
Update on legal proceedings against the Governments of Greenland and Denmark

- Through its subsidiary GMAS, ETM is progressing its arbitration against the governments of Greenland and Denmark concerning the Kvanefjeld rare earths project.
- GMAS has filed its Statement of Claim, seeking an award requiring the governments to recognise its right to an exploitation licence for Kvanefjeld and provisionally quantifying its damages claim at USD 11.5 billion (including interest).
- The two Governments are objecting to the jurisdiction of the arbitral tribunal (saying the dispute must go to the Greenlandic courts).
- The arbitral tribunal has ordered the two Governments to file their Defence on 8 January 2024, after which the arbitrators will fix a schedule for the rest of the arbitration.

Energy Transition Minerals Ltd (the **Company** or **ETM**) (ASX:ETM) is pleased to provide the following update on the status of the legal proceedings brought by ETM's subsidiary Greenland Minerals A/S (**GMAS**) against the Government of Greenland and the Government of Denmark concerning the Kvanefjeld rare earths project in Southern Greenland (**Kvanefjeld** or the **Project**)

The arbitration against the two Governments has been brought under the terms of GMAS' Exploration Licence for the Project. The arbitration is taking place in Copenhagen. GMAS is seeking an arbitral award that requires the two Governments to recognise its right to an exploitation licence for Kvanefjeld. In its Statement of Claim filed on 19 July 2023, GMAS preliminarily quantified its damages claim at USD 11.5 billion (including interest). The two Governments have been ordered to file their Defence on 8 January 2024. Shortly thereafter, the arbitral tribunal will fix the schedule for the remainder of the arbitration.

As a preface to the more detailed update below, Daniel Mamadou (Managing Director of ETM) offered the following remarks:

"The arbitration is moving forward. We have filed our detailed Statement of Claim and it is over to the two governments to present their defence. Once they do so in January, we should get more certainty on what the rest of the arbitration will look like and when it will be completed.

Our Exploration Licence over Kvanefjeld was renewed for three years in March, so our tenure over this world class project is secure. We are well resourced for the arbitration. As I hope is clear from the company's Statement of Claim, we have a compelling case and strong evidence, including the expert opinions of two eminent professors of Danish law who agree that we have an unconditional right



to an exploitation licence and that we have rights protected by the Danish Constitution that would be expropriated if Act No. 20 was to be applied. On that basis, Act No. 20 as explained by the Greenlandic Parliament in the preparatory works cannot apply and therefore cannot prevent the granting of our exploitation licence.

Through the arbitration to date, we have continued to seek constructive dialogue with the Greenland Government, and we will continue to do so. Our objective remains unchanged: we want to develop the Kvanefjeld rare earths project for the benefit of all stakeholders. The minerals at Kvanefjeld are needed for the energy transition. We have proven that the project can be safely developed in accordance with international best practice, and we hope to find a solution that sees Kvanefjeld go into production in the future."

In this update, ETM endeavours to provide the maximum amount of relevant information possible, given the legal sensitivities of the situation.

Background to the dispute

The factual and legal background to the dispute is comprehensively set out in GMAS' Statement of Claim (a link to which is below). In summary, the dispute between GMAS and the Greenlandic and Danish Governments is primarily concerned with the question of whether GMAS is entitled to an exploitation licence for the Project.

By way of background, through GMAS, ETM (formerly Greenland Minerals Ltd) has been working on Kvanefjeld since 2007. In this period, GMAS has held its rights to Kvanefjeld under an Exploration Licence that is based on a set of 'Standard Terms' for exploration licences that were first published by the Greenlandic and Danish Governments in 1998. These Standard Terms, and the mining legislation under which they were issued (the Danish Mineral Resources Act 1991), were drafted with the specific objective of attracting foreign mining investors such as ETM to Greenland. To achieve this investment promotion objective, the Standard Terms include a provision (Section 1401) which reads (in relevant part) as follows:

"If the licensee has found and delineated commercially viable deposits which the licensee intends to exploit and provided the terms of this licence have been complied with, the licensee is entitled to be granted an exploitation licence under articles 7 and 15 subsection 2 of the Mineral Resources Act. The exploitation licence will be granted as indicated in sections 1402 [to] 1408."

