requires preparation of an environmental impact assessment (EIA), see Chapter 15. In certain situations a social sustainability assessment (SSA) is also required, see Chapter 16.

**- Environmental damages and liability**

Specific rules on “*environmental damages*” and “*environmental liability*” are now being introduced in addition to the general rules on liability for damages.

The party who performs, manages or supervises the performance of an activity within the scope of the Mineral Resources Act (i.e. “the responsible party”, see Section 63) is responsible for environmental damages caused thereby and liable for the caused pollution damages, even if the cause of damage is accidental, see Section 69 of the new Act. If the responsible party is another party than the licensee, the licensee and the responsible party are jointly and severally liable. However, exception is made when it is proved that the activity was performed in accordance with indispensable directions laid down by a public authority, unless the directions follow from enforcement notices or instructions that are due to the responsible party’s own activities or circumstances.

**- General rules on liability**

Under the new Act a general principle of strict liability is applicable to licensees in relation to damages caused in connection with operations or activities under a licence, even if the cause of damage is accidental, see Section 92 of the new Act.

In a licence it may be stipulated that the licensee's liability must be covered by insurance or another type of security, see Section 92(3). Also, the Greenland Government may lay down rules and regulations to the effect that insofar as their services are used for operations or activities under the licence, the liability of contractors, suppliers and service providers must be covered by insurance or another type of security, see Section 92(5).

**3.2 Licences****- Prospecting licences**

The provisions stipulated in the new Act on prospecting licences (non-exclusive) are very similar to the existing rules, see Chapter 4 of the new Act.

**- Licences for exploration and exploitation**

The provisions stipulated in the new Act on licences for exploration and exploitation (exclusive) are also very similar to the existing rules, see Chapter 5 of the new Act.

For companies holding exploitation licences new requirements are introduced to the effect that such companies may not be more thinly capitalised than the group of which the companies form part, but the companies' loan capital may always exceed the shareholders' equity up to a ratio of 2:1, see Section 16(2). These rules apply, no matter whether the lender is a company within the same group or not, and no matter whether such companies are domiciled in Greenland or abroad. Also, companies holding exploitation licences are generally required to trade at arm's length prices and on arm's length terms. Similar rules and principles apply under the tax law in Greenland, but similar rules are now being introduced under the Mineral Resources Act to the effect that actual requirements are made to the size of the company's equity capital which the licensees must comply with from time to time in order to maintain their licences.

As previously, it may be stipulated in a licence, to which extent the licensee is required to use labour from Greenland and Greenland enterprises for contracts, supplies and services, see Sections 18(1) and 18(2). Also, under the new Act, it may be stipulated in a licence the extent to which the licensee are required to process exploited mineral resources in Greenland, unless processing in Greenland would result in significantly higher costs or greater inconvenience,

see Section 18(3), subject to a specific assessment in each case. Neither the Act nor the explanatory notes set up the specific criteria for this assessment.

As mentioned above, a licence may now also include requirements as to assessments and preparation and implementation of plans to ensure that exploration or exploitation of mineral resources is socially sustainable, see Chapter 15 and 16.

In terms of the various types of mineral resources, the following specific rules are laid down under the new Act:

***Hydrocarbons:***

A licence may now be granted according to a neighbouring block procedure to a licensee under a licence for a neighbouring area, without applying the usual rounds of tendering, see Section 23(5).

Extension of an exploitation licence until 50 years may now only take place if warranted by “*special circumstances*”, e.g. in case the exploitation must be postponed due to climate or other nature conditions to the effect that the deposit can not be exploited as expected within the original licence period.

Also, the Greenland Government may order the licensee to initiate exploitation no later than three years after the issue of such an order, unless the licensee has returned the parts of the licence area covered by the order or returned the licence before such date, see Section 25.

Furthermore, the Greenland Government may make changes in approved plans for exploitation or determine new quantities that may be exploited where considerations for appropriate and efficient exploitation so require or decisive social considerations so necessitate, see Section 26. According to the explanatory notes this provision is to be applied if the obtained knowledge of the hydrocarbon reservoir calls for an immediate change of the exploitation period, e.g. in case of risk for permanent damages to the reservoir, due to social considerations in order that the Greenland society and economic development benefit to the greatest extent possible from the exploitation.

***Minerals:***

The Greenland Government may lay down new specific provisions on minerals, including on exploration, exploitation, processing, storage, depositing, transport, trading, export, import and certification of minerals, see Section 31 and 85. For example, this could be requirements as to the quality of the processing as well as a system for certification of origin.

Please also note the new provisions on licences for “small-scale” exploration and exploitation. Such licences may be granted as exclusive or non-exclusive licences for areas up to 1 square kilometer to physical persons who are permanently residing and fully liable to pay tax in Greenland. Non-exclusive licences lapse insofar as an exclusive licence is granted for the same area under Section 16 or under Section 33.

***The Underground:***

Under Sections 39 to 41 new provisions are stipulated on the grant of licences to use the underground, which have been introduced in the light of a growing focus on the global warming as well as carbon storage, which may be relevant in relation to exploitation of hydrocarbons.

\* \* \*

If you have any questions to the above, please do not hesitate to contact us.

Yours sincerely



Peter Schriver