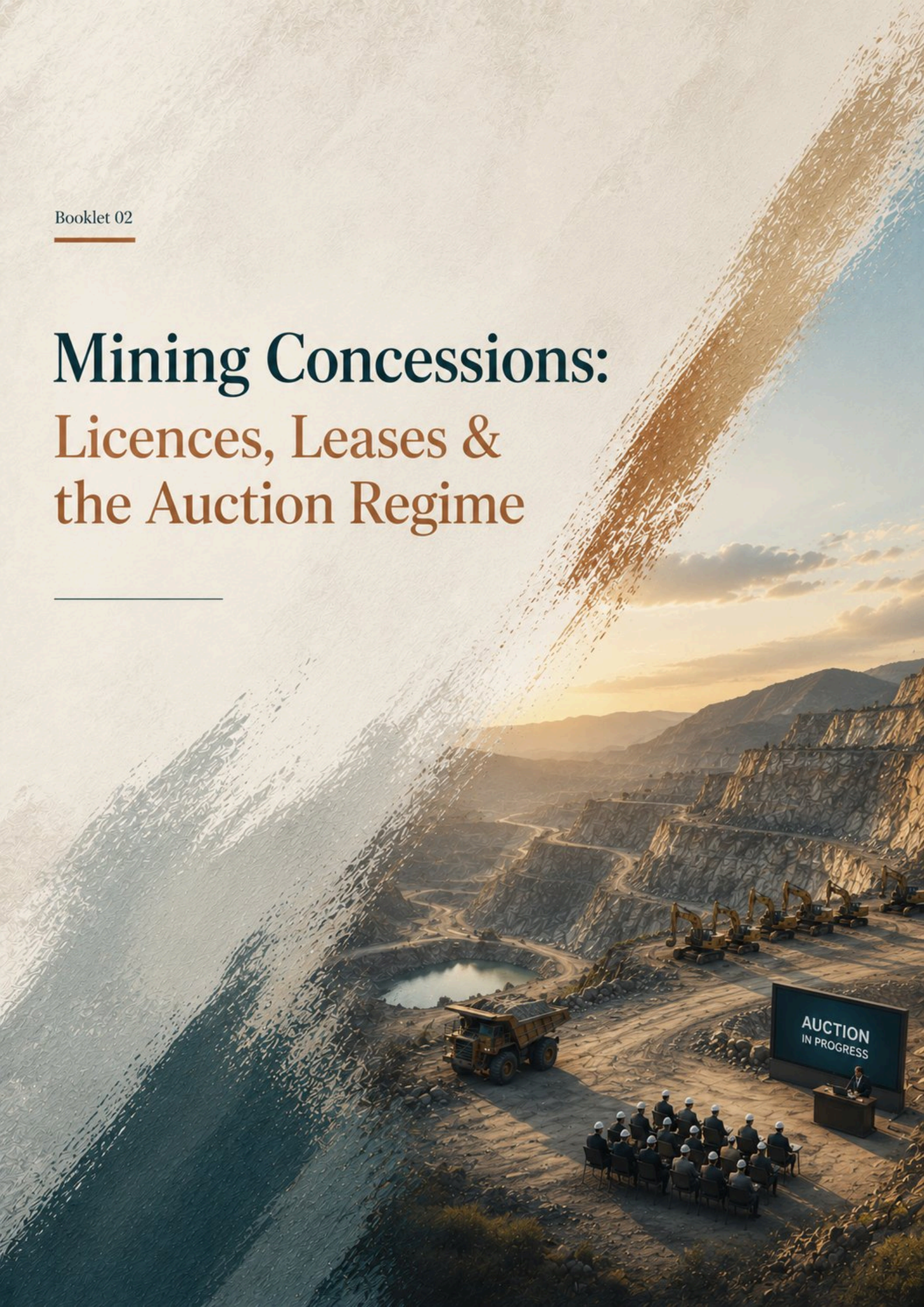


Booklet 02

---

# Mining Concessions: Licences, Leases & the Auction Regime

---



# Mining Concessions: Licences, Leases & the Auction Regime

Prospecting Licences, Mining Leases, Composite Licences, Mineral Auction Rules 2015, Electronic Bidding and Concession Compliance

*Booklet II of VI — Indian Mining Sector Legal Series*

Bhatt & Joshi Associates, Advocates & Legal Consultants

**Disclaimer:** Educational publication only. Not legal advice. Bar Council of India Rules complied with.

## TABLE OF CONTENTS

<b>Chapter 1 — Types of Mining Concessions Under the MMDR Act</b>	3
<b>Chapter 2 — The Auction Process: From Block Notification to Grant</b>	9
<b>Chapter 3 — Mineral Concession Rules 2016: Procedural Framework</b>	16
<b>Chapter 4 — Conditions of Mining Leases and Operational Compliance</b>	22
<b>Chapter 5 — Transfer, Renewal, Termination and Lapse of Concessions</b>	27