GMAS' Exploration Licence contains this provision, which was relied upon by GMAS. Essentially the same right is conferred on exploration licence holders by Section 29(2) of Greenland's Mineral Resources Act 2009 (**MRA**), which was enacted when Greenland moved to a system of self-government in 2009 and which mirrors the system in the preceding Danish Mineral Resources Act for Greenland of 1991 (which was in force at the time when the exploration licence was first issued). The effect of the inclusion of the provision is that the right it gives GMAS is simultaneously contractual (in the Exploration Licence) and statutory (in the MRA) in nature.



Originally, GMAS' Exploration Licence for Kvanefjeld did not include radioactive elements, even though (when the Exploration Licence was originally granted) the Greenlandic and Danish authorities knew that uranium was present in the ore body at Kvanefjeld. During its exploration work, GMAS held numerous discussions with the Greenland Government regarding their position on uranium, given the existence of the so-called 'Zero Tolerance Policy' on uranium mining. Getting clarity on uranium was important to GMAS because, even though GMAS' focus was on rare earths, it was clear that the small amount of uranium in the ore body had value and could be produced in the multi-element project that GMAS envisaged at this stage.

In 2010, the Greenland Government amended the Standard Terms to allow for permission to be granted for uranium exploration. GMAS obtained these permissions but only for limited periods of time. After GMAS made it clear that GMAS could not continue its work and investment without more certainty on its rights with respect to uranium, the Greenland Government informed GMAS that it intended to lift the 'Zero Tolerance Policy', which would enable Kvanefjeld to proceed as a multi-element project and, in the meantime, GMAS and the Greenland Government agreed a specific amendment to the Exploration Licence to give GMAS uranium exploration rights in early 2012.

In October 2013, the Greenland Parliament voted to abolish the 'Zero Tolerance Policy' and the Greenland Government and the Danish Government then embarked upon a joint process of developing and enacting the laws and regulations needed to enable the export of uranium from Kvanefjeld. Encouraged by the two Governments' strong support for the development of Kvanefjeld, GMAS' representatives participated in this process and assisted the Greenland Government to promote Greenland as a destination for mining investment.

With the required legal framework in place and having successfully completed its exploration and feasibility work in accordance with the Exploration Licence, GMAS then notified the Greenland Government that it had delineated a commercially viable resource of rare earths, zinc and uranium at Kvanefjeld which it intended to exploit. In April 2020, the Greenland Government wrote to GMAS, confirming that it had satisfied the conditions under MRA Section 29(2) to be entitled to an exploitation licence for the Kvanefjeld Project, and set out the remaining steps to be completed for the licence to be issued (namely the approval of the Environmental Impact Assessment (**EIA**) and Social Impact Assessment (**SIA**) and completion of the community consultation process).

On 18 December 2020, the Government formally approved GMAS' EIA and SIA for public consultation. GMAS and the relevant Government authorities (Greenlandic and Danish) then commenced the joint process of community consultation on the EIA and SIA. The guidance from the Greenland Government was that this process would take 12 weeks – this was not accurate (in fact, the consultation process for GMAS ran for over 38 weeks before it was unilaterally aborted by the Greenland Government). The consultation process was ultimately derailed by a combination of interference from non-government organisations opposed to uranium and negligent mismanagement or deliberate misconduct by the Greenlandic authorities.

In April 2021, while the consultation process was ongoing, a snap election took place in Greenland. Government was won by a coalition led by the Inuit Ataqatigitt (**IA**) Party, who are



ideologically opposed to uranium and who had campaigned on the basis that they would stop the Kvanefjeld Project. Once in power, the newly elected Government of Greenland introduced legislation to block the progress of the Kvanefjeld Project. This legislation was enacted in December 2021 as Greenland Parliament Act No. 20 of 1 December 2021 to ban uranium prospecting, exploration and exploitation, etc (**Act No. 20**).

Under Act No. 20, no prospecting, exploration or exploitation of a mineral resource is allowed if the average uranium content of the total resource is above 100 ppm. The Kvanefjeld deposit contains uranium at a low concentration of approximately 360 ppm, which is co-mingled with significant rare earth elements mineralisation. The Greenland Government was aware of this when it proposed and caused the enactment of Act No. 20, and it was clear from the preparatory works to the Act that, in reality, only the Kvanefjeld Project would be affected as an existing exploration project transitioning into exploitation.

