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Introduction

I represent Greenfields Exploration Limited, an Australian mineral explorer and project developer. Since 2017 we have been engaged in several projects within Greenland. In 2019 Greenfields Exploration was awarded the Prospector and Developer of the Year Award.

Our projects focus on ambitious early stage 'greenfields' projects with little or no prior geological work. Our goal is to unlock belt-scale opportunities for mineral projects at the nation-building scale.

We thank the MMR and EAMRA for the opportunity to comment on the 'Bill Greenland Parliament Act on Mineral Activities' (the ***Bill***) to amend the Mineral Resources Act, Greenland Parliament Act No. 7 of 7 December 2009 (the ***Act***).

Greenfields has no comment on most of the proposed changes within the Bill, which are largely administrative and/or technical amendments to a legislative system that already works quite well.

However, there are several proposed changes within the Bill which, in our opinion, deserve to be reconsidered. The changes, if enacted, would in our view negatively impact the development of the mineral resources industry within Greenland. These changes would run counter to the stated purpose of '(making) the regulatory environment clearer and more investor-friendly, with an emphasis on meeting international standards and being competitive with the legislation of other mining countries'.

At the outset, in our view the consultation process could have been made easier by circulating a version of the Bill which highlighted any provisions which are changed from the Act. A comparative legislative analysis is a significant time burden, particularly for those groups which may not have access to legal expertise.

Nonetheless, our key areas of concern are discussed below.

1. Public hearing process for exploration licences – section 35

We are concerned that the new rules around the public hearing process for exploration licences go too far and will restrict future applications for exploration within Greenland.

The existing rules under the Act allow the MLSA to grant an exploration licence without a period of public consultation. The MLSA, as the organization best placed to assess the suitability of a party to hold an exploration licence, is empowered to assess applications to perform these very preliminary activities. At this stage of a project's development, there is extremely high geological and project risk – very little is known about the area and the investment is at significant risk. The lower administrative threshold aligns with the higher project risk.

Under section 35(1) of the Bill, all applications for an exploration licence will be subject to a public consultation process lasting 21 days. This consultation applies regardless of whether the project has any significant social or environmental impact.

We note that the six-week appeals period for decisions generally remains largely unchanged. This means that there are at least nine (3+6) weeks between an application and a final decision. A conservative investor will not begin work on a project until that nine-week period has been completed. Under the Bill, any applicant must be prepared to expend the significant time and resources in answering questions a public consultation. These questions may be asked by *anyone*. For the smaller companies which tend to be first mover licence applicants in Greenland, this is a significant burden on a very early-stage project.

We note the comment in the explanatory notes that:

> *It is important that citizens and other interested parties are given an opportunity to object at this stage in the process as a licensee under an exploration licence, see section 34, is entitled to be granted a mineral exploitation licence, see section 41, if the requirements of this provision are satisfied.*

With respect, we cannot follow this reasoning and, in our opinion, the significant burden of a public consultation has been incorrectly placed too early in the project lifecycle under the Bill. A licence holder is *not* automatically entitled to an exploitation licence under section 41, because there are further stages at which approval must be granted:

- the full ‘terms of reference document’ process under s44 must be completed;
- the Government is entitled to make a decision under s41(2) on whether the requirements of s41(1) have been met. This decision appears to not be subject to any qualifications or limitations – it is solely a decision for the Government of Greenland;
- section 43(1) states that an exploitation licence *may* be granted if the criteria are fulfilled. This is another unqualified exercise of discretion on the part of the government;
- under section 126 the Government of Greenland has an effectively unlimited discretion on whether to award a licence on any grounds.

There are at least four stages between the granting of an exploration licence and the granting of an exploitation licence where interested parties can object and/or the Government of Greenland can refuse to grant the exploitation licence. Once an exploration licence is granted, this is not the ‘point of no return’.

For a project developer, a non-exclusive prospecting licence is commercially of very little value. The only way to attract investment is with an exclusive exploration licence. As a result, developers will apply for this licence before making a site visit, based purely on a ‘desktop study’. To the best of Greenfields’ knowledge, this has been the case with every new licence in Greenland in recent memory.

The new Bill would effectively mean that every exploration licence applicant would need to go through a full public consultation process and answer detailed questions about their project before even visiting the site or confirming that there is any potential in the project. Recent examples suggest that there will be groups within and outside Greenland who will strongly object to every licence application. There are no rules for the scope of the consultation other than the 21-day period. Of course, citizens are entitled to have their viewpoint, and there is a time when they can do so under the existing rules. Recent history suggests that this feedback can be quite effective. Ultimately, though, the MLSA needs to take the responsibility to make some decisions about who is entitled to hold an exploration licence.

