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The Government of Greenland  
The Ministry of Mineral Resources

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### **Bill on the Greenland Parliament Act to ban uranium prospecting, exploration and exploitation**

The Ministry of Mineral Resources has sent the above Bill out for consultation, to which Nuna Law Firm has the following comments:

First of all, please note that the mineral resources industry has requested clear legal framework conditions for years. Notwithstanding that it is assumed to be the intention of this act to provide a clear framework for the mineral resource activities which concern or are related to radioactive elements, it is, however, our opinion that the bill creates considerable uncertainty about the legal framework conditions within this area.

This not only affects future licences, but also to a high degree existing prospecting and exploration licences where the licensees are de facto left with significant uncertainty as to whether present projects may never be realised due to the new provisions stipulated under the act.

#### **Re Section 1, subsection 2**

According to the provision, the ban on mineral resource activities directed at uranium does not apply if the activities are directed at non-uranium resources and the average uranium content is less than 100 ppm.

As stated in the explanatory notes, it will not be established until during the exploration stage whether the threshold content has been observed. It further appears from the explanatory notes that

*“However, mineral resource activities will not be permitted to continue if it is clear or should be clear to the licensee in other ways that the activities cannot be carried out in accordance with section 1.*

...

*It is emphasised that the provisions of the Mineral Resources Act apply correspondingly, and the licensee is therefore subject to a duty to inform in respect of*

*the Government of Greenland. Reference is also made to section 3 of the Bill, which provides that the Government of Greenland may restrict or revoke a licence if it is established that exploitation is not possible in accordance with section 1. Licensees will thus also be subject to a duty to inform the Government of Greenland of any matters that may be relevant to the assessment of whether a licence should be restricted or revoked.” (emphasis added)*

It is assumed that the intention of a threshold content under section 1, subsection 2, is to fix an objective verifiable threshold content. In the explanatory notes, however, reference is also made to the licensee's subjective assessment of other matters according to which the mineral resource activities are not permitted if it is clear or should be clear to the licensee. In our opinion, this creates considerable uncertainty as to the circumstances in which the Government of Greenland may restrict or revoke a licence under section 3, and the licensee may be subject to a fine, see section 4.

According to the explanatory notes, the licensee is in this connection subject to a duty to inform which does not appear from the act but solely from the explanatory notes to the act. The way the explanatory notes are worded, it is not entirely clear and verifiable when this duty to inform comes into force, see “*is clear or should be clear*”. This also causes considerable uncertainty as to the scope of the ban and the basis of the restriction or revocation of licences under section 3 and the imposing of fines under section 4, which depends on the licensee's own assessment and information to the authorities.

## **Re Section 2, subsections 1 and 2**

The provision authorises the Government of Greenland to extend the ban in section 1 by executive order in relation to other radioactive elements than uranium, including to fix the relevant thresholds in this respect individually.

It is specifically mentioned that an examination will be made for the purpose of introducing a possible ban on mineral resource activities aimed at thorium, and it is thus expected that the ban in section 1 will be expanded to also apply to other radioactive elements.

It is in itself worrying that similar drastic measures may be laid down by executive order of the Government of Greenland in relation to other radioactive elements under the act - and therefore without the parliamentary debate in the Parliament of Greenland. It is emphasised that this is not an ordinary implementing legislation, but that rules are laid down concerning other radioactive elements and completely new thresholds independently of the ban in section 1 and the thresholds fixed in this section. It should only be possible to introduce such rules by way of an amendment to the act taking into consideration the drastic effects of the rules.

The authority also creates significant doubt as to the legal framework conditions in relation to existing as well as future mineral resource projects which are directed at other mineral resources than radioactive elements. It must be assumed that this will result in the mineral resource industry generally pulling away from mineral resource activities in Greenland, and it must be assumed that it will be more difficult to attract the required financing. The mining industry is economically demanding, and many mining companies are smaller companies which depend on providing regular financing, i.e. by way of listings in Toronto, London and Australia.

