

# Legal Analysis of China Mining Right Transfer System

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**Abstract:** *Mineral resources are an important material basis for human survival and development and social and economic progress. The mining right is a right formed in the process of developing and utilizing mineral resources. As China has been in the planned economy system for a long time, this makes China's mining right capital market started late, the mining right transfer market is not mature enough, and there are some legal problems in the process of mining right transfer. This paper tries to analyze the historical development of the mining right transfer system, the legal orientation of the mining rights, the institutional causes of the legal problems and the difficulties of the transfer of the mining rights, the registration system, etc., which is of great legal significance and practical demand.*

**Keywords:** *China's mining right legal positioning "lost" mining right secondary market legal path*

## 1. Introduction

China's mining rights include the mining right and the exploration right, which is the right given by the resource owner to the explorers or miners in a paid way, and it is the core concept in China's mineral resource system. The Civil Code · Property Title Code clearly stipulates that its legal nature is usufructuary right. The implementation of the Civil Code from January 1, 2021 is bound to have a far-reaching impact on China's mining rights system as a whole. From the property rights of mining rights, to the influence of the contract transfer contract, initially discuss the legal significance of Chinese mining right transfer system, further discuss the process of mining rights transfer, introduce competition mechanism to complete the transfer of mining rights, is conducive to choose technical enterprises with abundant capital and exploration and development and full utilization of resources, and the full realization of resource ownership is very beneficial. The transfer of mining rights refers to the subject who has obtained the exploration right and mining right to other units or individuals in the implementation of its rights for other reasons. This transfer is paid under the condition of commodity economy and follows the market mechanism, thus the form of mining right transfer market, that is, the secondary market. Since the license system of mining rights has been changed from administrative examination and approval system to registration system, should independent registration rules conducive to the secondary mining rights market should be completely designed? The future Mineral Resources Act (newly amended) is not clear. Therefore, this paper uses the legal analysis of Chinese mining right transfer system to deeply study the corresponding improvement of mining right transfer registration system and related problems.

## 2. Tracing back of China's mining rights transfer system

The traceability of China's mining rights system can be traced back to the release and implementation of the Interim Regulations on Mining Industry in 1951, that is to say, after the founding of the People's Republic of China to before the promulgation and implementation of the Mineral Resources Law (hereinafter referred to as the Mining Law in 1986), which is the embryonic stage of China's mining rights transfer system. However, it should be noted that the so-called "transfer" in the mining right transfer system is a broad concept, whose meaning is not clearly stipulated in the current law. Professor Wang Limin refers to the transfer of the same right object between different subjects. According to the status difference between circulation subjects, the circulation can be divided into horizontal circulation (equal circulation between subjects) and vertical circulation (circulation between affiliation relations). Therefore, the transfer is usually in the sense of the vertical transfer, and the horizontal transfer is generally called the transfer. The author agrees with the general view of mining right transfer, that is, the transfer of mining right not only includes two transfer modes of mining right

transfer and transfer, but also includes a variety of circulation and turnover modes where mining right ownership has not changed. The so-called "mining right transfer" belongs to a kind of property right transfer. According to the definition of transfer, the transfer of mining rights can be included but not limited to the transfer of mining rights, and its scope is far greater than the transfer of mining rights. The change in the ownership of mining rights is the transfer of mining rights, which should belong within the transfer of mining rights. For those who do not actually involve the change of mining rights, it can only be classified in the category of the transfer of mining rights. It can be seen that the two different legal concepts of mining right transfer and the transfer of mining rights will not only be conducive to the practice of the relationship of mining right transfer and the transfer of mining rights, but also have a practical guiding role in the improvement of the legal mechanism of the mining right market. According to the description of relevant scholars, China's mining rights transfer system has mainly experienced the following three stages of development.

### ***2.1 Fordimentary period: the free distribution stage of mining rights***

This period occurred in the period of mineral resources implementing a single national ownership system established under the background of China's planned economy system. The primary characteristic of this period was that the government became the sole subject of mineral resources supply and decided to distribute it. Secondly, the mining rights in this stage were completely non-marketization. It was not until after the official implementation of the Mineral Resources Law that the mining rights gradually went to the market. The promulgation and implementation of the Interim Regulations on Mining in 1951 means that the planned economic system of mineral resources was initially established, unified management of the national mineral resources, unified planning and unified development, and enterprises obtained mining rights free of charge. Therefore, one very important feature of the development of mining rights in this period was that the mining rights were distributed free of charge, that is, the state allocated mineral resources to state-owned mining enterprises in the form of administrative allocation, while the private development mining subjects were completely excluded. In other words, this model completely excludes the commodity attributes of resources, let alone the transfer of mining rights.