## CHAPTER ONE

# Types of Mining Concessions Under the MMDR Act

*Prospecting Licences, Mining Leases, Composite Licences — Legal Character, Duration, Area Limits and Statutory Conditions*

*The MMDR Act's concession framework provides three principal instruments through which the state permits private parties to explore and extract minerals from government-owned or regulated mineral deposits. Understanding the legal character, scope, and statutory conditions of each instrument is the foundation of any mining law practice.*

## 1.1 Prospecting Licence: Nature and Scope

A Prospecting Licence (PL) under Section 10 of the MMDR Act authorises the holder to enter the specified area, conduct geological investigations, carry out drilling and sampling operations, and undertake such other work as is necessary to determine the presence, extent, and quality of minerals in the area. The PL confers a licence to explore — it does not authorise extraction of minerals in commercial quantities, though the licence holder may extract and remove such quantities of mineral as are reasonably necessary for prospecting purposes (samples for assay, bulk samples for metallurgical testing). The maximum area that can be held under a single PL

varies by state rules and mineral, but the MMDR Act sets overall limits on the total area that can be held by a single entity under PLs, MLs, and CLs combined. PLs are now granted through the auction framework under Section 10B for most major minerals — the pre-2015 practice of granting PLs by application in the first-come-first-served system has been replaced by a Composite Licence system that combines prospecting and mining rights in a single auction-awarded instrument. However, PLs granted before the 2015 Amendment's cut-off date that are still operative are governed by the MCR 1960 framework applicable at the time of their grant, and the holder's rights upon successful prospecting are determined by the Section 10A savings provision analysis.

The PL holder's principal obligation is to conduct genuine prospecting operations — the PL is not a dormant "land banking" instrument but an active exploration commitment. MCR 2016 requires PL holders to commence exploration operations within a specified period of the PL grant, to submit periodic progress reports to the state government, and to deliver a Prospecting Report at the end of the prospecting period specifying the mineral resources identified and the recommendations for further development. Failure to commence and conduct genuine prospecting within the required timelines can result in cancellation of the PL. For investors who have obtained PL grants through the Composite Licence auction, the exploration phase is not merely a regulatory formality but a commercial imperative: the auction bid premium commits the investor to payments that commence from grant (or from the start of production) regardless of exploration results, creating strong financial incentives to conduct efficient exploration and to make the production commencement decision as quickly as the geological and regulatory timelines permit.

## **1.2 Mining Lease: Legal Character and Creation**

---

A Mining Lease (ML) is a statutory creation — it is not a lease in the strict property law sense (since the mineral rights in government or forest land are not owned by the lessor in the ordinary sense) but a concession granted by the state authority under the MMDR Act, conferring on the holder the exclusive right to mine, quarry, bore, dig, or carry out operations for the purpose of winning any mineral in the leased area. The ML is the primary instrument of mineral extraction rights in India, and its grant, renewal, transfer, and termination are governed by the MMDR Act, the MCR 2016, and the state mineral concession rules applicable to any state-specific conditions. The maximum area of a single mining lease for major minerals is 10 sq. km for hard rock minerals and somewhat larger for minerals that require large contiguous areas for efficient mining (coal and bauxite have different area limits); the maximum period of a mining lease is 50 years for auction-awarded concessions (under the post-2015 framework) — a significant extension from the pre-2015 maximum of 30 years, recognising that the longer tenure provides greater investment security for large-scale mining projects requiring substantial capital expenditure. The auction-awarded ML runs for 50 years from the date of execution and cannot

be renewed — at the end of 50 years, the block must be re-auctioned.

The ML deed — the formal written instrument executed between the state government and the successful auction bidder — incorporates the statutory conditions prescribed by the MMDR Act and MCR 2016 (non-negotiable conditions that form part of every ML regardless of the auction terms) and any additional conditions specific to the particular block (such as conditions relating to the mine's distance from water bodies, protected areas, or inhabited zones; requirements for specific dust suppression or noise mitigation measures; and commitments given by the successful bidder during the auction process). The distinction between statutory ML conditions (imposed by law and not subject to negotiation) and bid-specific ML conditions (arising from the auction process and forming part of the concession agreement) is important for understanding the lessee's rights and remedies: breach of a statutory ML condition may result in termination of the ML by the state government without the lessee having any claim for compensation; while breach of a bid-specific condition may give rise to a contractual claim as well as regulatory consequences, and disputes about the interpretation of bid-specific conditions are typically arbitrable under the ML deed's dispute resolution clause.