We note that under the current regime, the MLSA already reviews all applicants as part of the licensing process. Applicants are required to state their credentials to the satisfaction of MLSA. Additionally, the field programs themselves are subject to quite detailed review. Adding an additional public consultation is a duplication of the reviewing process at this early stage.

We assume that the change proposed in the Bill was made in pursuit of Priority Area 3 of the Mineral Strategy, ‘simplified transition from exploration to exploitation’. Unfortunately, it does not simplify any of these matters while adding significantly to the upfront burden elsewhere. The MLSA review process for an exploration licence, and the public consultation process for an exploitation licence are still there, and under the Bill there is another significant public consultation process which must be completed even before the developer has a good idea of whether the project has any potential.

At the risk of oversimplification, the proposed position of the Bill on this matter may have these effects:

- Every mineral project will need to be prepared to face coordinated and enthusiastic opposition from the very first stage of the project's life.
- Before a single geologist has set foot on the ground, or a single study is done, the developer will be in a position where they need to prove to the public's satisfaction that nebulous standards will be met. Even with the best intentions, this is not possible. The developer doesn't know where the prospect even is, let alone what an eventual mine might look like.
- Incoming investors will see that they can expect a period of at least 9 weeks from application before finding out whether the licence is *actually* approved. A prudent investor would not invest any money in a field campaign until that 9-week period has expired (though they must set aside money for a public consultation and public relations campaign before even setting foot on the ground).
- In a nation with short field seasons, high cost of exploration, and extremely long lead times required for field work, this delay might be enough to lose one season of exploration. Alternatively, an incoming investor might simply look at the upfront burden and decide to invest elsewhere.

2. Special Exploration Licences

We note that the provisions for Special Exploration Licences (***SELs***) are currently contained within the Standard Terms for Exploration Licences rather than within the Act. Greenfields has been granted several SELs and the improved terms of these licences are in our view one of the largest benefits of exploring in Greenland.

The SELs are effectively a fourth category of licence as they are quite different to a standard Exploration Licence. For new entrants into Greenland reviewing the Bill, it may not be clear how the SELs tie in with the wider regime.

The Bill provides an opportunity for the rules around SELs to be clearly set out in their own Part of the Bill to make it clear how these licences operate.

3. De facto management within Greenland – section 45(2)

Section 45(2) of the Bill creates a new requirement that the holder of an exploitation licence must have its *de facto* head office, the place from where the company is managed, in Greenland. While we support that any exploitation licence holder should have a strong and active engagement with the Greenlandic community, this requirement may be unintentionally too restrictive.

The prospects within Greenland are enticing enough to attract globally significant mining companies – and indeed, they have already done so. These companies are likely to be incorporated and managed within the USA, Canada, Australia, or other mining centres. If one of

these companies does go forward with a mine development in Greenland, the subsidiary which holds the licence will always have its *de facto* head office in the global HQ for that company. A global miner will not relocate its headquarters for the sake of one project, but in our view, these are the sorts of companies that Greenland should be trying to attract. If this requirement had been in place when Greenfields was attracting investment for our projects, it would have been seen as a significant 'red flag' for potential investment partners.

In our view, if the desired outcome is to ensure that exploitation licence holders are adequately engaged in the Greenland business community and can effectively be managed by the Government of Greenland, this could be achieved by a 'softer' requirement. For example, it may be enough that the *management of the project the subject of the exploitation licence* is located in Greenland.

4. Additional costs of processing in Greenland – section 53(1)

Section 53(1) sets out rules in relation to onshore and offshore processing of minerals. Notably, a licensee may only process minerals outside Greenland where processing in Greenland would result in **both** significantly greater costs **and** that 'advantages to Greenlandic society will not be significantly affected thereby'. The current Act allows offshore processing where there would be increased costs only.

Realistically, having both requirements in place may mean that there are no situations where offshore processing would ever be permitted. A minerals processing plant is a significant employer and source of local income, particularly taking regard to the small size of many Greenlandic towns near mining prospects. If a decision is made to locate a plant somewhere other than Greenland, that decision will always 'significantly affect advantages' to local employment. So, no matter how severe the increased costs will be for the developer, the vague second criteria will never be met, and offshore processing will never be permitted.

The decision on whether to allow offshore processing needs to be made by considering and weighing up conflicting interests. The explanatory notes identify that this needs to be a consideration of both factors (economics vs social benefit), but the Bill itself demands that both are satisfied at once. We would like to see this section redrafted to make it clear that these are both factors which will be considered in making a decision but removing the requirement that both need to be satisfied.

