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GUIDE TO MINING REGIMES IN AFRICA

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Introduction

About LEX Africa

Doing business in Africa is associated with diverse opportunities, challenges and risks and must be founded on a strong legal base.

LEX Africa is an Alliance of leading African law firms founded in 1993 with over 700 lawyers in 29 African countries. LEX Africa effectively covers the entire African continent and has a more than 30 year track record of assisting and advising clients on their African business and other activities.

Each member is a full service business law firm with expert knowledge and experience in both local law and the local business, political, cultural and economic environment. LEX Africa accordingly provides a "one stop shop" and Pan African legal team for cross border and domestic African legal solutions to clients wherever they wish to do business in Africa.

Africa is a key source of minerals for the world and mining remains a very import source of African revenue and investment. Understanding the heavily regulated mining sector is vital for success in this sector and we are proud to launch our updated 2025 Mining Guide which summarises the applicable laws and regulations in 21 African countries.

Many thanks are due to all our contributors and editors. I trust the Guide will continue to assist mining companies and others interested in African mining.



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Preface

Africa is well endowed with mineral resources. It harbours the world's largest mineral reserves of platinum, gold, diamonds, chromite, manganese, and vanadium. Mining in Africa is an integral and important part of the continent's economy. Many mining projects suffer extreme risks and difficult decisions and sound mining law is integral for an investment decision. The purpose of the publication is to gain a better understanding of what makes up the various laws in each African jurisdiction. The basic essence of mining law in most African countries is similar, being a state licencing system, but each country has its own local laws, customs, practices and guidelines.

LEX Africa is the first and largest African legal alliance with a long history of assisting clients across the continent. It is hoped that our insight into these issues will be both informative and practical. LEX Africa members have a full understanding of mining law in their respective countries and the practice thereof. This edition of the Mining Guide sets the tone for the African continent and establishes a guideline which is both informative and useful. There is no doubt that the key issues raised in the guide will assist in gaining a better understanding of the various applicable mining regimes operative across the continent.

We hope that you enjoy reading this guide as much as we have enjoyed compiling it.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The mining activities are regulated by the Mining Code approved by Law no. 31/11 of 23 September 2011.

Which Government Bodies administer mining law?
The Government bodies which administer the mining industry are (a) the Head of the Executive Power; (b) the Ministry of Mineral Resources and Petroleum and Gas, (c); the Ministry of Finance; (d) the Geological Institute of Angola (indirect administration body of the State responsible for the collection, storage, management, promotion and availability of geological information of Angola); (e) the National Agency of Mineral Resources (which performs the function of national concessionaire, being responsible for the regulation, supervision and promotion of the Angolan mining sector); (f) ENDIAMA (a strategic company in the public domain, which, amongst others, is entitled of planning, preparing and launching mining concessions for the free market, in view of the politically defined objectives, negotiate and manage mining concession contracts, representing the interests of the Angolan State, monitor the execution of mining contracts, perform the functions of certification and public procurement, monitor the quality and content of minerals in Angola); (g) SODIAM – E.P (a public domain company inserted in the Indirect Administration of the State and responsible for the strategic marketing of minerals); (h) the Diamonds Exchange; and (i) the Kimberly Process National Commission. The National Kimberley Commission (CNPK) has aims to ensure the implementation and execution of the tasks related to the fulfillment of the postulate in the Regulation of the Kimberley Process Certification Scheme, approved by the United Nations General Assembly, through the resolution No 55/56.

The CNPK is, therefore, entitled to ensure the legitimacy and design of production and export of rough diamonds produced in the country to the world market; to cooperate and ensure the methods of preventing and combating conflict diamonds and illicit diamond trafficking; to monitor the evolution of the international market diamonds, etc.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
Mining rights can be awarded pursuant to a public tender or upon request, being recognized through a mining investment contract or through a mining concession. Mining Code describes the rights and obligations of the mining right holders which have the following legal guarantees:

- Applications for access to mining rights are recorded and decided according to order of entry, within the legally established time limits;
- Applications for the granting of mining rights shall be properly published;
- Unrestricted extraction of mineral resources during prospecting, except as expressly provided under the standards of the mining code or additional legislation;
- Titles for mineral resource extraction are allocated on an exclusive basis, and may be transferred pursuant to the provisions of the mining code;
- The necessary support from the government for the execution of mining activities and respect for the rights inherent thereto; and
- The right to freely dispose of and market mining output, subject to the rules and procedures provided under the mining code and additional legislation on the matter.

Pursuant to Presidential Decree 174/15 of 15 September, except for structuring projects that are manifestly technically, economically and financially viable, the granting of new mining titles has been temporarily suspended until the geological mapping of the country and the National Geology Plan (PLANAGEO) is concluded.

The PLANAGEO is a geological mining research and mapping that still in progress that is a very important tool for the planning and diversification of the mining geological activities in Angola.

However, projects with great impact to the Angolan Economy which are technically, economically and financially viable, such as:
- Prospecting or exploitation projects in large scale activity;
- Long-term maturity exploitation projects;
- Projects involving large amounts of investment; and
- Projects involving state-owned companies, are not subjected to this suspension.

Mining investment projects submitted before September 15, 2015 and by that time were pending for approval have not been affected by the above-mentioned suspension.

The mining right holders are also entitled to the following:
- Obtaining geological/mineral information from competent supervisory authorities that are available for the area subject to concession, or to consult such authorities regarding such information;
- Obtaining the cooperation of administrative authorities for the execution of field work and the establishment of rights-of-way, pursuant to law;
- Use of existing surface and groundwater in proximity to the concession area that is not used or covered by any other specific extraction title, without prejudice to third-party rights and always subject to mining legislation;
- Building and deploying infrastructure and facilities

necessary for the execution of geological/mining activities;
- Pursuant to pertinent legal and regulatory conditions, use of the land demarcated for the implementation of mining facilities, buildings and equipment;
- Pursuant to approved work plans and schedules and to the extent necessary for execution of mining operations, to modify the natural configuration of areas subject to concession;
- Conducting geological/mining activities necessary to the execution of approved work plans, without other restrictions other than those arising from legal standards, the concession contract or by order of the regulatory body;
- Extracting, transporting and benefitting from the mineral resources subject to contract, in accordance with the law;
- Disposing of extracted mineral resources and market them, in accordance with the law;
- Through extraction proceeds, recouping expenses from investments made during the exploration, prospecting, surveying and evaluation phase;
- Receiving compensation for losses that may be incurred from any action limiting the exercise of mining rights, in accordance with the law or the concession contract.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

Petroleum deposits existing in the available area of the Angolan national territory, inland waters, territorial waters, exclusive economic Zone and continental shelf are an integral part of public property of the Angolan State.

Mining rights in the oil & gas sector shall be granted by ANPG (National Agency of Oil and Gas) a public company that is the National Concessionaire, under the terms of the law no. 05/19 of 18 April (Law amending the Petroleum Activities Law).

The rights granted to conduct oil and gas exploration and production are for:
- Prospecting;
- Exploration; and
- production.

Petroleum and gas operations may only be carried out under a prospecting license or petroleum concession.

Prospecting licenses shall be issued by the Ministry of Mineral Resources and Petroleum, while the Government shall be responsible for granting concessions for the exercise of mining rights. A prospecting license has a maximum duration of three years. As regards the concession the duration is determined in the concession decree. Although, whether it is a license or concession its duration may exceptionally be extended, upon the request of the licensee or the National Concessionaire. Such extension is subject to the approval of the Ministry of Petroleum, upon verification of the reasons invoked and certification checked that the licensee or the National Concessionaire have performed their obligations.

Any company that wishes to carry out petroleum operations in Angolan territory apart from the scope of its prospecting licenses may only do so together with the National Concessionaire under the following terms:
- Subject to the prior consent of the Government, the National Concessionaire may associate with Angolan or foreign entities of recognized capacity, technical knowledge and financial capability; and
- Such association may take the forms of (a) corporation, (b) consortium, or (c) Production Sharing Agreement.

Finally, regarding the applicable framework to the natural oil and gas sector, such resources are mainly regulated by Petroleum Activities Law and may be conducted under the assignment of a prospecting license or petroleum concession. In addition to the above, please note that recently, on 2 March 2015, the Executive Decree 80/15 which approves the Technical Regulations on the design, installation, operation, maintenance, repair and the Change of Liquefied Petroleum Gas Tanks, establishing its technical and security conditions and the Executive Decree 81/15 approving the Security Technical Regulation of Liquefied Natural Gas Autonomous Units was also published.

On the other hand, other mining activities are mainly regulated pursuant to the Mining Code which rights can only be assigned through a concession regime.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

The Angolan Government is deeply committed in promoting Angolan companies. Moreover, Angolan companies must comply with several local policies designed to promote the development of industrial infrastructures and the furthering of the education levels of the people in Angola. The Angolan local content policies aim to protect the domestic market over the products and services for the mining industry. The local content rules broadly aim to promote Angolan employment, Angolan ownership of business and the Angolan industry, production and services.

The Local content policies are reflected in different levels including:

- The preferential treatment of Angolan companies in public tender processes;
- The obligation of companies to maintain a work force ratio of 30% of foreign employees to 70% of Angolan employees;
- The Mining and Oil companies are expected to source certain products and services exclusively from Angolan companies; meaning companies with majority Angolan ownership; and
- The restrictions to the incorporation or acquisition of a company in Angola by foreign investors.

Are there any special rules or restrictions applicable to foreign applicants?
There are no restrictions under the Mining Code, which provides a special regime that allows foreigners to invest and carry out mining activities.
The main types of investment in the mining sector are (i) the general investment regime, (ii) the investment in the strategic minerals regime and (iii) the artisanal investment regime. In general, holders of mining rights must enter into an investment agreement with the Angolan State. Such mining investment agreement shall be approved by the competent Minister or, if the amount of the investment is equal or higher than USD 25.000.000 (twenty-five million United States Dollars), by the Angolan Chief of Executive.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The State's participation in the mining sector can occur in several ways, including:

Shareholding
The state is entitled to a direct stake in mining companies operating in the country, often through Angola's National Diamond Company (Endiama). State participation can be done through public companies, which have shares in private companies or even in the capital stock of the concessionaires of mining projects.

Licensing and contracts
The State has the authority to grant mineral exploration licenses to companies, both domestic and foreign. Such concession contracts may include clauses that guarantee the State's share of the profits generated by the mines.

Royalties and taxes
In addition to the shareholding, the Angolan state receives royalties and taxes from mining companies. These payments are an essential part of the country's public revenue and reflect the contribution of the mineral sector to the national economy. Taxation includes Industrial Tax, Production Tax, among others.

Public-Private Partnerships (PPP)
In some situations, the State may participate as a partner in mining projects through public-private partnerships (PPP). In these partnerships, the State maintains control over strategic natural resources and can benefit from private investments, maintaining participation in the operations.

Therefore, the State of Angola, through its institutions and legal mechanisms, has a strong presence in the mining sector, ensuring a form of participation in projects that involve the exploitation of its natural resources.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Holders of mining rights are entitled to dispose of the minerals mined and have the power to sell the products of mining activities, subject to the limitations set out in the Mining Code. The Holder of the Executive Power is bound to approve the rules related to trade in the strategic minerals sector, in view of the specificities regarding each strategic mineral. The Mining Code determines that, when reasons of public policy or national sovereignty are at stake, the Angolan Government may create a particular institution to act as the sole trade public body (as it happens already with diamonds). It is also ensured that the holders of mining rights participate in the negotiation and in the draft of the trade agreements related to strategic minerals that are produced in their mines. The Mining Code also foresees that the Angolan State may create one or more trading companies, aimed at acquiring the strategic minerals directed to producers, in a free market regime, whenever this is required by law or by an objective need of State intervention.