### ***2.2 Period of development: stage of paid transfer of mining rights***

The period occurred after the promulgation of the Mining Act in 1986 and before the revision of the new law. One important feature of this period is that China gradually established the public ownership as a main body of ownership economy coexist basic economic system, socialist market economy construction, therefore, in order to promote the development of mining rights, from the legal standard level regulation mining order, protection and reasonable use of mineral resources, new China introduced the first mineral resources law in 1986. The introduction of this law truly breaks the shackles of the free distribution of mining rights in the traditional planned economy era, and will also provide a good guiding role for the limited transfer of mining rights in the Chinese mining market. The reason is that the formal establishment of the law makes it clear that mineral resources are owned by the state, and gradually changes the situation of disorderly and unscrupulous development of mineral resources. At the same time, the state established for the first time a paid mining system and mining rights system. During this period, the State clearly proposed that the acquisition of mining rights must be registered through the state administrative examination and approval according to law, but the mining rights "shall not be sold, leased or used as mortgage", and the subject of obtaining mining rights is limited to state-owned enterprises, collective-owned enterprises and individual natural persons. It can be seen that in this period, the legal nature of mining rights in the state focused more on an "administrative right", rather than recognizing the inherent usufructuary property in its civil law. This makes the essence of mining rights become an "isolated" public power, and does not give full play to its property and commoditized social attributes. Because natural resources have not only natural attributes, but also social attributes, so natural resources have dual attributes. If it is necessary to give full play to the function of "making full use of things" of mineral resources, then we must make mining rights have the social characteristics of commercialization and property, so that mining rights can be transferred normally.

### ***2.3 Mature period: the main stage of bidding transfer***

During this period, the law not only abolished the prohibited provisions such as "mining rights prohibit sale, lease, mortgage", but also clearly stipulated the paid transfer and legal transfer of mining

rights. For example, Article 6 of the current Mining Law stipulates that "the exploration right holder, after completing the minimum exploration input stipulated by the state, may transfer the exploration right to others after approval according to law." Mining enterprises that have obtained mining rights... may transfer mining rights to others with approval according to law. It is forbidden to resell the exploration and mining rights for profit. It can be seen that the state takes the change of the subject of mining right as the legal basis and situation for mining right subject to administrative examination and approval. In addition, since the promulgation and implementation of the Property Law in 2007, although the usufructuary property of mining rights is affirmed and the second revised Mining Law in 2009 has formally established the property of mining rights, there still no substantive change has been made to the transfer of mining rights. For example, the protection of the transfer of mining rights only confirms the transferability of mining rights from the judicial judgment level of the Judicial Interpretation on the Trial of Mining Rights Disputes issued by the Supreme Court in 2017. The update progress of the legal system did not timely follow up the trading practice of the mining rights market, but lagged behind the mining rights market trading practice, which brings many restrictions to the efficient transfer of mining rights. Moreover, the Ministry of Land and Resources issued the Notice on Further Standardizing the Management of Mining Rights Transfer. The notice establishes the principle of unified classified management of mineral resources, adopts different ways to transfer mining rights in different ways according to different circumstances, and requires those qualified mining rights to be transferred by bidding, that is, through the means of "bidding, auction and hanging".