Critically, the Explanatory Note to Act No. 20 says that the Act does not apply to the extent that its application would result in an expropriation in the specific case. As GMAS had already acquired the right to receive an exploitation licence by the time Act No. 20 came into force, Act No. 20 should not apply to the Kvanefjeld Project because, if it did, it would expropriate GMAS' property rights (including its right to an exploitation licence under Section 1401 of the Exploration Licence).

In meetings with the Greenland Government after Act No. 20 came into force, the Greenland Government's representatives invited GMAS to withdraw its exploitation licence application on the basis that, if it was maintained, it would be rejected due to Act No. 20. GMAS declined to do so and queried how Act No. 20 could apply to its Exploration Licence and exploitation licence application, given the non-expropriation condition set out in the Explanatory Note to the Act. The Greenland Government's representatives responded that, in their view, Act No. 20 does apply because GMAS has no right or legitimate expectation capable of being expropriated. This flatly ignores GMAS' rights under the Exploration Licence, and GMAS thus strongly objected to this view of government.

In March 2022, GMAS commenced arbitration against the Greenland Government under the Exploration Licence, primarily to obtain confirmation of its rights under the Exploration Licence. The dispute was referred to arbitration in accordance with Section 20 of GMAS' Exploration Licence, which provides that the "*disputes arising between the Government of Greenland and the licensee regarding questions concerning the licence will be finally decided upon by a board of arbitration [...]*" comprising three arbitrators, seated in Copenhagen. GMAS named the Danish Government as a second respondent in the arbitration, on the basis that, although they are not a signatory to the Exploration Licence, they are bound by the arbitration agreement.

Status of the arbitration

The arbitral tribunal comprises Professor Torsten Iversen (Chairman), Dr Veijo Heiskanen (appointed by GMAS) and Mr Thomas Rørdam (nominated by the two Governments to replace Mr Poul Søgaaard, who resigned for reasons of ill health and sadly passed away in September 2023).



The arbitration is taking place in accordance with the Danish Arbitration Act, which is based on a United Nations model arbitration law that many countries (including Australia) have adopted as the basis of their arbitration legislation. Unlike most arbitrations today, the arbitration between GMAS and the two Governments is *ad hoc*, meaning it is not being supported or administered by an arbitration institution (such as the International Chamber of Commerce in Paris). This means that there are no detailed rules already in place dealing with matters such as time limits and, instead, much of the process of fixing the arbitration procedure (including the schedule for written submissions) depends upon the parties being able to reach agreement or, failing that, the arbitral tribunal deciding the issue.

Since the beginning of the arbitration, GMAS and its legal representatives have taken a constructive approach to the arbitration procedure, making proposals intended to ensure a fair and efficient process consistent with norms of international arbitration practice. In GMAS' view, the Governments have generally taken a different approach with the underlying motive of seeking to have the arbitration stopped so that GMAS' rights will never be assessed on the merits by the Tribunal.

As a result of the factors outlined above, a greater than usual level of Tribunal involvement has been required on matters of procedure. The parties are currently proceeding under a Procedural Order of the Tribunal dated 27 March 2023 (**Procedural Order No. 1** or '**PO1**'). PO1 sets out detailed rules for the arbitration procedure, including the language of arbitration, the form in which evidence is to be given (including expert evidence), and arrangements for hearings. A link to PO1 is below.

In the arbitration, GMAS is represented by a team of international mining disputes specialists from global law firm Clifford Chance and leading Danish law firm Plesner.

The bifurcation question

As indicated above, the two Governments have said that they object to the jurisdiction of the Tribunal and that they wish for the arbitration to be 'bifurcated', such that their jurisdictional objection will be heard and decided as a preliminary matter (before issues of liability and damages).

As a result, in PO1 the Tribunal has thus far only fixed a schedule for the arbitration that covers the first round of written submissions: the filing of GMAS' Statement of Claim (which was done on 19 July 2023) and the filing of the two Governments' Defence on 8 January 2024. Under PO1, the two Governments have the option of either filing a full Defence to GMAS's Statement of Claim (covering jurisdiction, liability and damages), or instead filing a Defence that addresses jurisdictional issues only. After the two Governments have filed their Defence, the Tribunal will decide whether the proceedings should be bifurcated, and then convene a meeting of the Parties with a view to scheduling the proceeding through to either a hearing on the Governments' jurisdictional objection, or otherwise to a final hearing.