Are there any restrictions on the export of minerals?
Export of mineral is subject to a previous license issued by the Ministry of Trade and an authorization issued by the Customs authority.

All minerals exported from Angola are subject to a certificate of origin issued by the competent authorities. Also, internal rules adopted by the framework of the Kimberley Process Certification Scheme (KPCS) apply to other strategic minerals.

Additionally, a local certification process was implemented, in accordance with the KPCS.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The Mining rights can be transferred, granted as collateral and can be subjected to judicial execution measures, subject to the limitations set out in the Mining Code, which include previous authorization from the competent authority. In case of insolvency of the mining rights holder, the mining rights will not terminate but can be allocated to the creditor of the holder that offers the best price (subject to a right of first refusal of the Angolan State).

Transfer of mining rights is subject to the payment of taxes.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
There are no particular rules regarding restrictions or disposals of controlling interests in entities holding exploration or mining rights.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The holders of mining rights have the right to use the surface necessary or incidental to the exploration or mining operation.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Pursuant to the Mining Code, holders of mining rights must ensure the conservation and protection of nature and the environment, complying with the respective legal standards. Without prejudice to the provisions of specific environmental standards for mining activity, the exploitation of minerals must be carried out in accordance with basic laws on the environment, biological and aquatic resources and water as well as with Environmental Impact Assessment standards.

Holders of mining rights are specifically required to observe the following precepts:

- Fulfil the obligations arising from the Environmental Impact Assessment and environmental management plan, pursuant to the terms established therein;
- Take measures necessary to reduce the formation and propagation of dust, debris and radiation in areas of extraction and surrounding areas;
- Prevent or eliminate water and soil pollution, using appropriate means for such purposes;
- Neither reduce nor in any other way impair the normal supply of water to the populations;
- Execute mining operations to minimize soil damage;
- When using explosives in proximity to human settlements, reduce impact from noise and vibration to acceptable levels, as determined by competent authorities;
- Refrain from discarding waste harmful to human health, flora and fauna into the sea, water currents and lakes; and
- Notify authorities of any occurrence that causes or may be capable of causing environmental damage.

In general, the mining operators must adopt internal rules of conduct on environmental matters that are compliant with legislation in force creating conditions to ensure that workers at all levels recognize their responsibility in regard to environmental management, as well as that resources, personnel and training adequate to implementing environmental plans are provided.
In collaboration with competent State bodies, they are responsible for strengthening infrastructure, training and qualifications of workers regarding environmental management in mining operations.
Moreover, the environmental obligations are set forth jointly with the payment of an environmental guarantee.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
No, but holders or owners of land have the right to an income for the duration of activities corresponding to prospecting and surveying, and such parties shall be compensated for the losses incurred, but they must properly consider the relative interest of mining production for the national economy, refraining from creating unjustified barriers to geological/ mining research.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
There is specific legislation governing health and safety in general.

Pursuant to the Mining Code, the holders of mining rights must adopt measures to ensure hygiene, health and safety at work, as well as to prevent professional risks and accidents at work, pursuant to regulations issued by competent bodies and necessary training programs in the realm of hygiene, health and safety in the workplace must be promoted, as well as the observance of proper use of machinery, materials and working equipment.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
Yes. The Constitution of the Republic of Angola, approved in 2010, is the fundamental norm that establishes the basic principles for the management of natural resources and the conditions under which economic activities can be carried out. Although the Constitution does not deal directly with mining, it does provide for the right to property, environmental protection and prior consultation with affected communities, as well as guaranteeing the state's sovereignty over the country's natural resources.

Are there administrative appeals in the mining law?
The conflicts arising between state bodies and mining holders are subject to the general administrative law.
The Code of Administrative Procedure (CPA) applies generally to all sectors of public administration, including the mining sector, when it comes to administrative processes involving the granting of rights, licenses and other permits within the mining area.

Some of the main mechanisms for resolving conflicts between holders of mining rights and state bodies under the Code of Administrative Procedure are Complaints and hierarchical appeals.

ROYALTIES AND TAXES

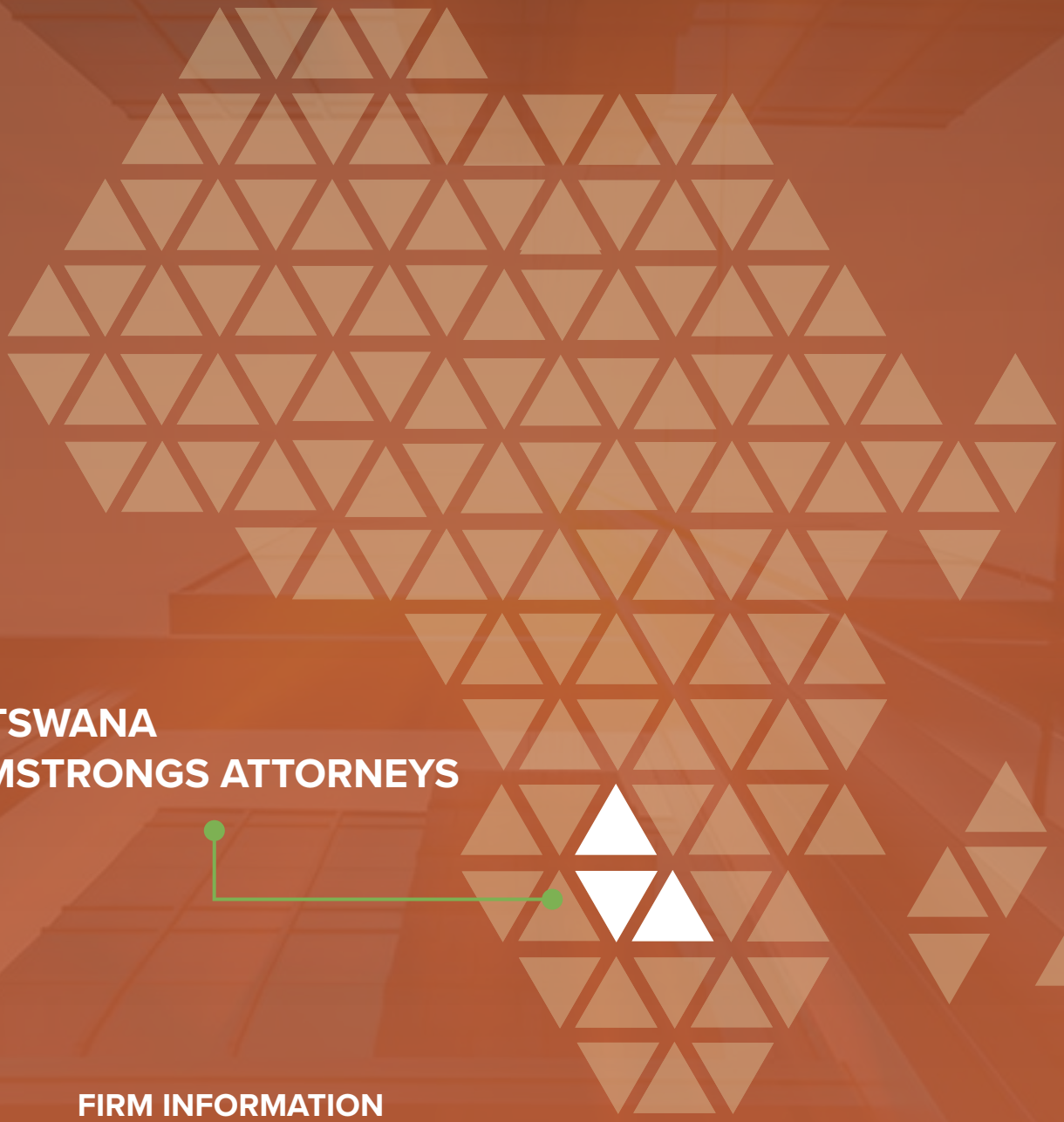
Are there special rules applicable to taxation of exploration and mining companies?

All local and foreign entities that are engaged in mining activities in Angola as well as abroad (to the extent that Angola has the power to tax) are subject to the special tax regime described in the Mining Code. They may be subject to the following taxes: income tax (actually at the rate of 25%), royalties; surface tax; artisanal mining tax; and taxes applicable to other activities conducted by the relevant entities.

The provisions related to custom duties provide for certain exemptions, in particular equipment used in connection with the mining activities, and the conditions that apply to such exemptions. Mining products can be exported directly or indirectly by the mining right-holder without any additional custom duties.

Are there any royalties payable to the State over and above any taxes?

Yes, the mining operators must pay for the tax over the value of the mineral resources.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The relevant legislation that governs the system of mining law in Botswana is the Mines and Minerals Act Cap 66:01 and the Mines, Quarries, Works and Machinery Act Cap 44:02. The mining of diamonds is also regulated under the Precious and Semi-Precious Stones (Protection) Act [Cap 66:03].

Which Government Bodies administer mining law?
The Department of Mines administered under the Ministry of Minerals and Energy.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

All Minerals in Botswana vest in the state. No person may prospect, or mine minerals save in terms of a licence issued by the Minister for Minerals and Energy under the Mines and Minerals Act Cap 66;01 ("MMA").

Prospecting License
Prospecting licences are issued for three years with two options to renew, each period not exceeding two years and the licences cover such area as provided for by a licence which area shall not exceed 1,000km2 under the terms of the MMA.

The Minister may renew a prospecting licence for additional periods where a discovery has been made and evaluation work has not, despite proper efforts, been completed. This means that a licence is renewable beyond the 3 + 2 + 2-year periods. For example, if at the end of the 7-year period the holder informs the Minister that a discovery has been made but evaluation work has not been completed, an additional extension may be granted.

Alternatively, the holder could apply for a retention licence and/ or mining license. Generally, retention licences entitle the holder to keep the area to which the licence relates for future mining operations and to carry on prospecting within the retention area. They are granted for two periods not exceeding three years each.

In terms of the MMA the holder of a prospecting licence is entitled to enter onto any land to which its prospecting licence relates and may prospect thereon for the mineral to which the prospecting licence relates, drill bore holes, make excavations, erect camps and put up temporary buildings for machinery necessary for prospecting purposes.

The rights of a holder of a prospecting licence are more restrictive and narrower compared to the rights under a mining licence. The MMA obliges the holder of a prospecting licence to:

- Commence prospecting operations within three months or such further period as the Minister may allow, of the date of issue of his licence;
- Carry on prospecting operations in accordance with the programme of prospecting operations as set out in the prospecting licence; and
- Notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery or discovery of any mineral deposit of economic value.

The holder of a prospecting licence shall not without the written permission of the Minister, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, valued or tested in Botswana.

The Minister is empowered to monitor compliance with the programme of prospecting operations as specified in a prospecting licence however, in practice we note that compliance is reviewed at the time of licence renewal or transfer. A licence may not be cancelled, even in the event of non-compliance unless the notice has been given to a holder to rectify the default.

The holder of a prospecting licence can notify the Minister of proposed amendments to the programme of prospecting operations. Unless the Minister objects within 60 days of such notification, which in practice the Minister does not do if the proposed amendments are reasonable, the amendments take effect automatically.

The holder of a prospecting licence may at any time not later than three months before the expiry of the licence apply to the Minister for renewal thereof, submitting a report on prospecting operations carried out so far and the costs incurred and a proposed programme of prospecting operations to be carried out and the estimated cost thereof.

The holder shall be entitled to a renewal provided that:

- It is not in default under the terms of the MMA or the licence; and
- The proposed programme of prospecting operations is adequate.