It can be seen above that the transfer of mining rights not only includes the form of transfer, but also the form of transfer. Therefore, the historical development context of mining rights transfer should be elaborated in detail here. Similarly, the evolution of China's mining rights transfer system has generally passed from the strict ban to the gradual relaxation, namely, including the stage of the prohibited transfer of mining rights, the limited transfer stage of mining rights and the stage of the relaxed transfer of mining rights. In the first phase of the prohibited circulation of mining rights, this period began roughly from the founding of the People's Republic of China until the revision of the Mining Law in August 1996. The main characteristics of this stage are: (1) planning economy color, China 7 implement mineral resources free mining system, the state grants free mining rights, generally is not allowed to obtain mining rights; (2) China mining rights transfer mode from free acquisition to paid acquisition, mining rights transfer market initially formed; (3) period mining laws and regulations strictly prohibit mining rights transfer, at the same time, from the theory and practice. The (4) Mining Act (enacted 1986) specifies that mining rights shall not be sold, leased and mortgaged. In the second phase of the limited transfer of mining rights, this phase was about the beginning of the second revised Mining Law in 1996 and the Interim Provisions on the Administration of the Transfer of Mining Rights issued by the Ministry of Land and Resources in 2000. The main characteristics of this stage are: (1) mining management chaos, heavy waste of resources and poor mining investment environment; (2)'s revised Mineral Resources Law relaxed the restrictions on the transfer of mining rights under certain conditions; the second revised (3) Mining Law still explicitly prohibited the sale of exploration and mining rights for the purpose of profit. On the whole, the revised Mining Law still has great restrictions, which is not fully adapted to the needs of the rapid development of China's mining economy. In the stage of relaxing the transfer of mining rights, the specific time point starts from the Interim Provisions on the Administration of the Transfer of Mining Rights (hereinafter referred to as the Interim Provisions) issued and implemented by the Ministry of Land and Resources in 2000. The main characteristics of this stage are as follows: the gradual advancement of (1) socialist market economy with Chinese characteristics makes the real demand to relax the transfer of mining rights more urgent; (2) Interim Provisions clarify the property rights of mining rights, break the restrictive provisions of mining resources laws and regulations on mineral rights; (3) lists the "sale" of mining rights as one of the ways and recognizes for the first time; (4) further broadens the transfer form of mining rights, which clearly stipulates that mining rights can be not only sold in accordance with law, but also be mortgaged and leased. The great significance of this stage is that it has effectively promoted the exploration and development of China's mineral resources, promoted the rational utilization and effective allocation of China's mineral resources, and played an active role. After this, China's mining rights transfer market was gradually established and developed.

### **3. The legal nature of mining rights positioning "lost"**

#### **3.1 *Dispute over the legal nature of mining rights***

In his article "Reflections on and Reconstruction of China's Mining Rights", scholar Liu Weixian

has completely summarized various theoretical disputes about mining right theory. It mainly describes eight theories, in which the author powers and calls it the "octotomy".

The "eight point method" mainly includes "mining right claim", "mining right pre-real right", "mining right", "mining right", "mining right pre-real right", "exploration right intellectual property", "mining right from property right", "property acquisition" and "exploration right and mining right property". The reason held by scholars in favor of "mining right claims" is that the mining rights are born based on the mineral resources development and exploration contract, which directly governs the national mineral resources. When the mineral resources exploitation is developed and utilized as a quasi-real estate, the development and user must pay the corresponding consideration. However, there are two reasons for scholars to oppose the mining rights claims claim. One of the reasons is that the creditor's right is the right to request and receive certain payment between certain people, and only has the corresponding nature and effect of the right of claim. According to the provisions and interpretation of our Mineral Resources Law, the mining right obviously does not have the above nature and effect. The second reason is that the formation of claims is related to a specific academic background. That is, before the introduction of the first Mineral Resources Law and the General Principles of the Civil Law, there was almost no systematic research on real right in Chinese academic circles, so it is impossible to draw the conclusion that mining right belongs to real right. "Mining right quasi real right said" recognizes that mining right is a private right of public right nature, which is compound in the right object and right composition. However, some scholars are opposed to the above view, that is, it is difficult to clearly define quasi real right in the concept and type, and the concept of vague connotation and extension of assigning mining right to quasi real right will not help to further clarify the nature of mining right. The views of "right of mining right" and "right of mining right" are both "amendment plans" based on the principle of civil law. Under the realistic background of mining rights trading, mining rights are difficult to conform to the characteristics of usufructuary right. As for the following "exploration right intellectual property right", "mining right from property right", "property right acquisition" and "exploration right and mining right", it is incompatible with the characteristics of the mining right itself. Therefore, few people in the academic community approve.