### **1.3 Composite Licence: Integrated Exploration-Mining Grant**

---

The Composite Licence (CL), introduced by the 2015 Amendment as a new concession type, confers on the holder the right to carry on prospecting operations in the licensed area and, subject to completion of prospecting and approval of a Mining Plan, to proceed to mining operations in the area on the same terms as an ML. The CL is awarded through the auction process under Section 10B and the Mineral (Auction) Rules — the auction terms specify the area, the target mineral(s), the minimum exploration work programme that the CL holder must complete in the prospecting phase, and the bid parameter (typically premium over royalty) that determines the winning bid. Upon completion of prospecting, the CL holder files an application for conversion to an ML, which is processed by the state government (or Central Government for central minerals) within specified timelines on the basis of the prospecting report and the approved Mining Plan. The CL's commercial significance lies in the certainty it provides to exploration investors: unlike the pre-2015 framework where a PL holder had no guaranteed right to proceed to ML (even after successful prospecting), the CL holder has a contractual right to ML conversion embedded in the CL deed, enforceable against the state government if the ML conversion is unreasonably delayed or refused. This certainty fundamentally changes the risk-return calculus for mineral exploration investment, making the CL an attractive instrument for explorers who are willing to invest in speculative exploration provided they have a clear path to development rights if exploration succeeds.

# The Auction Process: From Block Notification to Grant

*Block Identification, Information Memoranda, MSTC Platform, Bid Evaluation, Successful Bidder and ML Execution*

---

## 2.1 Block Identification and Pre-Auction Data Development

---

The mineral block auction process under the MMDR Act and the Mineral (Auction) Rules, 2015 begins with the identification of mineral blocks by the state government (for state-administered minerals) or the Central Government (for central minerals and critical minerals). Block identification involves: geological assessment of the proposed block by the state geological department or the GSI, to determine the mineral resource estimate or at minimum the geological prospectivity of the area; preparation of a preliminary Geological Report (GR) or an Exploration Report (ER) documenting the available geological data; delimitation of the block boundaries on a mineral map; and assessment of any encumbrances on the area (existing reserved forests, national parks, tribal areas, or other protected categories that would require specific clearances before mining can commence). The pre-auction data development stage is commercially critical: blocks auctioned with detailed and reliable geological data (resource estimates with UNFC resource classification, drill hole data, and assay results) attract more competitive bids at higher premium levels, because bidders can make informed assessments of the block's mineral potential. Blocks auctioned with only reconnaissance-level data attract more conservative bids that discount the geological uncertainty, reducing the state's revenue realisation. The Ministry of Mines' emphasis on improving pre-auction geological data through MECL drilling programmes and GSI mapping updates is therefore not merely a technical matter but a direct driver of auction revenue performance.

Once a block has been identified and the geological data compiled, the state government prepares an Information Memorandum (IM) for each auction block — a detailed document published on the auction portal that provides prospective bidders with all available information about the block, including: the area map with coordinates; the available geological data (mineral occurrence reports, GSI maps, MECL reports); the mineral resource estimate (if available); the applicable royalty rates and bid parameters; the environmental and forest status of the area (including any forest land proportions, protected area proximity, and water body adjacency); the applicable statutory conditions and special conditions for the block; the minimum bid requirement; and the timeline for the auction process. The IM also specifies the minimum exploration work programme that the successful bidder must complete (in terms of drilling meterage, sampling, and reporting), the timeline for submitting the Prospecting Report, and the timeline for applying for ML conversion (for CL auctions). Bidders who fail to conduct due

diligence on the IM — including field visits to assess the block's actual condition, legal checks on any pending litigation or environmental claims over the area, and independent geological assessment of the mineral resource estimate — take on risks that are often underpriced in the auction bid, leading to post-award difficulties in project development.

## **2.2 Electronic Auction on MSTC Platform**

---

Mineral block auctions in India are conducted through the electronic auction platform operated by MSTC Limited — a Central Public Sector Enterprise under the Ministry of Steel that provides e-commerce and e-auction services for various government agencies. The MSTC mining auction platform is the designated e-auction portal for both state and central mineral auctions, providing: a secure electronic bidding environment accessible through the bidder's registered account; real-time visibility of current bids and bidder status during the live auction; automated bid validation (checking that submitted bids meet the minimum bid increment requirements and the bidder's financial qualification thresholds); electronic recording of all bids for the permanent auction record; and automated announcement of the L1 bidder (the highest bidder) at the close of the auction window. The electronic auction format — which replaced paper-based sealed bidding for mineral concessions — significantly improves the transparency and integrity of the auction process: all bids are time-stamped and electronically recorded, manipulation of bids after submission is technically impossible, and the competitive pressure of a live auction (visible real-time bidding) encourages optimal bidding behaviour from participants. The electronic format also enables broader participation by reducing the physical attendance requirements of the auction process — bidders can participate from any location with internet access, removing the geographical barriers that previously limited auction participation to entities with offices in the state where the auction was held.