At the end of the period of the prospecting licence the rights granted to the holder thereof under the terms of the MMA and the licence cease, and the holder is required to vacate the area to which the licence relates, taking such measures as are necessary to restore the land substantially to the condition it was in prior to the commencement of prospecting operations, the holder being obliged to make adequate on-going financial provision for compliance with such obligations.

Retention Licence

The holder of a prospecting licence may apply to the Minister for a retention licence in respect of the area and mineral covered by the prospecting licence.

A retention licence - for which an application must be made no less than three months before the expiry of the prospecting licence - is designed to bridge the gap between (i) the expiry of a prospecting licence and completion of the prospecting programme and (ii) the time when, subject to the feasibility study, mining can proceed on a profitable basis. Retention licences are granted for two periods, not exceeding three years each and entitles the holder to:

- To retain the retention area to which the retention licence relates, for future mining operations;
- To carry on prospecting operations in the retention area in order to determine from time to time the prospects of mining any mineral to which the retention licence relates on a profitable basis;
- To remove any mineral or sample of a mineral for any purpose other than sale or disposal, from any place where it was found or incidentally won in the course of prospecting operations to any other place within Botswana or, with the permission of the Director of Mines, outside Botswana; and
- To carry on, in order to determine, from time to time, the prospect of mining any mineral to which the licence relates, on a profitable basis, such other investigations and operations, including erection of necessary equipment, plant and buildings, in the retention area as may be reasonably necessary for, or in connection with, any future mining operations or any prospecting operations.

The holder of a retention licence is obliged to:

- Demarcate and keep demarcated the retention area in the prescribed manner;
- Obtain consent of the Director of Mines for any amendment to his intended work programme.

Unless the Director of Mines otherwise stipulates:

- Back fill or otherwise make safe excavations made during the course of his prospecting operations to the satisfaction of the Director of Mines;
- Permanently preserve or otherwise make safe any borehole in the manner directed by the Director of Geological Survey and Director of Mines;
- Remove within two months of the expiry of his licence, any camp, equipment, plant or building erected by him in the retention area, and repair or otherwise make good any damage to the surface area of the grant occasioned by such removal, to the satisfaction of the Director of Mines; and
- Furnish the Director of Geological Survey and to the Director of Mines a quarterly report.

Furnish to the Minister by submitting to the Director of Mines, as soon as they become available:

- The results of all studies, surveys and tests including but not limited to analytical, metallurgical, mineralogical, and geo-physical work incidental to those prospecting operations;
- The interpretation and assessment of such studies, surveys and tests; and
- Submit annually to the Director of Mines an updated feasibility study and an audited statement of direct expenditure if any, incurred in the retention area during the year.

Mining Licences

A person wishing to obtain a mining licence is entitled to apply to the Minister and the Minister shall grant a mining licence if he is satisfied that the applicant is the holder of a prospecting licence, retention licence or a waiver issued (if the area over which a mining licence is required has been sufficiently prospected and that no other person has exclusive rights over that area).

Under the terms of the MMA the holder of a mining licence, may enter upon any land to which his mining licence relates and take all reasonable measures on or under the surface to mine the mineral to which his mining licence relates, erect the necessary equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining minerals recovered, dispose of any mineral product recovered, prospect within his mining area for the mineral for which he holds a mining licence and for any other mineral and stack or dump any mineral waste product in a manner approved by the Director of Mines.

The mining licence once granted is valid for a period as is reasonably required to carry out the mining programme but not exceeding twenty-five years.

The Minister shall grant a mining licence if satisfied that:

- The proposed programme of mining operations will ensure the most efficient and beneficial use of the mineral resources in the proposed mining area;
- The proposed mining area is not the same as nor does it overlap an existing mining area or retention area unless the holder of that area consents to the grant of a mining licence, or in the case of a retention licence, has failed to make an application;
- The proposed mining area extends to cover only that area reasonably required for surface mining and treatment facilities and also to cover the proved, indicated and inferred reserves;
- The applicant has or has secured access to adequate financial resources, technical competence and experience to carry on effective mining operations;
- The proposed financing plan submitted as part of the feasibility study is in accordance with good financial practice, and provides for a debt-to-equity ratio of no more than 3:1 unless the Minister otherwise agrees;
- The parent company guarantees the performance of the obligations of the relevant company; and
- The applicant is not in default under the terms of the MMA.

The holder of a mining licence has the following obligations:

- To commence production on or before the date referred to in the proposed programme of mining operations in the

mining licence application as the date by which he intends to work for profit;
- Develop and mine mineral covered by his mining licence in accordance with the programme of mining operations as adjusted from time to time in accordance with good mining and environmental practice;
- Demarcate and keep demarcated the mining area in such manner as may be prescribed and within three months submit to the Minister a diagram of the mining area;
- Keep and maintain an address in Botswana, full particulars of which shall be registered with the Minister to which all communications and notices may be addressed; and
- Notify the Minister as soon as he begins to work his mining area for profit.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
There are two pieces of legislations that are relevant to the production of gas, one is the Industrial Development Act, Chapter 43; 01 and the Petroleum (Exploration and Development) Act, Chapter 67:01.

The Industrial Development Act relates to the manufacture (means to subject physical matter to any process which materially changes it or its packaging in substance, character or appearance and includes the assembly of parts), for sale, any product. Product is defined as any article, thing or substance produced by any manufacturing enterprise to which the Industrial Development Act applies but excludes any immovable structure at any place in Botswana.

The Industrial Development Act provides that no person shall manufacture any product at any place in Botswana unless he is in possession of a licence to manufacture such product, issued by a licensing committee. The application for a licence to carry on a manufacturing enterprise shall be made in the prescribed form to a licensing committee.

The Industrial Development Act does not list the types of products that will require a licence under the Act therefore an enquiry has to be made to the licensing committee as to whether the product falls under the Industrial Development Act. The second legislation is the Petroleum (Exploration and Development) Act which relates to the exploration and the production of petroleum. Petroleum under the Act is defined as any naturally occurring, hydrocarbon; mixture of hydrocarbons; or mixture of one or more hydrocarbons and any other substance, whether in gaseous, liquid or solid form, and includes petroleum which has been returned to a natural reservoir but does not include coal or a substance which may be extracted from coal.

Under the Petroleum (Exploration and Development) Act, two licences can be issued, the first one being the exploration licence, which from reading the Petroleum (Exploration and Development) Act has to be issued prior to when a development licence is issued (the licence to produce petroleum from the discoveries made by the exploration licence.

A development licence may be issued to a person who is not the registered holder of an exploration licence if he is satisfied that the area in which he intends to retrieve the petroleum does contain a petroleum reservoir or part of a petroleum reservoir and that area is not subject to any exploration or development license.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
No.

Are there any special rules or restrictions applicable to foreign applicants?
No.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
Upon the issue of a mining licence, the Government shall have the option of acquiring up to fifteen percent working interest participation and shall inform the applicant as to whether or not it is exercising its option.
If the Government does decide to exercise its option, it shall be issued a single P1.00 special share at par, which shall carry the right to appoint up to two directors, with alternates, and to receive all dividends or other distributions in respect of its working interest percentage and shall be obliged in the same manner as other shareholders to contribute its working interest percentage.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
No. However, there is a provision in the MMA which provides that the holder of a mineral concession issued under this Act, shall, in the conduct of his operations under such concession, and in the purchase, construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to:
- materials and products made in Botswana; and
- service agencies located in Botswana and owned by Botswana citizens or bodies corporate established under the Companies Act.

Are there any restrictions on the export of minerals?
There are no restrictions in the export of minerals nor are we aware of any export permits or levies. We are aware in practice that the Department of Mines is required to issue a supporting letter to the exporter confirming that they have no objection to the export of the minerals mined.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
A prospecting licence or an interest therein or any controlling interest in the holder thereof may be transferred from one person to another, with the prior approval of the Minister. For the avoidance of doubt, a change in shareholding of a company that holds a licence which does not result in a change in controlling interest in that company does not require approval of the Minister. Approval is subject only to the Minister being provided with such details of the proposed transferee as would be required in the case of an application for a prospecting licence and the transferee not being disqualified under any provision of the MMA from holding a prospecting licence.

No retention licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.
In any application to the Minister for his approval the applicant gives such particulars concerning the proposed transferee, assignee or other party concerned as would be required in an application for a mining licence. The Minister shall grant his approval for the transfer, assignment or other dealing with any retention licence or interest therein provided the transferee is not disqualified under any provision of the MMA from holding a retention licence and the Minister is satisfied that the application is not in breach.

No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
The restrictions on disposals of controlling interests in entities holding exploration or mining rights are capable of two possible interpretations, namely a wide and a narrow interpretation.

The narrow interpretation holds that no approval from the Minister is required for a change of control in the parent or ultimate parent of a license holders. The basis for this interpretation is the definition of "interest" in section 50 (4) of the MMA. More particularly the fact that "interest" is defined as meaning "in the case of a holder who is private company, a controlling interest in such holder".

It has been interpreted as being limited to circumstances where there is a transfer in the shares of the license holder and such transfer has the effect of changing the control in such entity.

The wide interpretation holds that the transfer of any interest, whether direct or indirect in a mining license will require approval from the Minister. To date no Court in Botswana has determined which of the aforementioned interpretation applies and consequently this is unsettled under Botswana Law.

Our approach in dealing with this issue has been to address a letter to the Minister notifying him of the change in control at the parents (or ultimate parent level) but informing him that there is no requirement for such notification under the Act or for his consent or approval to the transaction.

To date we have not had any objection from the Minister to such approach. We should however caution that recently the Department of Mines and Minerals has indicated that in its view the wider interpretation of Section 50 has application and that it will advise the Minister accordingly. We cannot thus warrant or guarantee that the Minister will not adopt the wide interpretation and insist on his consent for a change of control at the parent company level.

USE OF SURFACE OF LAND INVOLVED IN EXPLORATION AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
In Botswana, the grant of a prospecting licence, a retention licence, a mining licence, an exploration license or development license issued in terms of the MMA or Petroleum (Exploration and Development) Act does not give exclusive surface rights in the area which is the subject of the concession.

Section 62 of the MMA and section 70 of the Petroleum (Exploration and Development) Act provide that where the license holder requires exclusive use of the whole or any part of the license area, he may obtain from the owner or lawful occupier of the area, a lease for the exclusive use thereof. The rental to be paid, the duration of the lease and the extent or area to be covered may be agreed upon by the parties and failing such agreement, the said Acts provide for the rental to be determined by arbitration. During prospecting operations, it is not usual for leases to be entered into with holders.

In addition, both the MMA and the Petroleum (Exploration and Development) Act contain restrictions on the use of surface rights in certain places without obtaining appropriate consent, including sensitive land (e.g. places of burial, monuments or government land), within proximity of buildings, agricultural land or land used for water purposes, national parks, railways, roads, land the subject of mining and any other restricted land specified by the Minister.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Sections 55 and 56 of the Petroleum (Exploration and Development) Act imposes certain environmental obligations upon a license holder when exploring, extracting or storing petroleum including inter alia an obligation not to pollute underground water sources.

Section 65 of the MMA obligates the license holder to undertake prospecting and mining operations with minimum impact on the environment and further requires the holder to rehabilitate its license areas from time to time as well as at the end of prospecting and mining operations.