Although the above classification methods have some rationality in civil law, the author believes that in addition to the basic principles of civil law, many different understandings of the nature of mining rights should be summarized into a relatively mature "four-point law theory". Because the classification idea of "eight-point method" is mainly limited to the private law category of civil law, and does not fully reflect the particularity of mining rights. In other words, mining rights not only reflect the well-known explicit value — economic value attribute, but also reflects the intrinsic value — natural attribute of natural resources. So, mineral resources legislation can not only consider the private interests of civil law, ignore the social public interests safeguard and safeguard, in this sense, civil law is more to safeguard the legitimate interests between equal subjects, and mineral resources legislation is not only to safeguard the interests of civil subjects, also need to protect social interests, national interests and even the environmental resources interests of future generations. To be specific, there are four representative theories of "mining right claim", "special real right of mining right", "mining right franchise real right" and "quasi real right of mining right". First, the so-called "mining right and creditor's rights" refers to the rights obtained after the mining rights based on the civil subject and the mineral resources owner signed the mineral resources exploration and development contract, and the relationship between rights and obligations is fixed through the contract, so the mining right is the creditor's right, rather than the real right. Relatively speaking, there are very few scholars who support the mining rights claim, and as the mining rights legislation continues to mature, it is gradually abandoned by the majority and legislative practice. So what is the "mining right special property right to say"? Scholars who claim mining right as a special property right believe that even if the recognition of mining right is a typical real right and is very close to the usufructuary right in nature, in practical application, the specific right acquisition procedure and the object state of rights are also significantly different from the typical usufructuary right. At the same time, exploration rights under special circumstances can not be classified as usufructuary use. In view of the current situation, some scholars put forward in the ordinary property right and special property right this theory classification guidance, we can use the word "special property right" to summarize such property rights including mining rights, and in the property right system set separately together with the pre-property right, security property right and possession of a new property right arrangement. This understanding focuses on clarity and refinement of rights, and emphasizes the attribution and full use of things, which is actually a complete subversion of the traditional classification method of property rights. However, the scholars who advocate "mining right franchise property right" have basically the same view of advocating special property rights, both recognizing the theoretical distinction between ordinary property right and special

real right. However, this part of the scholars not only tend to emphasize the particularity of the nature of mining rights, but also hope to highlight the public law of the right through the nature of rights.

Therefore, the scholars who put forward the concept of "franchise property right" believe that mining rights are an administrative license. That is to say, scholars holding this theory believe that the application for administrative permission to the administrative organ of the mining right subject before being engaged in mining activities is essentially the legal manifestation of the administrative permission of natural resources, so it should be determined that the mining right is the franchise real right. From the perspective of state order defenders, the state licensing of franchise property rights is not out of the owner of natural resources, but out of the manager of social public affairs. Second, "mining right quasi real right said" can be regarded as a strong view in the legal field, that is, that mining right should belong to the category of quasi real right. Scholars holding this view have two main reasons: on the one hand, they believe that the quasi-real right is still a real right in essence, and it is basically consistent with the views of "chartered real right" and "special property right" in terms of recognizing the particularity of mining rights. It is also believed that the object of mining rights is not always specific and uncontrollable, that is, there is a heterogeneity of right objects. Therefore, this is not completely consistent with the certainty and predictability of the traditional real right object. The property right nature performance of this kind of property right is not typical, but the state stipulated by the property right should be used accurately. From this view, "quadmethod" largely gets rid of the limitations of traditional civil law thinking.

At present, there is no substantial dispute between the nature and positioning of mining rights, and the root causes of different views of scholars is because the legislative practice of China's mineral resources deviates from the original institutional concept and causes various alienation of the theoretical understanding of the nature of mining rights. Although the theoretical basis of each view varies and has the limitations of vision, the essential attributes of mining rights have gradually become clear in the exchange of various views. In my opinion, the fierce contention of academic views is just a signal, and the real problem it reflects is the deviation from the reality between the legislative practice and the ideal state of the system. Therefore, in order to close the distance between "ideal" and "reality", and correct the practical problems existing in the current mineral resources transfer system, it is necessary to find out the institutional root causes of the dispute over the nature of mining rights.