5. Orders prohibiting the use of contractors – section 68(3)

Section 68(3) of the Bill allows the MLSA to issue an 'enforcement notice' prohibiting a licensee from working with any contractors who have been delinquent in their tax obligations to Greenland. We have no issue with this in principle, but we do note that plans for exploration programs are usually made many months in advance and tend to rely heavily on one or two contractors (for example, a transport provider).

The explanatory memorandum states that the Bill 'is not intended to impose on a licensee an obligation to submit tax reports or make tax payments on behalf of its contracting parties'. However, the Bill effectively does so as it is currently drafted. A prudent licensee will include a clause in every agreement with a contractor which requires the contractor to do the necessary tax reporting, and a power of attorney for the licensee to take over those obligations if the contractor fails. If there is no power in the contract for the licensee to complete tax reporting for a contractor, the licensee has no way of ensuring that the contract will remain valid. A contractor might refuse to meet their obligations, the MLSA might forbid the licensee from using that contractor, and the licensee is left without a vital piece of their field program. Damages against the contractor would be an insufficient remedy.

A good compromise would be if the MLSA made a list of those 'blacklisted' contractors each year, and that list was made available to licensees in advance of a coming field season. Then a licensee could make arrangements with contractors *not* on that list for the following year, knowing that the MLSA is not going to step in and issue an enforcement notice for one year, at least.

This would avoid the situation where a licensee either:

- through no fault of their own, loses an essential contractor for a year of field work (and as is standard for working in Greenland, would be unable to find a replacement); or
- is required to effectively take on all of the reporting obligations for all of their contractors.

A list made available to all licensees would also incentivize all contractors to ensure they are up to date with their taxation obligations.

6. New remediation obligation – section 78

The Bill contains a new explicit obligation to 'clean up and restore nature etc. as relevant in the affected areas, to the extent possible', in section 78(1)(2). This obligation to restore a more explicit obligation than under the Act which requires 'clean up'.

Greenfields is, and remains, dedicated to exploring these sensitive environments with the utmost care and in accordance with all regulatory requirements. However, all exploration activities, even at a very early stage, have an impact on the environment. In an arctic environment these impacts can be more difficult to remediate than in other jurisdictions.

For the industry it would be very useful to have more detailed guidance about exactly what the new obligations entail, and particularly what restoration is considered to be 'within the extent possible'.

7. Suspension of administrative processing – section 125

In section 125, the Bill contains a new provision empowering the Government of Greenland to demand 100 000 DKK or more 'to cover the Government of Greenland's processing and other

administrative costs'. If that amount is not paid, the government may order that all activities be suspended.

We understand the rationale behind this provision and note from the explanatory memorandum that this is intended to be aimed at licensees which continue to not to pay any amounts while due. However, the way it is presented (in English at least) can easily be interpreted to read that the Government of Greenland can demand 100 000 DKK at any time and impose a stop-work order if the payment is not made. From an international comparative perspective this would be a very concerning provision.

We would like to see this provision redrafted to make it clear that it only applies in case of repeat offenders who have incurred a significant administrative debt. Ideally there would be caps and/or scales on the various administrative debts that arise, eg a cap on the amount that the Government can charge for each administrative action.

8. General discretion for important public interests – section 126

In section 126, the Bill introduces a broad new power for the Government of Greenland to refuse the granting of a licence or approval on essentially any grounds. It was clearly a policy decision to include this wide-ranging power. We would like to see more definite criteria applied in relation to the power so that licensees have a better idea on what criteria their application will be measured against.

We note from the explanatory notes that 'the provision should only be applied in special exceptional cases if justified by important public considerations and interests, including important foreign policy, defence policy or national security considerations or interests.' However, there is no such limitation on the power in the Bill itself. If the power is meant to be used only in extraordinary circumstances, this should be included in the actual Bill. We understand that the explanatory notes have no legal effect.

There is also a requirement on an applicant or licensee to 'inform the Government of Greenland of all matters which may be of importance to the Government of Greenland's decision'. This is simply not possible. A licensee cannot be put into a position where they are responsible for doing the Government's job in assessing what criteria might be important or not. A licensee can only provide what information is requested or required of it. For example, how is a licensee expected to have such a strong understanding of Greenland's foreign or defence policies, that it can inform the Government of everything which *might* be of importance? These are areas about which a licensee is explicitly not given any information.

The Bill has many sections where an applicant or licensee is required to provide information. There is also a right of the Government to demand further information. There is no need for an obligation on all licensees to provide information they do not have about matters they don't understand, which might impact interests they have no power over.

On behalf of Greenfields Exploration, I thank you for your consideration of the above points. We look forward to continuing to play an active role in the responsible development of the mining industry within Greenland.

If there are any questions or clarifications which we can provide in relation to these or any other matters please contact the undersigned.

Sincerely

Lindsay Dick
Executive Director
Greenfields Exploration Limited