## **2.3 Bid Parameters and Financial Qualification**

---

The bid parameter for most mineral block auctions is the "premium percentage" — the percentage above the applicable royalty rate that the successful bidder commits to paying as an additional consideration for the mining concession. For example, if the applicable royalty rate for iron ore is 15% of the average sale price, and the successful bidder's winning bid is a 100% premium, the bidder commits to paying a total of 30% of the average sale price to the state government (15% royalty plus 15% premium) per tonne of iron ore extracted over the life of the concession. The premium percentage is the auction's competing variable — bidders compete by offering increasingly high premium percentages, with the highest offered premium winning the concession. The financial qualification criteria for participation in mineral auctions vary by block, but typically require: proof of minimum net worth or paid-up capital (specified in the IM as a function of the estimated value of the mineral resource); a bid security deposit (typically 2-10% of the calculated upfront payment, refundable to unsuccessful bidders); and a track record in mining or mineral processing (with experience criteria that vary based on the scale and

technical complexity of the block). The financial qualification requirements are designed to exclude non-serious or financially incapable bidders while remaining permissive enough to allow a broad range of qualified participants — a balance that is commercially important because competition among a larger pool of qualified bidders drives higher premium commitments and better auction outcomes for the state.

## **2.4 Post-Auction: Letter of Intent, Upfront Payment and ML Execution**

---

Following the electronic auction and the determination of the successful bidder, the state government issues a Letter of Intent (LoI) to the L1 bidder specifying the terms of the concession to be granted and requiring the payment of the upfront amount (a specified lump-sum payment due within the period specified in the Mineral (Auction) Rules, typically 30 days from LoI issuance) as a condition for ML execution. The LoI also specifies the remaining conditions to be fulfilled by the successful bidder before the ML is executed — typically including: submission of performance security (a bank guarantee securing the bidder's bid commitments); evidence of company incorporation and KYC documentation; completion of the specified pre-mining regulatory requirements (such as obtaining surface rights for the mine site if not included in the concession terms). The ML is executed between the state government and the successful bidder after all LoI conditions are met — a process that in practice can take 3-18 months after the LoI issuance, due to the time required to complete surface rights arrangements, prepare the ML deed with all applicable conditions incorporated, and obtain the requisite government approvals for ML execution. The period between LoI issuance and ML execution is a commercially sensitive gap: the successful bidder has committed to the bid premium and paid the upfront amount but cannot commence mining operations until the ML is executed and environmental clearances are obtained, creating a carrying cost without corresponding revenue that must be factored into the investment model.

## Mineral Concession Rules 2016: Procedural Framework

*MCR 2016 Application, Eligibility, Conditions, State Government Powers and Central Government Oversight*

---

### 3.1 MCR 2016: Scope and Application

---

The Mineral Concession Rules, 2016 (MCR 2016), notified by the Central Government under Sections 13 and 15 of the MMDR Act, replaced the earlier MCR 1960 with a comprehensive updated framework governing the grant, transfer, renewal, and termination of prospecting licences, mining leases, and composite licences for major minerals (other than coal, lignite, atomic minerals, and offshore minerals, which have their own separate rules). MCR 2016 specifies: the qualifications required for eligibility as a PL/ML/CL applicant (including technical and financial criteria); the auction procedure for block selection, IM preparation, bidder pre-qualification, electronic auction conduct, and post-auction formalities; the form of PL, ML, and CL deeds and the standard conditions to be incorporated; the procedure for transfer of PLs, MLs, and CLs; the procedure for renewal of leases granted before the 2015 Amendment under the old framework; and the procedure for inspection of mines by the Indian Bureau of Mines. MCR 2016 is supplemented by the Mineral (Auction) Rules, 2015 (governing the auction process specifically) and the Mineral Conservation and Development Rules, 2017 (governing the technical standards for mining operations). State governments additionally frame State Mineral Concession Rules under Section 15(3) of the MMDR Act for matters specific to their state — these state rules must be consistent with the MCR 2016 framework and cannot impose conditions that conflict with the central rules, but they provide the operational detail for state-specific aspects of the concession management process (surface rent rates, ML deed formats, and state authority contact points for various procedural steps).

### 3.2 Prior Approval of the Central Government

---

Section 5 of the MMDR Act requires that state governments obtain the prior approval of the Central Government before granting a mining lease for specified major minerals (principally, minerals listed in Part B of the First Schedule to the MMDR Act, including titanite, corundum, kyanite, sillimanite, and certain others) and for any ML in an area exceeding a specified size threshold. The Central Government's prior approval function — exercised by the Ministry of Mines through the Internal Finance Division — provides a layer of oversight on large mining concessions to ensure consistency with national mineral development policy, prevent the over-concentration of mineral resources in a single entity, and verify that the state government's proposed concession terms are within the parameters permitted by the MCR 2016. The prior approval process involves the state government submitting the auction results and proposed ML

terms to the Ministry of Mines for review, and the Ministry issuing its concurrence (with or without conditions) within a specified period. Delays in obtaining Central Government prior approval — which in some cases have stretched to 12-18 months due to inter-departmental reviews — have been a significant bottleneck in the ML execution process, and the Ministry of Mines has periodically revised its internal processing procedures to reduce the prior approval timeline.