### ***3.2 The institutional root cause of the debate over the nature of mining rights***

#### ***3.2.1 Rights look mixed***

Discuss the essential properties of mining rights will help us find the actual state of our mineral resources law legislation, that is, the basic trend of getting closer to the ideal state. If this goal is to be achieved as soon as possible, it should first make clear the real difference and the reason for the difference between China's mineral resources property rights system and the ideal model. According to the specific performance of the legal nature of mining rights in the academic controversy discussed above, the author believes that the root difference between the "distorted" mineral resources property right system and the ideal state is that the current legislation does not stipulate the ownership of mineral products. Specifically, the right of the mining right appearance mixed concrete performance are: first, our law does not strictly distinguish between mineral rights, concession and development rights these three independent rights, the original mineral resources civil subject should have the three independent rights of each other at the same time, because the three rights corresponding legal provisions is "clear mineral ownership, administrative licensing authorization and mining enterprise exploration rights".

#### ***3.2.2 Loss of ownership of the mineral products***

A comprehensive view of the mineral resource property rights system of various countries and regions has mostly realized the need to establish the above three rights for civil subjects in the legislation at the same time, and has fully reflected these contents in practice. In general, countries in the world present two typical legislation: one is the premise of most western countries to allow mineral resources or land private, no matter whether mineral and land rights objectively exist and dominated by the civil subject, the law only requires the administrative licensing authorization and mining enterprise exploration right; the other is to adhere to the state-owned state enjoyed by the mineral resources ownership country, on this basis, the law respectively set three complete rights for the civil subject. As is known to all, the ownership of mineral resources in China is intransferable, indelible and the uncertainty of objects under certain circumstances. Under the ideal state, if civil subjects want to participate in the complete legal relationship of mineral resources, they must have the above three

rights.

In addition, this "separation of powers" of right structure setting mode can effectively avoid two obvious defects in the era of planned economy: one is the ownership of the specific mineral products ignored by the legislators; the binding of franchise and development rights, forming a virtual right body, and there is no effective legislative distinction between the independence of the two rights. Therefore, looking from the ideal structure of "separation of three rights", the right type of China's mineral resources property rights system is still incomplete. It is precisely because of this incomplete system that causes the continuous "loss" of mining rights positioning in China's legislative practice.

#### **4. Problems existing in the current mining right transfer system**

##### ***4.1 China lacks an independent mining right registration system***

Although a series of mineral resources laws and regulations in China stipulate that the transfer or transfer of mining rights should be registered in the mineral resources authorities, the registration is not independent, which is reflected in:

First, the mining rights register does not have the constructive validity of the rights. According to the relevant provisions of the Civil Code · Property Title, when the real estate register is inconsistent with the ownership certificate, the register shall generally prevail. However, in the current mining right registration, it is stipulated that "if the information of mining right registration occurs, the exploration license information issued by the exploration right (mining right) registration authority shall prevail." It can be seen that the electronic registration is not a source certificate of mining rights. When the electronic registration is inconsistent with the registration of the exploration license and mining license, the exploration license and mining license shall prevail. It can be seen that the current mining rights register does not have the presumption of correctness of the rights.

Secondly, the compound nature of the registration content. The registration content of the current mining right is complex, including the ownership content of the exploration right and mining right, the license of the mining right authority to the mining right applicant and the establishment registration of mining enterprises.

##### ***4.2 Problems existing in mining right trading subjects***

The problems existing in mining rights trading subjects mainly involve two aspects, and the first aspect is the integration of the transfer of rights subjects and the regulatory subjects. The specific performance is as follows: according to the current mining laws and regulations, the land and resources department is both the right subject and the regulatory subject, which is that it issues both the right certificate and the license to the mining right holder. In fact, the rights certificates and the licenses are different. The right certificate is the certificate of the ownership of the right, the license is the certificate of business qualification, so, the two license issuing authority should also be different. It is because of the dual identity of the land and resources department, and its administrative subject identity is easy to cover up the civil subject identity, which strengthens the administrative manager identity when conducting mining rights transactions with the counterpart. Therefore, although it standardizes the behavior of exploration and mineral development to a certain extent, it limits the rights of the relative.

On the other hand, whether the natural person can become the main subject of mining rights. Although our country laws and administrative regulations allow a natural person to become the subject of mining rights, in December 2009, the Ministry of Land and Resources on the Notice on Further Standardizing the Management of Exploration Rights and the Ministry of Land and Resources in January 2011 on Further improving the registration of mining rights stipulates that the mining owner must be a legal person, denying the subject status of the mining rights. The author believes that according to the provisions of the Legislation Law, the provisions of the Ministry of Land and Resources on this content are suspected of superior law, which should be invalid. In fact, a natural person can completely become the main subject of mining rights. Because the mining right as title, the right to transfer part or all of the right to others, that is, the establishment of his real right and the transfer of title. Natural persons lease and contract mining rights, and all the transfer of mining rights reflects the ownership characteristics of mining rights.