There is the Environmental Assessment Act Cap 65; 07 which is used to assess the potential effects of planned developmental activities; to determine and to provide mitigation measures for effects of such activities as may have significant adverse impact on the environment; and to put in place a monitoring process and evaluation of the environmental impacts of implemented activities.
The Environmental Assessment Act requires au
thorisation prior to any holder of an exploration right or mining right to conduct activities or an activity where there is an unanticipated irreversible adverse environmental impact.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Where the license area falls within tribal land, this may have implications for a license holder in the sense that unless such license holder acquires exclusive rights under section 62 of the MMA or section 70 of the Petroleum (Exploration and Development) Act, occupiers of land in the license area will continue to have customary and tribal land use rights with respect to the license area. Where a license holder requires exclusive use rights under the above sections, it will need to negotiate not only with the tribal authority but also with each of the relevant occupiers for exclusive use rights.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Mines, Quarries, Works and Machinery Act Cap 44:02 regulates and governs health and safety and welfare of persons engaged in prospecting, mining and quarrying operations including any works which form part of and are ancillary to mining and quarrying operations and to make provision with respect to the inspection and regulation of mines, quarries, works, and of machinery used in connection therewith.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
No.

Are there administrative appeals in the mining law?
No.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies
The royalty's payable shall be the following percentages of the gross market value:

MINERAL TYPE	PERCENTAGE
Precious stones	10%
Precious metals	5%
Other minerals or mineral products	3%

The royalty shall be paid on a mineral or mineral product on receipt of each payment or other consideration for such mineral or mineral product, and each royalty payment shall be accompanied by full particulars of the mineral or mineral product sold or disposed of and the terms of payment therefor: Provided that any disposal for other than monetary consideration or consideration deferred for a period beyond industry practice shall be referred to the Minister for the determination of the royalty.

Where it appears to the Minister that minerals have been disposed of otherwise than in an arm's length transaction, the Minister shall determine the royalty payable based on prices ruling in the industry, and the royalty so determined shall be payable on demand: Provided that the royalty so determined and paid may be varied by court review or arbitration and the sum of any such variation shall thereupon become payable or repayable as the case may be.



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BURKINA FASO | SCPA YANOGO BOBSON

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
In Burkina Faso, many laws are applicable to the mining sector which is however primarily regulated by:
- the mining code which was adopted by Act n°016-2024/ALT dated July 18, 2024 *(Loi n° 016-2024/ALT du 18 Juillet 2024 portant code minier du Burkina Faso)* and its enforcement regulations;
- the OHADA Uniform Act on Companies;
- the environment code; and
- the criminal code.

Which Government Bodies administer mining law?
The Government bodies administering mining law are the ministry in charge of Energy, Mines and Quarries.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

The research and exploitation of mineral substances in Burkina Faso are authorised under mining titles or authorisations:
- Research operations are conducted under a research permit;
- Exploitation operations are conducted under an exploitation permit, which may be industrial or semi-mechanised exploitation;
- Prospecting authorisation;
- Artisanal exploitation authorisation; and
- Quarry substances research and exploitation authorisations.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
There is no specific law regarding oil and gas exploration and production in Burkina Faso. Therefore, any investor who might be interested is required to negotiate with the government the right to conduct these activities.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Burkina Faso's mining law does not set up any requirement in relation to the holding of equity in exploration and mining projects by indigenous peoples.

Are there any special rules or restrictions applicable to foreign applicants?
There are no special rules or restrictions applicable to foreign nationals in relation to the holding of equity in mining projects.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The grant of an exploitation permit entitles the State to fifteen percent (15%) free carried interest of the share capital of industrial exploitation companies. The State can acquire, against payment, at least thirty percent (30%) of the share capital of industrial exploitation companies for itself and/or for the national private sector.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Yes. A mining title holder must beneficiate or transform locally part of its production in Burkina Faso.

Until a refinery is available, which is not the case as of September 2026, the gold production can be in total exported to be refined outside of Burkina Faso.

Are there any restrictions on the export of minerals?
There are no restrictions on the export of minerals.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
Yes, the disposal of the rights to research and mine in Burkina Faso are assignable subject to the prior written authorisation of the minister in charge of mines.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
Yes, the transfer of controlling interests in entities holding exploration or mining rights resulting in an indirect transfer of rights of exploration or mining companies are subject to the prior written authorisation of the minister in charge of mines.

USE OF SURFACE OF LAND INVOLVED IN EXPLORATION AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Occupation of the land required for prospecting, exploration or exploitation of mineral substances and related industries, both inside and outside the perimeter of the mining title, as well as access to such site for the same purposes, is permitted in accordance with the provisions in force on the subject.

In such cases, the owner of the land or the occupier in any capacity whatsoever is entitled to fair and prior compensation. However, the mere passage across the land does not entitle the owner or traditional occupant to any compensation if no damage is incurred.

Occupation of land also includes, where applicable, the right to cut the wood required for mining activity and to use open waterfalls and surface and underground water, all within the perimeter defined in the mining title, subject to compensation or payment of the taxes or royalties provided for by the texts in force.

However, semi-mechanised and industrial mining by dredging and any other method in riverbeds is prohibited.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The laws that govern the protection of the environment at research and mining sites are the mining code, the mining regulations and the environment code and regulations.

The mining activities shall be conducted in a way that ensures environmental conservation, management and the rehabilitation of the exploited sites according to standards, conditions and modalities set by the regulation in force. Mining titles holders, prior to any field work likely to impair the environment shall:

- Obtain a feasibility opinion from the ministry in charge of the environment;
- Set up an environmental conservation and management program including a rehabilitation plan of the exploited site; and
- Open an account and make a deposit in a trust fund to be used to cover the implementation cost of the environmental conservation and management program.

Note that the exploitation of radioactive minerals, the use of radioactive sources must be subject to radiation monitoring. In addition to these special provisions, mining is subject to general environmental laws.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
There are no native land title implications on exploration and in the mining industry.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
Health and safety in mining is governed by:

- the mining code;
- the decree related to the health and safety of mining workers; and
- the labour code.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
Yes, the Constitution of June 2, 1991 as revised and amended by Act n°004-2026/ALT dated January 20, 2026 *(Loi n° 004-2026/ALT du 20 janvier 2026 portant révision de la constitution)*.

Are there administrative appeals in the mining law?
Yes, all decisions taken by the administration may be contested before the administrative tribunal. Judgements rendered can be appealed before the Administrative Court of Appeal and its decisions can be appealed lastly before the *Conseil d'Etat*.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies
There are tax incentives applicable to exploration companies and those in the construction phase, which shall not exceed three (3) years. Mining companies are subject to the common law tax regime.

Are there any royalties payable to the State over and above any taxes?
Yes, there are royalties payable to the State which rates vary according to the value of the ounce.

Mining royalties' rates are payable for industrial gold based on the international market value of gold (LME) as follows:

- 3% if the ounce is lower than $1,000 USD
- 4% if the ounce is over or equal to $1,000 USD and inferior to $ 1,300 USD
- 5% if the ounce is over or equal $1,300 USD and inferior to $ 1,500 USD

- 6% if the ounce is over or equal $1,500 USD and inferior to $ 1,700 USD
- 6.5% if the ounce is over or equal $1,700 USD and inferior to $ 2,000 USD
- 7% if the ounce is over or equal $2,000 USD and inferior to $ 3,000 USD
- From $3,000 USD, 1% is added for every increase of $500 USD or fraction of $500 USD in the value of gold.

CAMEROON
D. MOUKOURI AND PARTNERS

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CAMEROON | D. MOUKOURI AND PARTNERS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
In Cameroon the law governing the mining system is Law n°2023/014 of the 19 December 2023 instituting the Mining Code. This law repeals provisions of Law N°2016/017 of 14 December 2016 establishing the mining code.

Which Government Bodies administer mining law?
The Government Bodies in charge of administration of mining law is the Ministry of Mines, Industry and Technological Development and SONAMINES (National Mining Company) created by Decree No. 2020/749 of 14 December 2020.
SONAMINES is a public company with legal personality and financial autonomy placed under the technical supervision of the Ministry of Mines and the financial supervision of the Ministry of Finance.
Its mission is to develop and promote the mining sector, and manage the interest of the State in the mining sector. In this light, its role includes the following:

- To carry out an inventory of mineral deposits in liaison with other competent administrations and organisations;
- To conduct studies in relation to the exploration and exploitation of mineral substances in liaison with other competent administrations and organisations;
- To carry out operations of purchase and marketing of mineral substances on behalf of the State;
- To carry out the exploration and exploitation of mineral substances;
- To promote the processing and packaging of mineral substances;
- To ensure the implementation of measures relating to the restoration, rehabilitation, and closure of mining sites, in liaison with other competent administrations;
- To acquire shares in companies engaged in the exploration, exploitation, marketing, treatment, and processing of mineral substances by means of contribution, partnership, subscriptions, purchase of securities and/or corporate rights, alliance and/or joint venture;
- To participate in the negotiation and monitoring of the execution of contracts between the State and mining companies in liaison with other competent administrations;
- collecting and keeping documentation on mineral substances and mining activities in liaison with the Minister of Mines;
- To contribute to the promotion of transparency in the mining sector;
- To contribute to the promotion of geological and mining information in liaison with other competent administrations; and
- To carry out all commercial, industrial, movable, immovable and financial operations related directly or indirectly to its corporate purpose or of such a nature as to promote its development.

SONAMINES ensures on an exclusive basis, on the whole national territory, the operation of the purchase and marketing of Gold and Diamonds following the terms and conditions laid down by regulation, however:

- SONAMINES has no competence over Hydrocarbons which falls under the competence of the National Hydrocarbon Company ('SNH"); or
- over quarries, which fall under the jurisdiction of municipal councils as per the General Code on Decentralised Territorial Collectivities instituted by law no. 2019/024 of 24th December 2019

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Article 16 (1) of Law n°2023/014 of the 19 December 2023 instituting the Mining Code provides that "Any natural or legal person may undertake or carry out an activity governed by this law on the public domain, the private domain of the State, the national domain or the private domain of private individuals."

Article 16 (2) of Law n°2023/014 of the 19 December 2023 instituting the Mining Code provides that "Any mining activity, with the exception of reconnaissance is subject to obtaining a mining title."

Non-industrial licence and non-industrial miner's card
The collection of mineral substances can be handled only by natural persons of Cameroonian nationality. It is subject to the prior issuance of an individual non-industrial miner's card by the authority in charge of mines for a renewable period of two years and a non-industrial mining licence.

The non-industrial mining licence is granted by the authority in charge of mines for a renewable period of two years and may be granted within an exploration permit. The holder of a non-industrial miner's card may mark out a non-industrial mining perimeter within thirty days from the date the application for a non-industrial mining licence. (Articles 20 to 23 of Law n°2023/014 of the 19 December 2023 instituting the Mining Code).

Licence for semi-mechanised non-industrial mining of precious and semi-precious substances
The licence for semi-mechanised non-industrial mining of precious and semi-precious substances is granted within an exploration permit by the Minister in charge of mines after the prior approval of the President of the Republic of Cameroon for a period of two years renewable to any legal person governed by Cameroonian law or company where

the share of Cameroonians makes at least fifty-one percent of the shareholding.
The licence for semi-mechanised non-industrial mining of precious and semi-precious substances is granted over a total surface of land that shall not exceed twenty-one hectares and shall be a single polygonal-shaped block within one or several cadastral units. The State deducts a combined flat-rate mining tax of twenty-five percent of the gross production of every semi-mechanised non-industrial mining site. (Articles 24 to 27 of Law n°2023/014 of the 19 December 2023 instituting the Mining Code).

Reconnaissance Permit
The reconnaissance permit is issued to legal persons governed by Cameroonian law to conduct systematic and mobile surface surveys using geological, geophysical or other methods covering vast areas, for the purpose of detecting traces or concentrations of useful mineral substances. The validity of a reconnaissance permit is a renewable period of one year (Article 28 of the Law n°2023/014 of the 19 December 2023 instituting the Mining Code). The total surface area for which a reconnaissance permit is granted shall not exceed one thousand square kilometers or equivalent in terms of the number of cadastral units and must consist of a single polygonal block. (Article 29 of the Law n°2023/014 of the 19 December 2023 instituting the Mining Code).