Such new rules will not only affect future licences covered by the new rules but will also very much affect existing prospecting and exploration licences where the licensees are de facto left with significant doubt as to whether present projects may never be realised due to new provisions laid down in the act if additional bans are introduced according to which new exploitation licences may not be granted. This must be compared to the fact that licensees are obligated under exploration licences to pay exploration costs and an annual licence fee (the latter from year 6) according to the Greenland Government's rates (<https://govmin.gl/wp-content/uploads/2021/02/gebyr-2021-eng.pdf>).

Reference is also made to our comments below in relation to section 3, including damages and compensation, and section 5.

### **Re Section 3**

According to this provision, the Government of Greenland may decide to change a licence or revoke a licence in its entirety if it is assessed that exploitation of mineral resources may not take place in the future without exploitation of uranium exceeding the approved threshold value.

It appears from the explanatory notes that:

*“Licensees who in connection with their activities and on suspicion or discovery of uranium deposits are unsure whether it would be legal to continue the mineral resource activities may contact the authorities for clarification.”*

We propose that this access to clarification is clarified and included in the actual wording of the act.

It further appears from the explanatory notes that

*“No provisions are laid down on compensation to licensees for revoked or restricted licences. Thus, the provisions of the Bill do not permit compensation to licensees for lost or restricted licences.”*

As mentioned above, it is noted that exploration licences include an obligation to use a minimum amount fixed by the Government of Greenland each year for exploration as a condition for maintaining the licence under the Mineral Resources Act. Furthermore, an annually fixed fee must be paid from year 6. In case of revocation and/or restriction of licences, investments made under and at the request of public rules will be lost. This harmonizes badly with the fact that the authorities may revoke and restrict licences without compensation and should be considered.

Notwithstanding that there is no authority under this act concerning compensation to the licensee, a licensee may - taking the specific circumstances into consideration - be entitled to compensation for expropriation under section 73 of the Act of the Constitution. We urge that the importance of this possible economic consequence for the Government of Greenland and the licensee is considered more closely, including a compensation scheme covering exploration costs and annual licence fees paid according to the rates of the Government of Greenland (<https://govmin.gl/wp-content/uploads/2021/02/gebyr-2021-eng.pdf>). This should as a minimum be mentioned in the explanatory notes.

As mentioned above concerning section 2, the same problem is relevant in relation to existing licences which - notwithstanding that these are *not* covered by the new act according to the commencement provision in section 5 - may be affected just as hard retrospectively as an exploitation licence may never be issued under the new rules which should be compared to a restriction or revocation under the act.

#### **Re Section 4, subsections 1 and 4**

The provision authorises that a fine may be imposed if section 1 is violated. The sanction provision must be seen in connection with the calculation of the quantity of uranium made under section 1. It is further noted:

*“In this connection, it should be noted that licensees under the Mineral Resources Act are subject to a duty to inform and that compliance with this duty is assumed when uranium occurrences are discovered. Thus, licensees who in connection with their activities and on suspicion or discovery of uranium deposits are unsure whether it would be legal to continue the mineral resource activities may and are encouraged to contact the authorities for clarification.”* (emphasis added)

As stated in relation to section 1, subsection 2, the scope of the duty to inform is subject to considerable uncertainty, and it also appears from the explanatory notes that mineral resource activities are not allowed if it is clear or ought to be clear to the licensee in other ways than by ascertainment of exceeding of the threshold value that the activities cannot take place in accordance with section 1. Notwithstanding this, the activities may be subject to a fine. Taking into consideration due process of law, it is worrying that criminal sanctions are based on subjective assessments.

### **Re Section 5, subsection 2**

The act is to apply to licences granted after the coming into force of the act.

According to the explanatory notes, this means that that licences, standard terms, etc. already granted will not be affected by the bill - but however that exploitation licences may not be granted in continuation of an existing exploration licence. It further appears that

*“This applies regardless that the licensees will usually have a conditional right to obtain an exploitation licence for uranium deposits discovered under section 29(2) of the current Mineral Resources Act.”*

Thus, the act may have retrospective effect on existing licences. This also applies to licences directed at other minerals than radioactive elements. In this connection, reference is made to the comments to sections 2 and 3 above, including the possible economic consequences for the Government of Greenland and the licensees which should be considered also in relation to existing licences. The consequences of the act for existing licensees and a transition scheme, if any, should therefore also be considered more closely.

Yours sincerely

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