### **3.3 Surface Rights and Land Acquisition for Mining**

---

A mining lease grants the lessee the right to mine the specified minerals within the leased area, but it does not automatically confer the right to use the surface of the land for mining operations if the surface land is privately owned. For mining leases in government or forest land, the surface rights are typically granted by the state government as part of the concession terms; but for mining in areas with private surface ownership, the mining lease holder must separately acquire surface rights through: voluntary negotiation and purchase of the surface land from private owners; requisition of the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act 2013) — commonly known as the Land Acquisition Act 2013 — through the Collector if voluntary purchase fails; or use of Section 16 of the MMDR Act, which empowers the state government to acquire land for the purpose of mining operations where the land cannot otherwise be made available to the lessee. The RFCTLARR Act 2013's mandatory requirements — including Social Impact Assessment, consent of affected parties (in certain cases), and comprehensive compensation and rehabilitation — significantly increase the time and cost of land acquisition for mining projects compared to the pre-2013 framework under the Land Acquisition Act, 1894. For large open-cast mining projects in densely populated mining districts of Jharkhand, Odisha, and Chhattisgarh, the land acquisition process — involving thousands of affected households and extensive social impact mitigation obligations — is often the single longest and most challenging element of the project development timeline.

### **3.4 Illegal Mining: Penalties and Enforcement**

---

Section 21 of the MMDR Act provides for stringent penalties for illegal mining — the extraction of minerals without a valid concession or in excess of the concession's permitted area or quantity. The MMDR Act (as amended in 2015 and 2021) imposes: a fine not exceeding five times the value of the mineral unlawfully mined, plus imprisonment up to five years; an "additional amount" for the recovery of the mineral value from the illegal miner, computed at the average sale price applicable to the mineral for the period of illegal mining; and confiscation of all vehicles, equipment, and materials used in illegal mining operations. The administration of penalties for illegal mining is primarily the responsibility of the state government's Mining Department, supported by the state police, and the IBM for technical assessment of the quantity illegally mined. The chronic problem of large-scale illegal mining — particularly of sand, bajri,

and minor minerals in river beds — has prompted several High Courts to direct comprehensive anti-illegal mining measures by state governments, including real-time tracking of mining vehicles, mandatory installation of weighbridges at mine exits, and GPS monitoring of trucks transporting minerals. The Supreme Court's intervention in several illegal mining cases — including the appointment of Central Empowered Committees to quantify illegal mining in Odisha and Karnataka and direct recovery of environmental compensation from illegal miners — has established that illegally mined minerals are subject to full market-value recovery, not merely the lower royalty-based assessments that some state governments had applied.

# Conditions of Mining Leases and Operational Compliance

*Statutory ML Conditions, Mining Plan Approval, MCDR 2017, IBM Inspections and Environmental Management Within the Lease Area*

---

## 4.1 Statutory Conditions of Every Mining Lease

---

Section 9 of the MMDR Act and the Third Schedule to the MCR 2016 specify the statutory conditions that are incorporated by operation of law into every mining lease, regardless of whether they are explicitly stated in the ML deed. These statutory conditions include: the obligation to pay royalty at the rates specified in the Second Schedule to the MMDR Act (as revised periodically by the Central Government through gazette notification); the obligation to maintain correct accounts of the minerals extracted and to allow inspection of these accounts by the state government and IBM; the prohibition on sub-leasing or transferring the ML without prior approval; the obligation to comply with all mining safety regulations and the MCDR; the obligation to prevent undue waste of minerals; the obligation to rehabilitate the land disturbed by mining operations in accordance with the Mine Closure Plan; and the obligation to comply with all applicable environmental laws and the conditions of Environmental Clearance and Forest Clearance. The statutory nature of these conditions means that they cannot be waived by agreement between the state government and the lessee — even if the ML deed fails to incorporate a statutory condition (through drafting oversight), the condition is deemed to form part of the ML by virtue of Section 9 and the Schedule. Breach of a statutory ML condition — as opposed to a general breach of the ML deed's non-statutory provisions — gives the state government a statutory right of termination under Section 4A of the MMDR Act, without requiring the lessor to establish that the breach was material under general contract law principles.