The reconnaissance permit confers on its holder a non-exclusive and non-transferable right to carry out reconnaissance within the reconnaissance perimeter, the right to enter and set up appropriate facilities within the reconnaissance perimeter subject to the land, property, environmental and forestry law in force (Article 31 of the Law n°2023/014 of the 19 December 2023 instituting the Mining Code). The holder shall carry out operations in line with his/her works schedule and submit related periodic reports.

Quarrying is subject to obtaining a reconnaissance permit for new sites or a site access permit for old quarries. (Article 59 (1)).

Exploration Permit
The exploration permit is granted to a legal person subject to Cameroonian law by the Minister in charge of mines for the purpose of conducting exploration works; to locate and evaluate mineral deposits and to determine conditions for commercial mining.

It is issued for an initial maximum period of three years and may be renewed no more than three times, each renewal not exceeding two years. More than five exploration permits cannot be issued to the same person. The area of land over which an exploration permit is issued cannot exceed five hundred square kilometers. The minister in charge of mines approves the works schedule and the budget proposed by applicants for an exploration permit. The holder of an exploration permit can, if need be, request a change of the current works schedule and start exploration in the area covered by the permit within a maximum period of nine months with effect from the date of notification of the permit. After this deadline, the minister in charge of mines issues a formal notice in writing.

The exploration permit authorises its holder to:
- Access and occupy the surface area covered by the exploration permit;
- Extract, remove and dispose of rocks, earth, soil or mineral substances, excluding precious and semi-precious substances in quantities allowed by the approved by the works schedule;
- Collect and use water situated on or flowing through the said activity;
- Carry any works deemed necessary for exploration of the surface area; and/or
- Dispose of precious substances, and stones, found during exploration works only where the said substances and stones have undergone physical and chemical analyses or other laboratory analyses, on authorisation of the minister in charge of mines.

The holder of an exploration permit who, based on a pre-feasibility study, has identified a deposit and has demonstrated to the Minister in charge of mines that he cannot mine the said deposit within the set time limit, may apply for a change of schedule to continue exploration activities in the same area for a further non-renewable period of two years.

Mining Agreement
The mining agreement is signed between the State (Minister in charge of mines) and an exploration permit holder (by their legal representatives) with a view to developing, mining, or financing a new mineral deposit. The mining agreement shall be established on the basis of an exploration permit deemed admissible and shall be signed before the granting of a small-scale or industrial mining permit and shall take effect from the date of notification of the permit.

Mining Permit
A non-industrial or industrial mining permit is granted by right to any holder of an exploration permit who has provided evidence of the existence of a deposit within his perimeter. The granting of a non-industrial or industrial mining permit entails cancellation of the exploration permit within the perimeter covered by the mining permit. Holders may request, from the Minister in charge of mines, a change in the originally approved work programme and may benefit from special incentives when he undertakes to build a processing plant for all or part of the mining production.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
In Cameroon, oil and gas is subject to:
- law n°2019/008 of 25 April 2019 to institute the petroleum code. This law repeals provisions of law n°99-013 of 22 December 1999; and

- law n°2012-006 of 19 April 2012 to institute the gas code and decree n° 2014/3438/PM of October 27, 2014 setting the terms of application of Law No. 2012/006 of April 19, 2012 on the Gas code.

In line with the legislation, the following rights are granted to conduct oil and gas exploration:

OIL

Concession Contract
Concluded prior to the granting of a Hydrocarbons Research Permit, the Concession Contract sets out the rights and obligations of the State and the Holder during the period of validity of the Research Permit and, in case of discovery of a hydrocarbon deposit which is commercially exploitable, during the period of validity of the associated Exploitation Concession.

In the Concession Agreement, the holder assumes the Financing of Petroleum Operations and has Hydrocarbons extracted during the period of validity of the said Contract, in accordance with the Concession Agreement, subject to rights of the State to collect the fee in kind. (Articles 2 (12, 14, 43) and 15 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Production Sharing Contract
By the Production Sharing Contract, the State, directly or through a duly mandated public body or unit, contracts for the services of a holder for the purposes of carrying out exploration activities, on its behalf and in an exclusive manner, within a specified area. In the event of a discovery of a commercial hydrocarbon field, the holder shall be responsible for financing the petroleum operations. Petroleum operations of a production sharing contract shall give rise, depending on their nature, to an exclusive authorisation for exploitation covering the exploitation of a commercial hydrocarbon field. (Articles 2 (13), 16 and 17 of the law n°2019/008 of 25 april 2019 to institute the petroleum code).

Risk Service Contract
A Risk Service Contract refers to a petroleum contract attached to an exclusive exploration authorization, and as the case may be, to an exclusive exploitation authorisation whereby the holder is responsible for financing petroleum operations and receives remuneration in cash. Within the meaning of this code, a contract for the provision of services that does not confer the exercise of exclusive rights for hydrocarbon exploration and exploitation shall not be a risk service contract.

The State or a duly mandated public body shall, in a Risk Service Contract, confer exclusive hydrocarbon exploration and exploitation rights within a specified area on a qualified person taking a financial risk. The holder of a Risk Service Contract shall be remunerated in cash. (Articles 14 (c) and 18 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Authorisation for Prospection
The Authorisation for Prospection deals with areas not covered by the Petroleum Contract and may be granted to a natural person or a legal entity by decision of the Minister in charge of mines, who prescribes its terms.
The Authorisation for Prospection confers upon its holder the non-exclusive right to carry out preliminary prospection work within a specified area. Such authorisation does not constitute a hydrocarbon mining title and is neither assignable nor transferable. The State may also grant prospecting authorisation solely for technical information collection purposes. (Articles 27, 28 et 29 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Research Authorisation
Known as the exploration authorisation, attached to a petroleum contract may be either a hydrocarbons exploration permit - in the case of a concession contract, or an exclusive exploration authorisation - in the case of a production sharing contract. An exploration authorisation confers upon its holder the exclusive right to carry out, at its risk and expense, all hydrocarbons prospection and exploration work within the limits of the relevant area, and to an indefinite depth except as may be otherwise provided for in the petroleum contract. It also confers upon its holder the right to dispose of its share of hydrocarbons which may be extracted during exploration work and production tests, subject to a prior declaration to the Minister in charge of mines.

The exploration authorisation is granted for an initial maximum term of three years renewable twice for two years each. However, where necessary such term can be extended to five years in the case of special petroleum operations zones. Such authorisation is granted by decree. However, in the case of a production sharing contract, the signature of the contract by the parties amounts to the grant of the exploration authorisation. (Articles 30 to 38 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Provisional Authorisation to Exploit
The Provisional Authorisation to Exploit confers upon its holder the right to operate productive wells on a provisional basis for a maximum period of two years during which the Holder is required to carry out the appraisal and delineation of the relevant deposit. The provisional exploitation authorisation lapses with the expiration of the exploration authorisation for a specified area for any reason whatsoever unless an application in proper form for an exploitation authorisation is filed within the time limit. (Article 39 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Exploitation Authorisation
The Exploitation Authorisation attached to a Petroleum Contract can be either a concession in the case of a Concession Contract, or an exclusive authorisation of operation in the case of a Production Sharing Contract. The Exploitation Authorisation covers the surface projection of a

commercial hydrocarbons deposit. It confers upon its holder the exclusive right to carry out, at its own risk and expense, all petroleum operations within the limits of the pertinent area and to an indefinite depth, as well as the right to dispose of all or part of the hydrocarbons production, in accordance with the provisions of the petroleum contract.

The granting of an Exploitation Authorisation does not confer ownership of the deposits; it creates a right of limited duration which is not mortgageable and that is distinct from the ownership of the surface area and said right is assignable and transferable. The initial term of the Exploitation Authorisation cannot exceed twenty-five years for Liquid Hydrocarbons and thirty-five years for gaseous Hydrocarbons.

The Exploitation Authorisation is renewed once on application by the holder for a maximum additional term of ten years. To be so entitled, the holder must have fulfilled its obligations and shown evidence of the possibility of continuing commercial production of hydrocarbons beyond the current period of validity. The conditions for such a renewal may be subject to negotiation of the terms of the petroleum contract. (Articles 40 to 48 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

Authorisation for Inland Transport

The domestic transportation authorisation is granted by decree upon an application by a holder during the term of a valid petroleum contract. Within the territory of Cameroon, a domestic transportation authorisation confers upon its holder the right to transport, using its facilities as well as those belonging to a third party, while maintaining ownership rights, the products of exploitation activities or its share thereof, to major centers of consumption, collection, processing, storage or loading. (Articles 49 to 56 of the law n°2019/008 of 25 April 2019 to institute the petroleum code).

GAS

In line with the law n°2012-006 of 19 April 2012 to institute the gas code:

- An Eligible Customer is considered a legal entity. The need for natural gas is continuous and regular, with an annual gas consumption that exceeds a threshold set by regulation, along with the right to enter into gas purchase contracts with a producer, transporter or distributor and, for these purposes, has a regulated right of access to the transmission and distribution networks; and
- An End Customer is considered a natural or legal person who purchases gas for their own use and whose annual consumption is below a threshold set by regulation.

Gas Agreement

The gas agreement is concluded between the State, directly or through a public body duly authorised for that purpose, and one or more gas companies. It shall specify the rights and obligations of the parties relating in particular to the legal, economic and financial, tax, social, technical and environmental arrangements applicable to one or more gas exploitation operations during its validity period. The Gas Agreement is negotiated and signed on behalf of the State by the Minister in charge of the downstream gas sector, or by any establishment duly authorised to do so, and on behalf of other party (ies) to the agreement, by their legal representatives. The initial duration of the agreement is twenty-five years. However, the agreement may provide for a first renewal period not exceeding ten years. (Articles 3, 10 and 11 of the law n°2012-006 of 19 April 2012 to institute the gas code.)

Concession

Any activity of transportation and distribution of gas is subject to obtaining a Concession. A Concession is a contract with a view to constructing, operating, maintaining, and developing a gas transportation or distribution network on an exclusive basis within a given geographical area, for a specific duration, and on the basis of specifications.

The Concession is granted by the Minister in charge of the downstream gas sector for a maximum of twenty-five years renewable. The concession is valid only within the area for which it is granted. It defines, as the case may be, the rights and obligations of the transporter, in the management of the network under its responsibility.

Licence

The processing, storage, importation and exportation of gas, are governed by the licence system. The license is an instrument whereby the Minister in charge of the downstream gas sector authorises an operator to exercise under the transparent and non-discriminatory conditions referred to above. A licence is granted for a renewable period of twenty-five years maximum for gas processing and storage, as well as production of liquefied natural gas, and five years maximum for an importation and exportation licence. Applications for a licence shall be addressed to the Minister in charge of the downstream gas sector or any other public entity so empowered. The license is granted depending on the applicant, the technical capacities, and financial resources. (Articles 3, 12 to 15 of the law n°2012-006 of 19 April 2012 to institute the gas code.)

Processing Licence

The processing licence confers upon its holder the right to undertake gas processing activities in accordance with the provision contained in its licence and specifications. (Article 22 of the law n°2012-006 of 19 April 2012 to institute the gas code.)

