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Minerals (Transfer of Mining Lease Granted Otherwise than through Auction for Captive Purpose) Rules, 2016

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MINISTRY OF MINES

NOTIFICATION

New Delhi, the 30th May, 2016

G.S.R. 560(E).—In exercise of the powers conferred by clause (qqja) of sub-section (2) of section 13 read with the proviso to sub-section (6) of section 12A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), the Central Government hereby makes the following rules, namely:-

- 1. Short title and commencement:** (1) These rules may be called the Minerals (Transfer of Mining Lease Granted Otherwise than through Auction for Captive Purpose) Rules, 2016.
(2) They shall come into force on the date of their publication in the Official Gazette.
- 2. Definition.-** (1) In these rules, unless the context otherwise requires, -
 - (a) “**Act**” means the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957);
 - (b) “**transfer charges**” means the amount to be paid from time to time by the transferee to the State Government as notified in accordance with the provisions of sub-rule (1) of rule 6;
 - (c) “**transferee**” means a person to whom a mining lease granted otherwise than through auction to be used for captive purpose is to be transferred;
 - (d) “**transferor**” means a person who holds the mining lease to be transferred, which was granted otherwise than through auction and is being used for captive purpose;
 - (e) “**used for captive purpose**” means the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee;
 - (f) “**value of mineral dispatched**” shall have the meaning as specified in sub-rule (2) of rule 8 of the Mineral (Auction) Rules, 2015.(2) The words and expressions used in these rules but not defined herein shall have the same meaning as assigned to them in the Act or rules made thereunder.
- 3. Applicability.-** (1) These rules shall apply to transfer of a mining lease granted otherwise than through auction which is being used for captive purpose.
- 4. Conditions for transfer.-** (1) No transfer of mining lease granted otherwise than through auction being used for captive purpose shall be permitted except in accordance with the provisions of these rules.
(2) The transfer of a mining lease granted otherwise than through auction shall be permitted only where the entire quantity of mineral extracted from such mining lease is being used in a manufacturing unit owned by the lessee.
(3) Any approval for transfer of a mining lease granted otherwise than through auction which is being used for captive purpose shall be subject to the following conditions, namely:-
 - (a) all consents, approvals, permits, no-objections and the like as may be required under applicable laws for conducting mining operations, and which were obtained by the transferor, shall stand transferred *mutatis mutandis* to the transferee;
 - (b) the transferee has accepted all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such mining lease;
 - (c) on and from the date of transfer of the mining lease, the transferee shall be liable to the Central Government and the State Government with respect to any and all liabilities relating to the mining lease.

- (d) the transferee shall ensure that the entire quantity of mineral including rejects or tailings or slimes or dumps or overburden extracted from the mining lease shall be used exclusively for captive purpose and shall not be sold or exported; and
- (e) on and from the date of transfer of the mining lease, the transferee shall be bound by the provisions of the Act and the rules made thereunder.

5. Transfer of mining lease.— (1) The holder of a mining lease, granted otherwise than through auction which is being used for captive purpose, may apply to the State Government for transferring the mining lease to any person satisfying the conditions specified in sub-section (1) of section 5 of the Act, in the format given in **Schedule I** appended to these rules.

(2) The State Government shall, within a period of ninety days of receipt of the application made under sub-rule (1), convey its decision to approve or reject such application for transfer to both the transferor and the transferee:

Provided that in case the State Government decides to reject the application, the State Government shall communicate to both the transferor and the transferee, the reasons for its decision to reject the application for transfer of the mining lease:

Provided further that if the State Government does not convey its decision for such transfer within a period of ninety days from the date of receiving an application under sub-rule (1), the State Government shall be deemed to have approved such transfer:

Provided also that no such transfer of a mining lease shall be made in contravention of any of the conditions subject to which the mining lease was originally granted.

(3) The State Government shall, within fifteen days of its approval of the application for transfer of mining lease in sub-rule (2), based upon an estimation of the value of estimated resources of the mining lease, raise a demand upon the transferee for making an upfront payment of an amount equal to 0.50 per cent. of the value of the estimated resources.