## 4.2 Mining Plan Approval and Modification

---

Every mining lease holder is required under the MCDR 2017 to prepare a Mining Plan — a comprehensive technical document prepared by a Qualified Person (a recognised mine planner with the prescribed qualifications) that specifies: the mining method (open-cast or underground, or combination); the annual production targets; the drilling and blasting plan; the overburden management plan; the water management and mine drainage plan; the environmental management measures (dust suppression, noise control, tree plantation); the mine safety provisions; and the progressive mine closure and land reclamation programme. The Mining Plan must be approved by the IBM before mining operations commence, and the lessee must thereafter conduct operations in accordance with the approved plan. Modifications to the Mining

Plans require fresh IBM approval — material changes to the mining method, production rate, or environmental management measures cannot be implemented without prior authorisation, ensuring that the regulatory oversight of the mine's development trajectory remains current throughout the lease period. For large mines with complex geology and evolving technology, the Mining Plan modification process is a recurring compliance requirement — as exploration advances and the mine's ore body characteristics become better understood, the optimal mining strategy typically evolves from the initial plan, requiring periodic plan updates and IBM approvals that must be built into the mine's planning and operational calendar.

### **4.3 Royalty Payment and State Revenue**

---

Royalty is the primary financial consideration payable by the mining lessee to the state government for the extraction of minerals, calculated on the quantity of mineral extracted and dispatched from the mine at the rates specified in the Second Schedule to the MMDR Act. The royalty rates in the Second Schedule are set by the Central Government and are periodically revised upward — the most recent comprehensive revision was in 2021, which increased royalty rates for most major minerals. Royalty is payable on the average sale price (ASP) of the mineral — the average of the sale prices realised by the lessee in the reference month — or on a specific rate per unit quantity for certain minerals, depending on the rate structure in the Second Schedule. The mechanism for computing and verifying ASP — which is self-assessed by the lessee in monthly royalty returns filed with the state Mines Department — is a significant source of dispute between lessees and state governments, with assessments challenged on grounds of inclusion or exclusion of specific price components, the applicable reference price for captive use (where the mineral is transferred to the lessee's own processing plant rather than sold at arm's length), and the timing of the royalty payment obligation in relation to the mineral's dispatch from the mine. In addition to royalty, the lessee pays: the bid premium (as committed in the auction); the Dead Rent (a minimum payment per hectare of the lease area that applies even in periods of no production, preventing lessees from holding non-productive leases without financial consequence); and DMF and NMET contributions calculated as percentages of the royalty amount.

# Transfer, Renewal, Termination and Lapse of Concessions

*ML Transfer Procedures, Pre-2015 Renewal Framework, Statutory Termination Grounds, Deemed Lapse Provisions and Exit from Mining Concessions*

---

## 5.1 Transfer of Mining Leases

---

The transfer of a mining lease — whether through assignment, sale, merger, or restructuring — requires prior approval under Section 12B of the MMDR Act. The transfer approval process differs for pre-2015 and post-2015 (auction-awarded) leases: for auction-awarded MLs, the 2021 Amendment introduced a "deemed approval" provision under which a transfer to an entity meeting the eligibility criteria is deemed approved if the state government does not communicate any objection within 90 days of the transfer application (with Central Government consultation completed). For pre-2015 leases, the transfer procedure under MCR 2016 requires: the transferor and transferee to jointly apply to the state government; the state government to verify the transferee's eligibility (financial and technical qualifications); the Central Government's prior concurrence (for specified minerals or large-area leases); and payment of transfer fee. The ML transfer mechanism is commercially important in the context of: mining project M&A (where a company acquiring a mining company or its assets needs to obtain transfer approvals as part of the transaction conditions); corporate restructuring (where mining concessions held by one group company need to be transferred to another for operational efficiency); and project financing (where the project company holding the ML needs to create a mortgage or charge over the ML rights as security for loans, which requires the state government's consent under Section 12A of the MMDR Act for the creation of the security interest). Legal due diligence on mining ML transfers must verify: the validity and good standing of the existing ML; the absence of any pending termination or lapse proceedings; the regulatory status of all subsidiary approvals (Environmental Clearance, Forest Clearance); and the accuracy of all production and royalty records that the transferee is inheriting as the new lessee.

## 5.2 Renewal of Pre-2015 Mining Leases

---

Mining leases granted before the 2015 Amendment's cut-off date (January 12, 2015) that had not been renewed before that date were subject to a "deemed lapse" provision under the 2015 Amendment — Section 8A of the MMDR Act provided that all such leases would lapse on 31 March 2020 (extended by the 2021 Amendment to 31 March 2023 in some states) unless renewed by the state government through the auction route. This deemed lapse provision effectively converted all legacy pre-2015 MLs into time-limited expiring rights that must be auctioned upon expiry — a fundamental change from the pre-2015 framework where MLs were

routinely renewed by administrative order for successive terms without any competitive process. The statutory expiry and auction framework for legacy leases has generated substantial litigation, with existing lessees challenging the constitutionality and fairness of the deemed lapse provisions, and competing applicants and state governments seeking to enforce the auction requirement against lessees who sought injunctions to continue operations beyond the lapse date. The Supreme Court has generally upheld the deemed lapse and mandatory auction provisions, recognising that the transition from a discretionary grant to an auction-based system required the termination of legacy concessions at a defined point to enable re-auction on competitive terms.

