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Canada and India Broaden Mining Partnership in Anticipation of Major Changes to Indian Mining Legislation

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Recent memoranda of understanding (MOUs) between Canada and India should facilitate greater access for Canadian companies to investment and other opportunities in India's mining sector. This sector is expected to be significantly reformed by new legislation implementing policy principles introduced in 2008. Among other things, the new legislation should afford greater exploration and extraction opportunities for Canadian mining companies in India.

At the close of the recent G20 summit in Toronto in late June, a MOU focused on "developing and reinforcing cooperation in the fields of earth sciences and mining" was signed between Canada's Department of Natural Resources and India's Ministry of Mines. The MOU establishes a framework for cooperation in areas such as exploration, technical and environmental matters, and the encouragement of improved market access and bilateral investment.

On July 8, a MOU was signed between India's Ministry of Mines and Ontario's Ministry of Northern Development, Mines and Forestry. This MOU indicates a desire on the part of Ontario and India for "developing and reinforcing their cooperation in the fields of geology and mineral resources." It is intended to promote opportunities for mineral development and investment between the two jurisdictions, and provides for cooperation on a broad range of mining sector activities, such as geoscience development, mineral exploration, mine development, mines rehabilitation, health and safety, and value-added processing.

A MOU similar to the two mentioned above is expected to be signed soon between India and Quebec.

India's efforts to broaden its mining partnership with Canada coincide with the implementation of its National Mineral Policy, 2008 (the "2008 Policy"), which forms the basis for a major overhaul of Indian federal mining legislation, culminating in the introduction of a new *Mines and Minerals (Development and Regulation) Act, 2010* (the "New Act"). The primary goal of the 2008 Policy was to encourage the flow of foreign and domestic private investment into India's mining sector. Indian mining regulation has generally been viewed by foreign companies as non-transparent, overly cumbersome and complex, and characterized by land disputes and major delays in allocating mining licences. Many exploration companies have avoided India because its current mining law impedes the transfer of mining concessions, and does not permit the effective conversion of reconnaissance permits to prospecting licences, and prospecting licences to mining leases. The 2008 Policy, which includes general articulations of principles upon which mining regulation and practices should progress within India, considered such key issues for foreign companies.

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The latest draft of the New Act, released in early June, includes provisions to deal with these issues and generally liberalize the Indian mining sector. It is expected that the New Act will ultimately deal with the following matters:

- granting prospectors rights to obtain a mining lease in the areas where they have done requisite work, and facilitating transition from regional exploration to prospecting and mining operations
- unbundling of prospecting from mining, whereby prospectors may invest, find and sell data
- encouraging exploration with state-of-art technology and investment with two types of concession instruments – namely, reconnaissance permits on a non-exclusive basis and large area prospecting licences on an exclusive basis
- ensuring a level playing field by separating the government's role as a regulator and as a miner
- promoting auction of government-owned or explored ore bodies
- reducing delays in the grant of mineral concessions
- promoting welfare of local communities by introducing a Sustainable Development Framework

The latest draft of the New Act was recently sent to a ten-member Group of Ministers formed by the federal government to resolve issues raised by various federal and state government officials. After the group's deliberations, the New Act will be sent to the Indian Cabinet for its approval and subsequently to Parliament. **1**