#### ***4.3 The special transfer form of mining rights is serious***

The special transfer form of mining rights refers to the leasing, contracting, joint mining of mining rights, etc. Mining right leasing A mining right lease is the leasing of the mining right to the lessee and collecting rent from the lessee. Mining right contracting is mainly the contract of the mining right, namely the behavior of contracting the mining right to others and collecting contract fees from others. Joint venture cooperative mining refers to the act that the mining right holder signs a cooperative mining agreement with others, who is responsible for mining, the mining right person provides assistance, and the mining right holder shares the proceeds of mineral products with others. The current laws in China prohibit the special transfer of mining rights. For example, Article 15 of the Administrative Measures for the Transfer of Mining Right of Detective Right stipulates that the contract of mining right is prohibited, and the mining right in the way of contract will also be subject to administrative punishment, with a fine or the mining license revoked according to the seriousness of the circumstances.

The author believes that if the law completely forbids the special transfer form of mining rights, then it will become very difficult to build an effective secondary market trading system of mining rights. Because the transfer of the mining right holder to lease, contract and cooperate with other people is a legal act of the mining right holder in exercising his rights as the owner, the law should not excessively regulate such social beneficial behavior, but should follow the ideological principle of "making the best use of things".

### **5. Realize the legal path of standardized and orderly, smooth circulation and efficient utilization of mining rights**

#### ***5.1 Design the ownership system of mineral products independent of the ownership of mineral resources***

##### ***5.1.1 specifies the legal "three elements" of mineral ownership***

First of all, in terms of the right subject, the subject who can theoretically have the ownership of mineral products should be the owner of mineral resources, that is, the state. Because mineral products were buried underground, they existed in the natural form of "mineral resources". In other words, since the mineral products later mined and processed are of course covered within the category of mineral resources, the four "powers" (possession, use, income and disposal) in the civil law owned by the mineral resource owners can naturally act on the specific mineral products. Of course, considering that the ownership of mineral resources can fully include all the ownership of mineral products, and the form of "things" of mineral products can only be objectively formed when the transaction, so there is no need for legislators to specifically emphasize that the owner of mineral resources owns the ownership of mineral products.

Secondly, the subjects who can own mineral ownership should also include the exploration and exploitation of specific regional resources. Mining rights holder with mineral products. On the one hand, in the construction of the whole mineral resource property right system, the ownership of the mineral rights, the ownership of mining products.

Finally, when the mineral was mined and entered the market, the civil subjects who purchased the mine actually acquired ownership of the mine. However, this legal fact no longer belongs to the scope of adjustment of the mineral resources property rights system, but only need to use the general principle of property rights to adjust, so it is no need to stipulate that this part of the subject can have the ownership of mineral products. Specifically, in terms of the right object, the object of the mineral product ownership is necessarily the mineral product within the corresponding mining right rights. This type of object can only belong to movable property, and there is only a complete mineral ownership on one object. In terms of rights content, the mineral ownership established by the legislation must contain all the power of the real right, namely the four "energies" mentioned above. However, through the analysis of the subject of ownership, it can be seen that the actual exercise of the mineral product ownership power can only be realized in the mineral products as the "independent object" of the civil law. Until then, the right was "dormant". Therefore, the author believes that it may be necessary to specifically stipulate the initial time for civil subjects to exercise mineral ownership, so as to which possible practical disputes and theoretical disputes can be eliminated.

### ***5.1.2 Procedure rules for the transfer of mineral ownership are clearly established in the law***

The author believes that if the civil procedure rules to reflect the transfer of mineral product ownership are reflected in the legislation, we should mainly deal with the following aspects:

First of all, the transfer of mineral product ownership is divided into two situations: transfer and transfer. Since these two situations correspond to two different legal relations, and there are differences in the subject and content, the procedure of ownership transfer and transfer of mineral products should be distinguished. In the procedure of ownership transfer, in addition to the civil contract necessary to bear the meaning of the mine products of both parties, the administrative organs on the examination and approval of the subject, object, content and other projects in the transfer are more stringent. In the procedure of ownership transfer, the content of the civil contract is the transfer of mineral products between civil subjects, so the restrictive conditions for the administrative organs to supervise the transfer procedure of mineral products should be more relaxed compared to the transfer procedure.