### **5.3 Termination of Mining Leases**

---

The state government has statutory power to terminate a mining lease under Section 4A of the MMDR Act on specified grounds: the lessee fails to pay royalty, dead rent, or other dues within the prescribed period; the lessee fails to commence production within two years of ML execution; the lessee fails to produce for a continuous period of two years after having commenced production; the lessee commits a material breach of any condition of the ML; or the lessee is convicted of an offence under the MMDR Act. Before exercising the termination power, the state government is required to issue a show-cause notice to the lessee, providing an opportunity to remedy the default or make representations against termination. The courts have consistently held that the show-cause notice and opportunity to be heard are mandatory pre-conditions for valid ML termination — a termination order issued without following the prescribed procedure is liable to be quashed on grounds of violation of natural justice principles under Article 14 of the Constitution. The jurisprudence on ML termination has also established that the state government's power under Section 4A is subject to judicial review not only for procedural irregularity but also for substantive proportionality — a termination that is disproportionately severe relative to the breach (for instance, terminating an ML for a minor non-payment that was quickly remedied) may be set aside as arbitrary under Article 14 even if the procedural requirements were formally met.

### **5.4 Mine Closure: Legal Obligations and Progressive Rehabilitation**

---

The Mine Closure framework under the MCDR 2017 requires all major mineral mining lessees (above specified production thresholds) to prepare and implement a Progressive Mine Closure Plan (PMCP) — a document integrated into the Mining Plan that specifies how each successive part of the mine area will be progressively reclaimed as mining operations in that area are completed, rather than waiting until the end of the ML period for all reclamation work. The PMCP must be approved by IBM as part of the Mining Plan approval process, and lessees must make annual contributions to a dedicated Mine Closure Fund (held in an escrow account) at the rate of Rs. 100 per hectare per year of the disturbed area within the lease, progressively building a financial reserve sufficient to complete the closure work. The mine closure obligations

extend beyond the lease area to address the mining operation's offsite environmental impacts: water courses affected by mine drainage, roads disturbed by mining traffic, and vegetation cleared for access must all be addressed in the PMCP's closure provisions. For abandoned mines — legacy operations abandoned before the Mine Closure framework was established — the Central Government's National Mine Closure Guidelines and the IBM's Mine Rehabilitation Schemes provide a framework for government-funded remediation of the worst environmental legacies of historical mining, funded in part from the NMET contributions and in part from general budget allocations for environmental remediation.

**Booklet II Key Takeaways:** The post-2015 auction-based concession framework represents a fundamental departure from India's historical discretionary concession grant system. The three concession types — PL, ML, and CL — serve distinct stages of the mineral development lifecycle, with the CL's integrated exploration-to-mining guarantee being the most commercially significant innovation for exploration investors. The auction process (through MSTC platform, with premium-over-royalty as the bid parameter) provides transparency and competition that the pre-2015 system lacked. The statutory ML conditions, Mining Plan approval requirement, and Mine Closure obligations collectively define the lessee's operational and financial obligations throughout the concession period. Transfer, termination, and lapse provisions determine the legal risks associated with mining concession investments and must be thoroughly understood by investors, financiers, and their legal advisors.

# Mining Concessions: Advanced Practice Issues

*Project Finance Security, Auction Disputes, ML Drafting Best Practices, Artisanal Mining and New Concession Categories*

---

## B.1 Project Finance and Mining Lease Security

---

Mining lease project finance — the structured lending to a mine project company, secured primarily by the project's assets (the ML and related rights) and its anticipated cash flows — involves specific legal challenges that arise from the nature of mining leases as statutory grants rather than freely transferable property assets. Section 12A of the MMDR Act permits the mortgage or creation of a charge over a mining lease with the prior consent of the state government — making the government's consent a prerequisite for using the ML as security for project loans. The practical implications of this consent requirement for mining project finance are: lenders cannot unilaterally enforce their security over the ML (by direct transfer of the lease to a new operator) without going through the government consent process; the government may impose conditions on its consent to the mortgage that limit the lender's enforcement options (for instance, by requiring that any transferee upon enforcement meet the same eligibility criteria as the original lessee, or that any enforcement be preceded by notification to the state government); and the risk of government refusal of consent to mortgage — or to any enforcement action by the lenders — creates a layer of political risk in addition to the commercial risk of the mining project. Sophisticated mining project lenders address these challenges through a combination of: pre-negotiated government consent agreements (obtained before loan disbursement, specifying the government's obligations if enforcement becomes necessary); step-in rights agreements (enabling lenders to appoint an operator to run the mine if the borrower defaults, using the security of the consented mortgage); and political risk insurance (from ECGC or multilateral development bank insurance schemes) to mitigate the risk of government non-cooperation with enforcement.