(4) The upfront payment referred to in sub-rule (3) shall be made in one lump sum within a period of thirty days from the date of receipt of demand for making the upfront payment by the State Government.

(5) The upfront payment shall be adjusted in full against the amount payable under sub-rule (1) of rule 6.

(6) The transferee shall, within fifteen days of making the upfront payment in sub-rule (4), sign the Mine Development and Production Agreement in the format published by the Government of India in the Ministry of Mines, *vide* Part I, Section-I of the Gazette of India, dated the 2nd July, 2015 with the State Government.

(7) The transferee shall, within fifteen days of signing the Mine Development and Production Agreement in sub-rule (6), provide a performance security to the State Government in the form of a bank guarantee as per the format given in **Schedule II** appended to these rules or as a security deposit, for an amount equivalent to 0.50 per cent. of the value of estimated resources, and the performance security may be invoked by the State Government as per the terms and conditions of the Mine Development and Production Agreement.

(8) The performance security shall be adjusted every five years so that it continues to correspond to 0.50 per cent. of the reassessed value of estimated resources.

(9) The transferor and the transferee shall jointly submit a duly registered deed for transfer of mining lease in the format given in **Schedule III** appended to these rules within a period of thirty days of fulfillment of the conditions specified in sub-rules (4), (6) and sub-rule (7).

(10) If a duly registered transfer deed is not submitted to the State Government as referred to in sub-rule (9), then the approval given by the State Government for transfer of mining lease in sub-rule (2) shall be deemed to have become null and void.

(11) The date of commencement of the transfer deed shall be the date on which a duly executed transfer deed is registered.

(12) The State Government shall execute a mining lease deed with the transferee in the format given in Schedule VII appended to the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, within ninety days of registration of the deed for transfer of mining lease referred in sub-rule (9).

6. Transfer charges and other payments.— (1) Whenever royalty is payable in terms of the Second Schedule to the Act, the transferee shall in addition to the royalty, pay to the State Government as transfer charges the amount given in **Schedule IV** appended to these rules, as a per cent. of the royalty.

(2) The transferee shall make payments of the transfer charges as referred to in sub-rule (1), to the State Government simultaneously with payments of royalty.

(3) The transferee shall pay royalty or dead rent to the State Government as specified in the Act and the rules made thereunder.

(4) The transferee shall contribute such amounts to the designated account of the National Mineral Exploration Trust as specified in rule 7 of the National Mineral Exploration Trust Rules, 2015, and the designated account of the District Mineral Foundation as specified in the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015.

7. The State Government shall inform the Controller General, Indian Bureau of Mines in writing about the transfer made under rule 5.
8. The State Government may, by an order in writing, terminate the mining lease, if the holder of the mining lease has in the opinion of the State Government committed a breach of any of the provisions of these rule or has transferred such lease or any right, title, or interest therein otherwise than in accordance with the provisions of the Act or the rules made thereunder, as the case may be:

Provided that no such order shall be made without giving the holder of the mining lease a reasonable opportunity of stating his case.

SCHEDULE I

[See sub-rule (1) of rule 5]

(FORMAT OF APPLICATION FOR TRANSFER OF MINING LEASE)

To

[Address]

I/We request for seeking transfer of mining lease.

S. No.	Item Detail	Particulars
1.	Name of the transferor	
2.	Address of the transferor	
3.	Name of the transferee	
4.	Address of the transferee	
5.	Mining lease number	
6.	Date of registration of mining lease	
7.	Whether the transferee is eligible to hold the mining lease in accordance with the provisions of the Act and the rules made thereunder?	Yes/No
8.	The consideration payable by the transferee	
9.	Whether the transferee is agreeable to accept all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such a mining lease.	Yes/No

We do hereby declare that the particulars furnished above are correct and am/are ready to furnish any other details, as may be required by you.