Storage Licence

The storage licence confers upon its holder the right to build and operate storage facilities in accordance with provisions contained in its licence and in the specifications. The Minister in charge of the downstream gas sector may waive the obligation for a processing licence holder to have a storage licence for storage facilities associated with its processing activity. Any operator may use the storage facilities of a

licence holder on the strength of the principle of open access against payment at a transparent and non-discriminatory rate which shall be made public after approval by the Minister in charge of downstream gas sector and determined on the quantities handled and the duration of the service. (Articles 23 and 24 of the law n°2012-006 of 19 April 2012 to institute the gas code.)

Authorisation
An authorisation is the instrument whereby the Minister in charge of the downstream gas sector or any other public establishment so empowered authorises an operator to carry out, under transparent and non-discriminatory conditions, one of the activities cited above.

The following activities are subject to authorisation:
- sale of gas;
- importation and installation of materials and equipment for setting up gas transportation and distribution networks;
- gas storage centers, as well as
- measuring and safety devices to be used by operators and customers.

The authorisation is renewable for no more than three years. However, the operator is bound to comply with the financial and technical criteria specific to the activity concerned and defined by a separate instrument. (Articles 25 to 28 of the law n°2012-006 of 19 April 2012 to institute the gas code.)

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Upon the signing of the mining agreement, the State shall, after consultation with the affected populations, grant to the mining operator the lands necessary for the mining of the discovery of mineral substances.

The indigenous population living around a small-scale or industrial mine shall be entitled to compensation, which amount shall be deducted from the ad valorem tax. The population living around a semi-mechanised non-industrial quarry, or an industrial quarry, shall be entitled to compensation on the quarry product extraction.

Moreover, the development of mining resources and industrial quarries must include a "local content" component which shall specify the spin-offs of the selected mining and quarry projects on Cameroon's economic, social, cultural, industrial, and technological development. Mining companies shall give priority to the recruitment of Cameroonians:
- in the majority for positions that require special skills; and
- ninety percent for positions that do not require special skills.

Are there any special rules or restrictions applicable to foreign applicants?
Yes. According to Article 15 (5) of the Cameroonian Mining Code, only legal persons under Cameroonian law operating in the mining sector shall be granted a mining title. Equally, non¬industrial mining shall be carried out only by natural persons of Cameroonian nationality. The Gas and Petroleum Codes do not expressly provide for nationality as a requirement to grant a licence, permit or authorisation.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The State shall hold ten percent of the total share capital of the small-scale mining company. As resource owner, the State shall be entitled to the said shares free-of-charge and without any encumbrances. Shares held by the State shall not be subject to dilution in the event of a share capital increase. However, the State may increase its shares in the capital for profit purposes, by mutual consent of the parties, in proportions not exceeding an additional ten percent, and the remaining shares shall be open to subscription by national foreign investors.

There are some conditions for the granting of a mining permit and these conditions apply automatically. However, the State may request an addition to the ten percent mentioned above, directly or through a public sector company, to increase its shares in mining companies under the terms and conditions agreed by mutual consent of the parties. The aforementioned increase may not exceed twenty-five percent. Shares can be transferred from one shareholder to another, and State or public body designated for this purpose shall have a preferential right on such shares. In this case, the State or the designated public body may transfer those shares to private businesses or to a new strategic partner within a period not exceeding five years upon an approval of the President of the Republic of Cameroon by a decree.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Yes. The tapping of spring water, minerals and thermo-mineral water, as well as geothermal deposits, shall be subject to prior issuance of a permit by the Minister in charge of mines.

The issuance of the permit shall be subject to preliminary hydro-geological, geophysical, bacteriological, and physic-chemical studies to determine the operating conditions and water table vulnerability studies, to determine the protection and security perimeters. The spring water, mineral or thermo-mineral water or geothermal deposit permit shall be issued for a period of five years renewable in periods of three years.

Are there any restrictions on the export of minerals?
Yes. Any mineral substance extracted from Cameroon's subsoil for export purposes shall be submitted to the expertise of the laboratory of the Minister in charge of mines or any other laboratory approved by the Minister in charge of mines.

Regarding gold, all export transactions, excluding those carried out on a non-industrial mining site, shall be done on alloyed gold.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
With the exception of non-industrial or semi-mechanised non-industrial mining licences, any right on a mining title may result in any form of transaction, notably farm-out, cession, collateral and pledge. The cession and conveyance of mining titles to any eligible person shall be free. Any direct or indirect transaction on a mining title shall be subject to the prior approval of the minister in charge of mines who shall have forty-five days to decide.

The assignment, farm-out, conveyance, pledge, or mortgage instrument must be entered into the registry. At the time of registration, a new permit shall be issued, and the rights and obligations attached to the initial permit shall be transferred to the new holder.

Non-industrial mineral substance mining licences and reconnaissance permits shall be personal and not open to cession, farm-out, conveyance or pledge. (Articles 98 and 99 mining code) The exploration permit shall be a right open to cession, conveyance, farm-out and pledge.

The small scale mining permit and the industrial mining permit shall confer on the holder a movable real right on the substance and an immovable real right within the perimeter during the period of the permit. Such rights shall be open to farm-out and may be pledged and mortgaged respectively.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
The small scale mining permit and the industrial mining permit may be subject to capital contributions. In the event of cession, the transferee and transferor of a mining right shall seek the opinion of the competent authorities. Except for ordinary stock exchange operations, any direct or indirect transaction on a mining title shall be liable to a capital gains tax.

For petroleum: The domestic transportation authorisation may be transferred to third parties by any holder subject to prior approval by the Minister in charge of mines.

USE OF SURFACE OF LAND INVOLVED IN EXPLORATION AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Concerning the prospecting activities, the holder of an exploration permit is authorised to access and occupy the surface area covered by the exploration permit, extract, remove and dispose of rock, earth, soil or mineral substances, excluding precious and semi-precious substances, in quantities allowed by the approved works schedules.

Mining activities under a mining permit enroll the entry and occupation of the land respectfully with the undertaking related to the mining title concerned, the construction of treatment plant on the said land, the treatment of minerals specified in the mining permit on the said land or elsewhere, and declare other related substances, construction of any facilities required for the treatment of waste, dumps and residue, removal and take rocks, earth and minerals from the land before and after treatment, collection and use of water found on the said land and flowing through it, for all purposes relating to mining and treatment operations.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?

Mining Code
Law n°2023/014 of the 19 December 2023 instituting the Mining Code in Cameroon provided a chapter known as chapter V Protection of environment from article 100 to article 106. Thus, further to the provisions of this law any mining and quarry operation undertaken must comply with the laws and regulations in force relating to sustainable environment protection and management precisely the Law N°96/12 of August 5, 1996, framework law relating to the management of the environment. Moreover, the granting of mining titles, quarry licences and permits shall be subject to the prior conduct of an environmental and social impact assessment, a hazard and risk assessment and provisions of an environmental management plan.

Petroleum Code
Law n°2019/008 of the 25 April 2019 instituting the petroleum code in Articles 91 and 92 provides that Holders shall carry out petroleum operations in such a manner as to ensure, under all circumstances, the conservation of natural resources. in particular hydrocarbon deposits, and due protection of essential features of the environment. In this respect, holders shall take all the necessary measures to preserve the safety of persons and property, and protect the environment, natural surroundings, and ecosystems.

Gas Code
Law n°2012-006 of 19 April 2012 to institute the gas code in Article 30 provides that operators shall be bound to comply with environmental protection and safety laws and regulations in force, as well as with internationally accepted environmental protection and safety standards.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
The existence of a mining title shall not stop the landowner from using the various materials on his land, or inhibit the use of the various materials within the perimeter of the title. The operator shall be entitled only to the reimbursement of expenses made by him or rendered useless by the mining of various materials and shall be compensate, if need be, with benefits which he can get therefrom. The landowner, or a member of traditional council or the traditional council shall be entitled to an allowance for the occupation of their land by the holder of a mining title. However, a mere passage on the land shall not give right to an allowance where no damages resulted from such passage. Such passage shall be created under the best conditions of environmental preservation.

The occupation where appropriate shall imply the right to cut wood needed for the mining activity and the use of free waterfalls and ground water, within the perimeter specified by title, subject of compensation, taxes or levies. The occupation shall be subject to the payment of compensation except where the owner expressly decides otherwise. The operator shall be bound to repair damages which mining works may cause to the owner. Similarly, he shall be bound to repair damages caused by neighbouring structures. In such cases, he shall only be liable to pay compensation corresponding to the value of the prejudice caused.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
Chapter IV of Law n°2023/014 of the 19 December 2023 instituting the Mining Code provides a framework in relation to health, safety and hygiene. According to this law, any natural or legal person carrying out exploration and mining works shall be bound to do so according to standard practice and in accordance with the laws and regulation in force, in such manner as to safeguard the health and safety of persons, workers of the mine and property.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
Law no. 96/06 of 18 January 1996 revising the Constitution of 02 June 1972, amended and supplemented by Law no. 2008/001 of 14 April 2008, provides that ownership shall mean the right guaranteed to every person by law to use, enjoy and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law. The right of ownership may not be exercised in violation of the public interest or in such a way as to be prejudicial to the security, freedom, existence or property of other persons. Every person shall have a right to a healthy environment. The protection of the environment shall be the duty of every citizen. The State shall ensure the protection and improvement of the environment.

Are there administrative appeals in the mining law?
Administrative penalties are provided for in the context of offences or breach of obligations in the mining or execution of the clauses of the chaired book of business. To this effect, the Minister in charge of mines may issue a formal notice reminding them of their obligations and give them a time limit to execute them. If, at the end of the delay, no action is taken, the Minister in charge of mines shall declare the non-execution by the person concerned and withdraw the title or authorisation. Where the obligation is pecuniary, the minister in charge of mines shall impose on the owner of the right a penalty corresponding to at least fifty percent of the amount of the unfulfilled obligation.

ROYALTIES AND TAXES

Mining Code
Law n°2023/014 of the 19 December 2023 instituting the Mining Code in Articles 149 and 150 is subject to the implementation of the relevant provisions of common law, the following tax and customs benefits shall be granted to any exploration or mining enterprise or company carrying out its operations. The tax and customs benefit shall be granted to mining title holders depending on the phases of the mining project.

Gas Code
Article 57 provides that all gas companies are liable to taxes as defined by tax code and the Custom Code.

Petroleum Code
Law n°2019/008 of the 25 April 2019 instituting the petroleum code (Articles 100 to 119) provide that petroleum contract holders and their partner companies under the protocols or agreements with the State shall be liable to payment of the taxes as defined by the Tax Code.

Are there any royalties payable to the State over and above any taxes?
Yes. Holders of titles and authorisations for mining, petroleum and gas activities are liable during the validity of their contracts, the payment of royalties.

Mining Code
Articles 131 à 133 of the Law n°2023/014 of the 19 December 2023 instituting the Mining Code provides for a value-based royalty including the ad valorem tax on mining substances and extraction tax on quarry materials shall be paid monthly by mining licence or permit holders or during the shipment of consignments by mining title holders upon filling out a tax returns at the taxation authority.

Gas Code
Law n°2012-006 of 19 April 2012 to institute the gas code in Articles 60 and 61 provides for the different operations and corresponding amounts to be paid as royalties before the award, renewal or transfer of a concession, a license, or an authorisation.

Petroleum Code
Law n°2019/008 of the 25 April 2019 instituting the petroleum code in Articles 103 to 113 provide for the payment of royalties. The amount to be paid shall be appropriate to production and shall be specified in the contract.