The financing of auction-awarded mining leases — particularly in the 3-7 year period between ML execution and the commencement of production during which the mine owner incurs heavy capital expenditure (mine development, plant and equipment, infrastructure) without any revenue — is one of the most demanding project finance challenges in the Indian mining sector. Lenders must assess and price: the risk that the EC and FC regulatory clearances required before mining can commence will be delayed beyond the projected timeline (creating extended periods of debt service without production revenue); the risk that the bid premium committed in the auction will prove commercially unrealistic at the mineral prices prevailing when production commences (particularly for auctions conducted during commodity price peaks that subsequently correct); and the risk that the mine's mineral resource estimates (on which the

financial model is based) will prove less accurate than projected (reflecting the inherent uncertainty of geological resource estimates). The risk management framework for mining project finance in India — combining thorough pre-finance due diligence (geological, legal, technical, and environmental), robust project documentation (ML deed review, regulatory approvals status, supply and off-take agreements), and appropriate political risk mitigation — is a specialised practice that experienced mining finance practitioners and their legal advisors must continuously adapt to the evolving MMDR Act regulatory landscape.

## **B.2 Auction Disputes: Pre-Award and Post-Award Challenges**

---

Mineral block auctions under the MMDR Act and Mineral Auction Rules generate a significant volume of pre-award and post-award legal disputes that mining law practitioners must navigate. Pre-award disputes typically involve: challenges by unsuccessful bidders to the qualification criteria specified in the auction IM (arguing that the criteria are unreasonably restrictive and have been designed to exclude specific bidders, or that certain criteria do not serve any legitimate regulatory purpose); challenges to the geological data or resource estimates provided in the IM (arguing that the data is misleading and has induced bidders to offer uneconomic bid premiums based on an inflated mineral resource); challenges to the auction process itself (arguing that the electronic bidding was manipulated, that bidders with inside information gained an unfair advantage, or that the auction was conducted without following the prescribed procedure). Post-award disputes typically involve: challenges by the unsuccessful highest bidder to the disqualification of its bid (arguing that the state government incorrectly determined the bid to be non-responsive or the bidder to be ineligible); challenges by the awarded bidder to the state government's failure to execute the ML within the specified timeline (seeking mandamus to compel ML execution); and challenges by the state government to the highest bidder's refusal to pay the upfront amount or to fulfil the LoI conditions within the specified period. High Courts in Odisha, Jharkhand, and Chhattisgarh have developed a significant body of jurisprudence on mineral auction disputes, generally applying a high threshold for interfering with the auction process (recognising the public interest in maintaining the integrity and finality of competitive bidding) while ensuring that the state government follows the prescribed procedure and does not arbitrarily disqualify eligible bids.

## **B.3 Artisanal and Small-Scale Mining: Legal Framework**

---

Artisanal and small-scale mining (ASM) — the extraction of minerals by individual miners, small cooperatives, or family-based units using manual or low-mechanisation methods — is a significant economic activity in India's mineral-rich states, providing livelihoods for hundreds of thousands of people in rural mining communities. The MMDR Act's current framework does not specifically address ASM: small-scale and artisanal miners are subject to the same concession requirements as large industrial operators (they cannot extract minerals without a valid ML or the equivalent, even for small quantities), but they typically lack the technical, financial, and

documentation capabilities to participate in the formal ML auction process. This creates a legal paradox: the vast majority of ASM activity in India is technically illegal (conducted without valid concessions), but criminalising or suppressing ASM would destroy the livelihoods of vulnerable rural communities who have no practical alternative to informal mining. Several state governments have attempted to address this paradox through minor mineral quarry lease provisions (which provide simplified lease processes for small-scale stone and sand extraction) and through cooperative-based ML systems (where tribal or community cooperatives can hold MLS subject to simplified qualification requirements). The Ministry of Mines has discussed introducing a specific ASM-friendly category of mineral concession into the MMDR Act framework — potentially a "Small Scale Mining Permit" with simplified application procedures, lower financial requirements, and appropriate technical assistance — that would provide formal legal status to small-scale miners while maintaining safety and environmental standards appropriate for their scale of operations.

**Booklet II – Complete Summary:** India's mining concession framework has been transformed from a system of administrative discretion to a transparent, competitive, and rule-based auction framework that serves both public revenue maximisation and private investment security objectives. The three concession types (PL, ML, CL) provide a comprehensive toolkit for different stages and scales of mineral development. Project finance for auction-awarded mining leases requires sophisticated navigation of the Section 12A security consent requirement and the pre-production regulatory risk. Auction disputes — both pre-award and post-award — are an increasingly important area of mining law practice as the auction framework generates competitive tension and high financial stakes. The mining lease's statutory conditions, Mining Plan obligations, and Mine Closure requirements define the operational compliance landscape throughout the concession period.