The transferee and transferor also undertake to comply with the provisions of section 12A and the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 and the Minerals (Transfer of Mining Lease Granted Otherwise than through Auction for Captive Purpose) Rules, 2016 with respect to the transfer of the mining lease.

Yours faithfully,

Transferor

.....

Transferee

.....

Place:

Date:

Instructions to applicants:

- (a) The application must be signed by a duly authorized representative of the applicants, in case the applicant is a company. In case the applicant is an individual, the applicant must personally sign the application. In case of a firm or association of individuals, all the partners/members constituting the firm or association of individuals shall sign the application.
- (b) The corporate authorisation of the authorised signatory of the applicant (which is a company) must be enclosed with the application. Any change in such corporate authorisation must be immediately intimated to the State Government.
- (c) Documentary evidence to confirm eligibility of the transferee to hold the mining lease in accordance with the provisions of the Act and the rules made thereunder, must be submitted along with the application.

SCHEDULE II

[See sub-rule (7) of rule 5]

(FORMAT OF BANK GUARANTEE FOR PERFORMANCE SECURITY)

[Reference number of the bank]

[Date]

To

The Governor of [Name of State]

[address]

WHEREAS

- A. [Name] incorporated in India under the Companies Act, [1956/2013] with corporate identity number [CIN of the Transferee], whose registered office is at [address of registered office], India and principal place of business is at [address of principal place of business, if different from registered office]¹ (the “**Transferee**”) is required to provide an unconditional and irrevocable bank guarantee for an amount equal to INR [figures] (Indian Rupees [words]) as a performance security valid until [date of expiry of performance bank guarantee] (“**Expiry Date**”).

Mentioned only for companies, the format to include individuals / other applicants also

- B. The Performance Security is required to be provided to **The Governor of [Name of State]**, (the “**State**”) for discharge of certain obligations under the [reference to the principal documents –prospecting licence/mining lease, mine development and production agreement] dated, [date] with respect to [particulars of concession] (collectively the “**Concession Document**”).
- C. We, [name of the bank] (the “**Bank**”) at the request of the Transferee do hereby undertake to pay to the State an amount not exceeding INR [figures] (Indian Rupees [words]) (“**Guarantee Amount**”) to secure the obligations of the Transferee under the Concession Document on demand from the State on the terms and conditions herein contained herein.

NOW THEREFORE, the Bank hereby issues in favour of the State this irrevocable and unconditional payment bank guarantee (the “**Guarantee**”) on behalf of the Transferee in the Guarantee Amount:

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the State without any demur, reservation, caveat, protest or recourse, immediately on receipt of first written demand from the State, a sum or sums (by way of one or more claims) not exceeding the Guarantee Amount in the aggregate without the State needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the State and Transferee on any matter whatsoever. The Bank undertakes to pay to the State any money so demanded notwithstanding any dispute or disputes raised by the Transferee in any suit or proceeding pending before any court or tribunal relating thereto the Bank’s liability under this present being absolute and unequivocal.
2. The Bank acknowledges that any such demand by the State of the amounts payable by the Bank to the State shall be final, binding and conclusive evidence in respect of the amounts payable by Transferee to the State under the Concession Document.
3. The Bank hereby waives the necessity for the State from demanding the aforesaid amount or any part thereof from the Transferee and also waives any right that the Bank may have of first requiring the State to pursue its legal remedies against the Transferee, before presenting any written demand to the Bank for payment under this Guarantee.

¹ Note: To be modified if the Transferee is not a company.