Accordingly, it will not be until January 2024 that ETM will have clarity on the schedule for the remainder of the arbitration. The key factor is whether the arbitration will be bifurcated such that there is a preliminary phase concerned solely with jurisdiction. ETM notes that the two Governments proposed bifurcation during procedural discussions in 2022 and, after hearing



written and oral arguments against bifurcation from GMAS, the Tribunal declined to order bifurcation for the time being.

Although it is not possible to predict the future arbitration timeline with any certainty, based on the approach taken in other major arbitrations, ETM expects that, if there is no bifurcation of jurisdiction, the written phase of the arbitration should be complete by Q1 2025, with an oral hearing and Tribunal decision on jurisdiction and liability to follow during that year. If jurisdiction is bifurcated, the procedure may take considerably longer.

ETM will provide a specific update on matters of arbitration procedure as soon as the Tribunal issues its next procedural order, which should be at some point in early 2024.

Recourse against licence rejection decisions

GMAS filed its original application for an exploitation licence for Kvanefjeld in June 2019. The events outlined above, including the enactment of Act No. 20, then occurred. However, at the point when GMAS commenced arbitration, GMAS' original exploitation licence application remained pending.

In December 2022, GMAS filed an amended application, seeking exploitation rights only for rare earths, zinc and fluorspar and proposing to treat uranium as a residual impurity to be stored as tailings. The rationale for this amended application was that Act No. 20 only prohibits the exploitation of uranium (above 100 ppm) and, by treating uranium as an impurity to be stored as tailings (rather than sold commercially), Act No. 20 would be no barrier as no exploitation of uranium would occur.

As previously announced, on 1 June 2023, shortly before GMAS filed its Statement of Claim on the arbitration, the Government of Greenland issued a decision rejecting GM's original application for an exploitation licence (for rare earths and uranium). The Government's rejection decision was based solely on Act No. 20. In May 2021, after the Government notified its intention to make such a decision, GMAS applied to the Tribunal for interim measures to require the Government to maintain the status quo (and refrain from making such a decision) pending the outcome of the arbitration. However, the Tribunal declined to grant such measures, on the basis that the Government had already issued the rejection decision in draft (i.e., the damage was already done).

In September 2023, the Government of Greenland rejected GMAS's amended licence application for the Kvanefjeld Project. Again, this decision was based on Act No. 20. It largely ignored the comments that GMAS made on the decision in draft form, including GM's comments concerning how the proposed approach to uranium would not amount to 'exploitation' since uranium would not be commercially utilised but merely handled as a residual product (among several others) from exploitation of rare earths, zinc and fluorspar.

GMAS has the right to seek judicial review of both rejection decisions in the Greenlandic courts. A one-year statute of limitations applies, meaning GMAS must file its applications for judicial review by June 2024 and September 2024, respectively.



As previously advised, GMAS is currently working with its legal advisers to assess its options in relation to the licence rejection decisions, including the option of applying for judicial review and the interaction of such a court proceeding with the ongoing arbitration. This analysis is well advanced and ETM will provide a further update once the decision is taken on how to proceed.

Funding of legal proceedings

As previously announced, in July 2022, ETM and GMAS entered into a litigation funding agreement with Woolridge Investments LLC, a subsidiary of Burford Capital Limited, to cover the costs of the case against the Greenlandic and Danish Governments. The litigation funding agreement is a non-recourse facility, repayable only on a successful outcome of the case. ETM is enjoying a positive working relationship with Burford and is grateful for their support.

A copy of GMAS' Statement of Claim is available by making a request to the following email:

arbitration@etransmin.com

A copy of the Tribunal's Procedural Order No. 1 is available here:

<https://etransmin.box.com/v/ProceduralOrder1>

Authorised for release by the Board of Energy Transition Minerals Ltd.

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ABOUT ENERGY TRANSITION MINERALS LTD.

Energy Transition Minerals Ltd (ASX: ETM) is an exploration and development company focused on developing high-quality mineral projects globally. One of the Company's projects is the Kvanefjeld Rare Earth Project. A comprehensive feasibility study was completed in 2015. The studies outlined the potential for Kvanefjeld to be developed as a long-life, low cost, and large-scale producer of rare earth elements. The company is also involved in the Villasrubias lithium project. Villasrubias is an early-stage exploration project located in the region of Castile and Leon in Spain. The company continues to assess other opportunities globally with the aim to get involved in the development of critical metals projects with a view to become a key enabler of the energy transition.

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