Secondly, in the transfer and transfer procedure of mineral ownership, the civil subject has not obtained the ability to exercise the ownership of mineral products. Because in the process of the mine transfer and transfer, the owner of the mineral product has not begun to exercise the four powers of the mineral ownership. Only when the mining right holder has earnestly exercised the mining right and made the form of the mineral products independent, the civil subject can freely occupy, use and dispose of the mineral products, and obtain the corresponding benefits. That is to say, in the level of mineral resource property rights system, the transfer of things caused by the sales of mineral products can only be regarded as the punishment of mining products by the mining subject, which is the concrete manifestation of ownership power.

Therefore, if the property right can be established in future mining legislation, then the right must be juxtaposed with the existing mineral resource ownership, exploration rights, and mining rights.

### ***5.1.3 Establish a complete secondary market trading system for mining rights in the new Mineral Resources Law***

The secondary market of mining rights generally refers to the trading platform where civil subjects transfer the mining right to other civil subjects after obtaining the mining right from the owner of mineral resources. From the current situation of China's mining rights secondary market, because the civil system construction of the primary market is not perfect enough, and the concept of banning trading and restricted trading in the era of planned economy has not been fundamentally reversed, it is far from reaching the opening degree of the mining right market required under the conditions of market economy. Therefore, it is necessary to timely formulate a trading system in line with the market environment and social needs for the existing problems in the secondary market of mining rights. Specifically, the author believes that the current mining right transfer system can be profoundly reformed from the following points:

First, based on the complete civil rules of the transfer of mining rights, change the current legislative mode of public-private combination, the civil transfer and administrative management legislation, to clearly distinguish the mining market access qualification, administrative license and mining property rights, in order to improve the social respect for the mining property rights and the space of free transfer of mining rights. Therefore, the current mining right legislation overemphasizes the regulatory responsibilities of administrative departments, and ignores or even negates the property attributes of mining rights, and the result must be a strict restriction on the transfer of mining rights. Therefore, in the future mining rights transfer rules should form a legal standard system with civil legal relations as the leading role and administrative legal relations as the regulatory means. Adjusting the transfer of mining rights with this standard structure and content not only maximizes and reflects the property attribute of the property right itself, the property rules have been fully used in the scope of the transfer of mining rights, and the restrictions on the transfer of mining rights have been greatly relaxed under the influence of civil rules.

Second, improve the transparency of mining administration through legislative rules to achieve the balance between administrative public power and civil private rights.

## ***5.2 Adopt legislative reform and improve the licensing and registration system through mining rights***

This is mainly through the following three aspects to improve the mining rights licensing, registration system: first, clear difference in real rights registration and administrative registration, in the legislative registration system systematic framework, specifically, our legislation should not



continue to adhere to the "trinity" registration system, but according to the different registration content, respectively independent, including legal procedures and entity content, complete registration rules. Second, according to the basic principle of the property law, establish an independent mining property right registration system. Third, give full play to the basic functions of the administrative organs, and further improve the mining administrative registration system. The administrative registration of mining rights can be divided by the "type" analysis method, which can be divided into franchise registration, registration of establishment of mining enterprises and withdrawal registration of exploration and mining sites.

## 6. Conclusion

This paper tries to analyze the historical development of mining rights transfer system, the legal nature of mining rights, the institutional causes of the dispute of mining rights, and proposes ways to solve the poor transfer of mining rights. China's mining rights transfer market started late, but it has developed rapidly. The establishment of the mining rights transfer system is in line with the development requirements of the socialist market economy with Chinese characteristics. However, starting from the existing mining right transfer market, there are still many urgent needs to be solved in the transfer of mining rights in China. In order to maintain the sustainable and healthy development of China's mining rights transfer market, we must face up to the legal problems existing in the process of mining rights transfer and start to solve these problems. For some problems existing in the transfer of mining rights, the author believes that the root cause of the problem is that China's laws and regulations of mining rights are not perfect, and there is a certain lag. Therefore, in the market of mining rights transfer, we should open up the administrative intervention in the transfer of mining rights, improve the laws and regulations of mining rights, and eliminate some lack of reasonable and lagging laws and regulations.

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