4. The Bank further unconditionally agrees with the State that the State shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
- (i) vary and/or modify any of the terms and conditions of the Concession Document;
 - (ii) extend and / or postpone the time for performance of the obligations of the Transferee under the Concession Document, or
 - (iii) forbear or enforce any of the rights exercisable by the State against the Transferee under the terms and conditions of the Concession Document.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the State or any indulgence by the State to the Transferee or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever.
6. The Bank agrees that State at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the Transferee.
7. The Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that specified in the Concession Document and that it shall continue to be enforceable till all the obligations of the Transferee under or by virtue of the said Concession Document with respect to the Performance Security have been fully paid and its claims satisfied or discharged or till the State certifies that the terms and conditions of the Concession Document with respect to the Performance Security have been fully and properly carried out by the Transferee and accordingly discharges this guarantee. Notwithstanding anything contained herein, unless a demand or claim under this guarantee is made on the Bank in writing on or before the Expiry Date the Bank shall be discharged from all liability under this guarantee thereafter.
8. The payment so made by the Bank under this Guarantee shall be a valid discharge of Bank's liability for payment thereunder and the State shall have no claim against the Bank for making such payment.
9. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts at the State of [respective State].
10. The Bank has the power to issue this Guarantee in favour of the State. This guarantee will not be discharged due to the change in the constitution of the Bank
11. The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the State in writing.
12. The State may, with prior intimation to the Bank, assign the right under this Guarantee to any other departments, ministries or any governmental agencies, which may act in the name of the Governor. Save as provided in this Clause 12, this Guarantee shall not be assignable or transferable.
13. Notwithstanding anything contained herein,
- a. the liability of the bank under this bank guarantee shall not exceed the Guarantee Amount.
 - b. This bank guarantee shall be valid up to the Expiry Date.
14. The Bank is liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only if the State serves upon the Bank a written claim or demand on or before the Expiry Date.

Dated the [day] day of [month] [year].

In witness whereof the Bank, through its authorized officer, has set its hand and stamp.

(Signature)

(Name and Designation)

(Bank Stamp)

SCHEDULE III

[See sub-rule (9) of rule 5]

(FORMAT OF DEED FOR TRANSFER OF MINING LEASE)

The Transfer Deed (“**Deed**”) is made on this [day] day of [month], [year] between:

1. (*Name of the individual with address and occupation*) (hereinafter referred to as the "**Transferor**" which expression shall where the context so admits be deemed to include his heirs, executors, administrators, representatives and permitted assigns); or

Name of the association of individuals through (*Name of member with address and occupation*) and (*Name of member with address and occupation*) or (*Name of the representative with address and occupation who has been duly authorised by all members*) (hereinafter referred to as the "**Transferor**" which expression shall where the context so admits be deemed to include their respective heirs, executors, administrators, representatives and their permitted assigns); or

Name of the partnership firm through (*Names and addresses of all the partners*) or (*name of the representative with details of address and occupation who has been duly authorised by all partners*) all carrying on business in partnership under the firm name and style of (*Name of the firm*) registered under the Indian Partnership Act, 1932 (9 of 1932) and having their registered office at [address] (hereinafter referred to as the "**Transferor**" which expression where the context so admits be deemed to include all the said partners, their respective heirs, executors, legal representatives and permitted assigns); or

(*Name of Company*), a company registered under the (*Act under which incorporated*) and having its registered office at [address] represented by (*Name of the Director with address who has been authorised by the Board of Directors*) (hereinafter referred to as the "**Transferor**" which expression shall where the context so admits be deemed to include its successors and permitted assigns) of the first part;

And

2. (*Name of the individual with address and occupation*) (hereinafter referred to as the "**Transferee**" which expression shall where the context so admits be deemed to include his heirs, executors, administrators, representatives and permitted assigns); or

Name of the association of individuals through (*Name of member with address and occupation*) and (*Name of member with address and occupation*) or (*Name of the representative with address and occupation who has been duly authorised by all members*) (hereinafter referred to as the "**Transferee**" which expression shall where the context so admits be deemed to include their respective heirs, executors, administrators, representatives and their permitted assigns); or

Name of the partnership firm through (*Names and addresses of all the partners*) or (*name of the representative with details of address and occupation who has been duly authorised by all partners*) all carrying on business in partnership under the firm name and style of (*Name of the firm*) registered under the Indian Partnership Act, 1932 (9 of 1932) and having their registered office at [address] (hereinafter referred to as the "**Transferee**" which expression where the context so admits be deemed to include all the said partners, their respective heirs, executors, legal representatives and permitted assigns); or

(*Name of Company*), a company registered under the (*Act under which incorporated*) and having its registered office at [address] represented by (*Name of the Director with address who has been authorised by the Board of Directors*) (hereinafter referred to as the "**Transferee**" which expression shall where the context so admits be deemed to include its successors and permitted assigns) of the first part;

And

3. The Governor of [State] (hereinafter referred to as the "**State Government**" which expression shall where the context so admits be deemed to include the successors and assigns) of the third part.