EGYPT
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RELEVANT AUTHORITIES AND LEGISLATION

What laws regAulate mining?
In Egypt, the laws that govern the mining sector are:
- Law No. 198 of 2014 on Mineral Resources and its amendments;
- Prime Ministerial Decree No. 108 for the Year 2020 on issuing the executive regulation of the Law;
- Law No. 27 of 1981 on Employment of Mining and quarrying workers;
- The Mining and Quarries Law No. 66 of 1953, as amended by Law No. 86 of 1956 and its Executive Regulations issued by Ministerial Decree No. 758 of 1972 (referred to as the Fuel Materials Law);
- the Gas Market Activities Law No. 196 of 2017 and its Executive Regulations issued by the Prime Ministerial Decree No. 239 of 2018;
- the 'Oil Pipelines Law' No. 4 of 1988 and its Executive Regulations issued by the Ministry of Petroleum Decree No. 292 of 1988;
- Law no. 202 of 2020 on Waste Management;
- the Environmental Law No. 4 of 1994 (Environmental Law) and its Executive Regulations issued by Prime Minister Decree No. 338 of 1995; and
- Article 32 of the Egyptian constitution of 2014.

Which Government Bodies administer mining law?
The governmental body responsible for administrating mining law is the Ministry of Petroleum & Mineral Resources of Egypt (the" MoP") along with the Egyptian Mineral Resources Authority ("EMRA"), additionally the Egyptian General Petroleum Corporation (EGPC) and The Egyptian Natural Gas Holding Company (EGAS) work under the supervision of the MoP.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

If a local company wishes to start operating in the mining field it has an obligation to obtain a licence for exploration or licence for exploitation, the EMRA is the competent authority along with the Minister of Petroleum and natural resources who is responsible for awarding the licence of exploration and exploitation. The EMRA also conducts bidding rounds, however, the licence scheme is the most dominant.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
In Cameroon, oil and gas is subject to:
- law n°2019/008 of 25 April 2019 to institute the petroleum code. This law repeals provisions of law n°99-013 of 22 December 1999; and
- law n°2012-006 of 19 April 2012 to institute the gas code and decree n° 2014/3438/PM of October 27, 2014 setting the terms of application of Law No. 2012/006 of April 19, 2012 on the Gas code.

In line with the legislation, the following rights are granted to conduct oil and gas exploration:

OIL

The MoP is the governmental authority responsible for the regulation and development of the oil and gas industry in Egypt. Based on the Egyptian constitution all oil and gas resources are owned and controlled by the state and therefore, only the state can grant rights for exploration and exploitation of oil and gas resources for investors.

There are five governmental entities that operate under the guidance of the Ministry:
- The Egyptian General Petroleum Corporation (EGPC);
- The Egyptian Natural Gas Holding Company (EGAS);
- The Egyptian Petrochemicals Holding Company (ECHEM);
- The South Valley Egyptian Petroleum Holding Company (GANOPE); and
- The Egyptian Mineral Resources Authority (EMRA).

The EGPC was established in 1976 by virtue of law No. 20, the EGPC is responsible for concluding concession agreements with international oil companies in the form of a production sharing agreement under the supervision of the government. Nevertheless, the government grants concessions in particular areas by virtue of a special law that is issued by the Egyptian parliament, such law licences the Minister of Petroleum to enter into agreements with the contractors.

There are three popular types of agreements that the governmental entities conclude with oil and gas companies after the bid rounds:
- Concession agreements, which is the oldest form when contracting with an oil and gas company, the state gives the foreign company the right to own a vast area in order to explore and exploit for oil and gas. The period of the contract can be up to 75 (Seventy-five) years, and the foreign company shall have ownership over the oil and gas which is produced in the area of concession, the right to

sell it inside or outside the state, and other rights that can be stated in the concession agreement upon the approval of the state and the company. The foreign company becomes the owner of the oil and gas produced while the state only benefits in the form of tax and royalties derived from productive economic activities;

- A Production Sharing Agreement is an agreement between a foreign oil company and the host state or national oil company on behalf of the state. The state remains the owner of the oil and gas produced, unlike in the concession agreement. The period of this contract depends on the host state and other factors affecting the speed of exploration and production. Therefore, the period of this contract is negotiable. The host state remains the owner of the oil and gas, however this ownership is partial, as there is a percentage from the oil produced called "Cost Recovery Oil" which is given to the foreign oil company to recover its risks resulting from the production of the oil. Most contracts have a cost-oil limit of say 50 (fifty)percent of production. After deducting the Cost Recovery Oil, the remaining oil produced is called "Profit Oil" and is split between the host state and the foreign company, the percentage of the split depends on what is stated in the agreement, for example, 60%:-40%. The foreign oil company is obligated not only to pay royalties but it is also subject to pay income tax on its share of the profit oil;
- Service Contracts: This type can be defined as a foreign oil company agreeing to perform a specific service for the host state in return of a fixed payment. There are different types of payment;
- Buy-Back service contract: The foreign company has the priority to buy a portion of the oil produced at a pre-agreed discount rate;
- Technical service agreement: the company performs the service in return for a fixed fee and does not receive any of the oil produced; and
- In a Pure risk service contract, the contracted company receives a share of the oil or gas revenues, however the oil company or contractor shoulders all the exploration expenses. This means that if no oil or gas is found, the contractor bears the cost. The host state remains the owner of the area, as well as having massive control over the operation of the exploration. In this type of contract, the foreign oil company is a service contractor, it doesn't share the oil produced with the host state.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
If a local company wishes to start operating in the mining field it has an obligation to obtain a licence for exploration or licence for exploitation. The EMRA is the competent authority along with the Minister of Petroleum and natural resources who is responsible for awarding the licence of exploration and exploitation.

According to the constitution and laws, there are different types of ownership with regard to this matter, nevertheless, the ownership of the land and any natural resources are owned by the state, however, if a local entity obtained a licence for exploitation, they shall have ownership over the ore extracted but they would have to pay a rental value for their mines and quarries and this rental value is set out per km2. The rental value for mines under exploration is EGP 25,000 per km2 and for white sand it is EGP 9 per km2. The rental value shall be reviewed every three years. Exploitation licences can be granted for up to a combined total of 15 years.

Are there any special rules or restrictions applicable to foreign applicants?
There are no restrictions with regard to foreign companies that operate in the field of mining, however, the previous rules shall apply to the foreign companies as well as local ones.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The state has the right to carry out research and exploitation of mining ores on its own, and in this case, it has the right to request the preservation of the area in which these works will be carried out, provided that a decision is issued for the preservation by the competent minister specifying its duration, also has the right to incorporate companies to carry out research, exploitation and mining work, or to have equity in other company that carries out such work provided that the state ownership shall exceed 25%, however the private mining companies would not necessarily have to do so if their mining agreement were ratified by law.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Yes, there are some requirements, for instance, in the case of mining it's prohibited to mine any other minerals except for the one the licence has been granted for. It is also prohibited to waive the mining right without notation to the EMRA and the fulfilling of the requirements set by law.

In the case of exporting of minerals mined, a licence must be requested prior to exporting and this licence could be granted twice a year only.

Are there any restrictions on the export of minerals?
It is not permissible to export any minerals, quarries unless an approval from the EMRA has been obtained. Exporting raw materials of minerals that have strategic and industrial value may be prohibited except in the case of value-added work or the construction of industrial projects.

The request for export approval must be submitted twice a year for the shipment that needs to be exported, and the request must indicate the quantity, the sale price, the source

of the crude and to whom it shall be exported. Moreover, the exported ores of mines and quarries must be extracted under a valid licence with a production statement.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The licensee may not assign, in whole or in part, the rights and obligations arising from the licence granted to explore and mine and without the written consent of the EMRA. To be granted this consent an application shall be submitted to the EMRA.

For this application to be accepted the licensee must:
- Have fulfilled all his obligations stipulated in the licence at the time of assignment;
- Ensure that the assignee is registered at the EMRA;
- Ensure that the assignee has the requisite technical competence and financial ability;
- Ensure that the assignee abides by the requirements for the licence;
- Ensure that the assignor pays twice the annual rental value to the EMRA when submitting the assignment request;
- Ensure that the assignee shall provide the insurance required by the EMRA; and
- Ensure that the assignee shall submit a work program for the remaining period of the licence term.

In the event of a partial assignment, the assignor and the assignee shall be jointly responsible for all the obligations stipulated in the licences towards the EMRA, and in case of selling all or some of the ownership shares, the EMRA must be notified.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
Prior to any action regarding the shareholding, the EMRA must be notified, other than that there are no particular regulations concerning the disposal of the controlling shareholding in a company that obtains a mining licence.

USE OF SURFACE OF LAND INVOLVED IN EXPLORATION AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
According to articles 31, 34, and 50 of the Prime Ministerial Decree No. 108 for the Year 2020 on issuing the executive regulation of the Law, the holder of an exploration right can use the surface and establish the equipment and infrastructure necessary for the exploitation operations. During the use of the surface the operator must enable the EMRA's employees and inspectors to enter the licensed area and scientific and educational institutions to conduct scientific experiments related to its activity in a manner that does not conflict with the main activity of the licensing.

The surface must be used in accordance to the scientific and technical principles, the rules of mines, and the observance of preventive health standards. The operator must permit waterways, canals, drains, pipelines, electricity, wires, roads and public utilities.

The operator must suspend and notify the EMRA and authorities of all found antiquities, archaeological buildings or artefacts, whether archaeological or non-archaeological, or geological phenomena within the boundaries of the mine, immediately after finding them, and may not resume work without approval.

To operate fully, the operator shall pay an annual amount of twenty-five thousand pounds in advance for each square kilometer of the exploitation area. If there is a fraction of a kilometer, it shall be forced into a full square kilometer. The exploitation of white sand is an exception as an annual advance rent of nine pounds per square meter must be paid.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?

Law no. 202 of 2020 on Waste Management and Law no. 4 of 1994 on the Environment.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
No. All ownership rights remain to the hosting state.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
Law No. 27 of 1981 on Employment of Mining and Quarrying Workers.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
Yes, article 32 of the 2014 Egyptian Constitution provides the route provided by law for the right to the exploitation of natural resources for a period that does not exceed thirty years. The law also governs the right to exploit quarries, small mines and salinas, or granting public utilities commitment, for a period not exceeding fifteen years.

Are there administrative appeals in the mining law?
There are no specific procedures for administrative appeals relating to mining law.

ROYALTIES AND TAXES

Entities involved in the exploration of oil and gas are subject to a corporate tax rate of 40.55%. Entities involved in the exploration and mining field are obliged to pay a corporate tax rate of 22.5%.

Are there any royalties payable to the State over and above any taxes?
Entities involved in the mining field shall pay royalties of not less than 5% and up to 20% from the value of the annual raw production that the licensee exploits, to be paid in cash and in local currency at a separate rate determined for each type of ore extracted. The ER provides for the royalty schedules. For example, the royalty for gold is 5%, phosphate is 10%, zinc is 6%, copper is 8%, iron is 9% and white sand is 18%. The royalty can be paid quarterly, in cash, or by cheque or e-payment. The royalty is valued as per the local market prices of the ore at the location of each ore and is determined by a committee that will be formed by the Ministry.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The mining sector is regulated by Law No. 1/2019, dated 29 November, regulating Mining in the Republic of Equatorial Guinea. This law sets out the legal framework for:

- Prospecting, exploration, and exploitation activities of mineral resources, categorised into four (4) groups: (a) Metallic and non-metallic minerals, (b) Minerals from industrial rocks and aggregates obtained in quarries, (c) Radioactive and strategic minerals, (d) Precious stones and metals, and (e) Groundwater.
- Prospecting, exploration, and exploitation activities of other geological resources, and
- Regulating the activities related to the management of the aforementioned resources and mining operations.

However, the development and enrichment of radioactive mineral and the processing and use of precious stones or noble metals are excluded from its scope of application.