WHEREAS:

- A. The Transferor has been granted a mining lease by the State Government in respect of which the State Government and the Transferor have executed a lease deed dated [date] and registered as no. [number] on [date] at the office of the Sub-Registrar of [address] in connection with the mining lease (collectively "**Concession Documents**") and the same is attached hereto as **Annexure A**.
- B. In terms of the Concession Documents, the Transferor is entitled to search for, win and work mines and minerals in respect of (*Name of minerals*) in the lands described in the schedules to the Concession Documents (more particularly set out in **Annexure B**), for the term and subject to the payment of the rents and royalties and observance and performance of the Transferor's covenant and conditions in the Concession Documents including a covenant not to transfer the mining lease in violation of applicable laws.

- C. The Transferor has, pursuant to its transfer application letter dated [*date*], requested the State Government for its approval in connection with transfer of the Mining Lease to the Transferee.
- D. The State Government has, pursuant to its letter dated [*date*] approved the transfer application of the Transferor subject to compliance by the Transferee of the terms and conditions contained in this Deed.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Concession Documents.
2. The Transferee hereby covenants with the State Government that from and after the transfer and assignment of the mining lease, the Transferee shall be bound by, and be liable to perform, observe and conform and be subject to all the provisions of all the covenants, stipulations and conditions contained in the Concession Documents in the same manner in all respects as if the mining lease had been granted to the Transferee as the lessee thereunder and he/ it had originally executed the Concession Documents as such.
3. It is further hereby agreed and declared by the Transferor of the one part and the Transferee of the other part that:
 - 3.1. The Transferee and the Transferor declare that the Transferee meets and shall continue to meet all the eligibility conditions which were required to be met by the Transferor for grant of the mining lease.
 - 3.2. The Transferor and the Transferee declare that they have ensured that the mineral rights over the area for which the mining lease is being transferred vest in the State Government.
 - 3.3. The Transferee acknowledges that he/ it has received a copy of, and has read and understands the Concession Documents, and covenants, agrees and confirms that it shall be bound by all provisions of the Concession Documents as if it was an original party thereto.
 - 3.4. The Transferor hereby declares that he/ it has not assigned or in any other manner transferred the mining lease now being transferred and that no other person or persons has any right, title or interest where under in the present Mining Lease being transferred.
 - 3.5. The Transferee hereby declares that he/ it has accepted all the conditions and liabilities which the Transferors was having in respect of such mining lease.
 - 3.6. The Transferor has supplied to the Transferee the original or certified copies of all plans of abandoned workings in the area and in a belt sixty five metres wide surrounding it.
 - 3.7. The Transferee hereby further declares that as a consequence of this transfer, the total area while held by him/ it under mineral concessions are not in contravention of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 or the rules made thereunder.
 - 3.8. The Transferor has paid all the rent, royalties, and other dues towards the State Government till the date, in respect of the mining lease.

In witness whereof the parties hereto have signed on the, date and year first above written.

For and on behalf of the State Government:

Name:

Designation:

For and on behalf of the Transferor:

Name:

For and on behalf of the Transferee:

Name:

ANNEXURE A:

Copy of Concession Documents

ANNEXURE B:

Location and area of the Mining Lease

[*Particulars of area to be provided*]

SCHEDULE IV

[*See sub-rule (1) of rule 6*]

AMOUNT OF TRANSFER CHARGES

Transfer charges payable by the transferee shall be an amount equal to eighty per cent. of the royalty paid in terms of Second Schedule to the Act.

[F. No. 1/2/2016-M.VI]

R. SRIDHARAN, Addl. Secy.