Apart from the specific regulation for mining and oil and gas, since the above-mentioned law refers to an activity that could affect the environment, private property and the working conditions of the workers involved on this activity, the following laws are also applicable:

- Decree Law 173/2005 of 8 September 2005 on the Environmental Inspections (the "EI Law");
- Law No. 7/2003 dated 27th of November regulating environmental laws in Equatorial Guinea(the "GEL");
- Law No. 4/2021, dated December 3rd on the General Labour Law (the "GLL");
- Law No. 121/2011 dated 5th of September, fixing the minimum wage, as amended (the "Minimum Wage Law");
- Law No. 4/2004 dates 28th of October on the General Tax Code (the "GTC");
- Fundamental Law of Equatorial Guinea dated 16th of February 2012 (the "EG Constitution").
- Administrative Procedure Law dated 29th of August 2014 (the "APL");
- Forced Expropriation Law of the 16th of December 1954 (the "Expropriation Law");
- Forced Expropriation Regulation of 26th of December 1957 (the "Expropriation Regulation");
- Regulation 02/18/CEMAC/UMAC/CM of 21 December 2018 (the "FX Regulation");
- Ministry of Mines and Hydrocarbons Order No. 1/2020 dated the 13th of April 2020, limiting Ministerial Order Number 1/2014, dated 26/9, which approves and adopts the National Content Regulation enforcing Chapter XX of the Hydrocarbons Law of the Republic of Equatorial Guinea, Law No. 8/2006 dated 3 November 2006 (the "National Content Regulation");
- The period of provision of services by expatriate personnel in the hydrocarbons sector in Equatorial Guinea (the "Order No. 1/2020");
- Ministerial Order No. 2/2020, dated 15th of June, on Petroleum Operations in the Republic of Equatorial Guinea issued by the Minister of Mines and Hydrocarbons (the "2020 POR"); and
- Law No. 1/2021 on Prevention and Fight against Corruption in Equatorial Guinea (the "Decree-Law N. 1/2021").

Which Government Bodies administer mining law?
Pursuant to article 36 of the Mining Law, any application and procedure for the exploitation or use of mineral raw materials, whether at industrial, commercial or artisanal level, as well as the exploitation of aggregates will be exclusively channeled through the Minister of Mines and Hydrocarbons (MMH), which will submit the proposal to the Government for approval, if appropriate.

Moreover, article 33 of the Mining Law states that the MMH is in charge, amongst other things, of:

- Carrying out administrative procedures;
- Negotiating and signing the licenses, authorizations and as many contracts as necessary for this purpose, adjusting the fiscal terms to the potential of each area; and
- Granting mining contracts to the interested parties for the prospection, exploration or exploitation of the mining resources.

With regards to oil and gas, as the regulator, the MMH has the sole right and authority to award contracts on behalf of the State. These contracts may be awarded after consideration of bidders in a competitive international public tender system or by direct negotiation.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
Articles 39 and 40.2 of the Mining Law regulate this aspect. Mining rights are granted through concessions, licenses, authorizations, and contracts. And those rights are the below:

The right of prospection
It is the right to carry out in a given area all searches for one or more mining substances, to the exclusion of any other person.

The right of exploration
It is the right to carry out in a determined area all the necessary tasks, tending to the verification of the existence of the deposit, the recognition of its characteristics, the

determination of its volume, quality and degree of mineral and its economic evolution.

The right of exploitation
It is the right to exploit or produce, in a given area, one or more mineral substances and to dispose of the products extracted or separated from the deposit.

- Foreign natural or legal persons, in order to be holders of mining rights, must have a fiscal domicile in the national territory (Art. 42 of Mining Law).
- The corresponding mining right is granted by means of an administrative decision (Art. 44 Mining Law).
- There are prerequisites to be eligible for the mining rights:
  a) To be in prior possession of the licenses and authorisations of the competent Ministries and bodies in the fields of the environment, labour and social security, water and forestry, public works and others.
  b) Submit to the Ministry the plans, reports and other required documents related to the mining activity of interest (Art. 45 Mining Law).
- The selection of companies wishing to engage in mining activity will be made by public tender, and in areas reserved for the State, the State reserves the right to make a direct award.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
Under the EG Constitution, EG can explore and exclusively exploit all mineral resources and riches as well as its hydrocarbons.

Moreover, the Hydrocarbons Law, issued by the Ministry of Mines and Hydrocarbons, provides that all hydrocarbon reservoirs that exist in the surface and subsoil areas of EG,

including its inland waters, territorial waters, exclusive economic zone and Continental Shelf are the exclusive property of the State. It goes further to stipulate that the State is the holder of all hydrocarbon exploration rights in EG and that, in addition to performing petroleum operations on its own or through national companies, the State may perform petroleum operations under an association with a contractor.

Ownership of the hydrocarbons may pass to the contractor beyond the wellhead if the contract with the State so provides.

The activities of the contractors must be authorized and regulated by contracts concluded with the State.

When hydrocarbon production operations are carried out, ownership of the hydrocarbons passes to the contractor in accordance with the provisions of the contract and, in any case, beyond the wellhead.

Contracts with the State shall be based on the Production Sharing Contract ("PSC") model approved by the Ministry of Mines and Hydrocarbons (the "MMH").

As the regulator, the MMH has the sole right and authority to award contracts on behalf of the State. These contracts may be awarded after consideration of bidders in a competitive international public tender system or by direct negotiation.
For a company to be awarded a contract with the State, the MMH is required to perform a due diligence to ascertain that the company has the suitable technical and financial capability, as well as proven experience in the oil and gas industry.

It is important to note that a contract signed with the MMH is not final in terms of its enforcement unless same is ratified by the President of Equatorial Guinea. Enforcement and application of the terms of the contract is also firmly linked to delivery of a written note to the contractor of the said ratification.

Furthermore, there are two rights under the Hydrocarbons Law: the right to explore and the right to produce.

Contractors are required to submit an annual Work Program and Budget ("WP&B") to the MMH for its review and approval in compliance with the terms and conditions of the contract. Petroleum operations cannot be performed without the MMH's prior approval of the annual WP&B.

Mining and hydrocarbon activities may involve the expropriation of the land where such activities are to be carried out, which will be decreed by the government in accordance with current legislation on expropriations, and such expropriations may also be requested, on a temporary basis, by contractors, in certain cases.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Articles 9 and 10 of the Mining Law only speaks of the Government's obligation to adopt measures to guarantee, promote and stimulate investment by national companies and Ecuadorian craftsmen in the sector. Nevertheless, article 26 (on competence/ability to carry out national mining operations and activities) of the same law states that individuals and companies, whether public, autonomous or mixed, that have obtained the corresponding enabling title from the competent authority can engage in national mining activity and carry out mining operations.

Decree72/2018, dated 18 April, Reviewing Decree 127/2004, dated 14 September, introducing complementary rules to foment and guarantee foreign investment in business activities only imposes equity restrictions in the oil sector. At least 35% of the company's shareholding must be held

by nationals of Equatorial Guinea with 1/3 of management control.

Are there any special rules or restrictions applicable to foreign applicants?
Article 42 of the Mining Law requires that holders of mining rights, either individuals or corporations, must have a fiscal domicile in Equatorial Guinea, and shall receive the same treatment as that granted to any national individual or corporation.

Article 82 of the Mining Law. Contractors and their foreign partners shall be obliged to establish, within two (2) years of signing the contract, branches in Equatorial Guinea, which shall be governed by Equatoguinean law, register their partners with the Ministry and submit a bank guarantee for their registration as well as construct a building for the installation of their national headquarters.

Article 83 of Mining Law. Obligation of the contactor to sell minerals to the State in the quantities agreed in the contract to cover the needs for such minerals in the country, and the contractor may therefore only dispose of the surplus for marketing or export.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
As per article 13 of the Mining Law, the State is the sole owner of all mining resources. Nevertheless, the Mining Law speaks of the creation of a public entity that may participate as a partner or shareholder in companies conducting exploration or exploitation of mining resources, as determined in the respective agreements with the State (Art. 16 of Mining Law).

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Additionally, to carry out mining operations, both a sufficient financial guarantee for the term and in the amount determined by the competent authority and an insurance policy must be obtained.

Are there any restrictions on the export of minerals?
Article 83 of the Mining Law contemplates that the contractors can only dispose of the surplus (for marketing or export) remaining from the sale to the State of the quantity of minerals agreed in the contract. Such obligation to sell minerals to the State is to cover the needs of such materials in the country.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
Article 31 of the Mining Law contemplates that to transfer rights granted by means of concession, license or administrative authorization under the Mining Law, the holder of such rights must previously request and obtain authorization from the MMH.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
Article 31 of the Mining Law contemplates that to transfer rights granted by means of concession, license or administrative authorization under the Mining Law, the holder of such rights must previously request and obtain authorization from the MMH.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Pursuant to article 47 of the Mining Law, the concession, license or authorization to grant a mining right will always include the general and specific conditions for carrying out mining activities, which will also mention the determination of the extension and delimitation of the affected area.

In the case of concessions, the administrative resolution shall determine and delimit the surface area of the concession and its extension may not be less than one hundred (100) hectares or more than thirty thousand (30,000) hectares, depending on whether prospecting, exploration or exploitation of mineral resources is involved (Art. 50 Mining Law).

In relation to licenses, the area of the license for small and medium-scale mining will be a closed polygon and defined by the UTM coordinates, its surface will vary between six (6) to one hundred (100) hectares and will be well marked out on the ground. Additionally, the small and medium-scale mining exploitation license confers on the beneficiary exclusive rights to extract the mineral substances that are found within the limits of the area object of the license, under certain conditions and to a depth compatible with the safety of the workers, in accordance with mining regulations and other provisions that regulate the sector. (Art. 54.1 and 3. Mining Law).

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Law No. 7/2003, dated 27 November, Environmental Law of Equatorial Guinea, and the Mining Law.

Those interested in carrying out mining operations must submit to the guardian Ministry an environmental impact study and detailed approved environmental protection and sanitation plan by the Department in charge of the Environment (Art.6 Mining Law).

Mining activities must be carried out by properly managing waste resulting from said activities and operations, restoring and rehabilitating the space affected by the aforementioned activities and operations, and properly dismantling unusable structures and facilities with their safe closure (Art.7 Mining Law).

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Article 19.2 of the Mining Law says that the State shall protect the property and land tenure rights of any person or community over the lands that may be affected by the concessions, licenses or administrative authorizations granted to a contractor. And prior to granting any right to a contractor, the State will carry out forced expropriation of the lands according to the applicable law.

The EG Constitution protects property and considers it inviolable, except for causes of public utility and payment of the corresponding compensation. In this sense, subject to compensation, public utility is the trigger of forced expropriations. There are certain conditions that must be met before the State may forcibly expropriate property. If said conditions are not complied with, the expropriation can be declared null and void.

To proceed with an expropriation, the State is required to:

- Make a declaration of public utility or public interest by law, even if the expropriation is deemed necessary for urban planning. In all other instances, a generic declaration is used empowering the cabinet of ministers to specify the property that is to be expropriated;
- Declare the need to occupy the property or acquire rights over it on the basis of its public utility or social interest. This need must be indispensable for the expropriation. It is the responsibility of the cabinet of ministers to stipulate what is needed to complete the works and the properties that would be affected; and
- Ascertain the correct price ("justiprecio"). The latter is the compensation that must be paid to the person affected by the expropriation. The law gives considerable discretion to the government. Once the appropriate price has been ascertained, payment of the total amount should be made to the affected person(s) within a period of six (6) months. If not compensated, the affected person has the right to demand a revaluation of the property within 4 years from the date the correct price was ascertained from the Government.

As indicated, the normal procedure requires that payment be made to the affected person(s) first and then the land is expropriated by the State. There is nonetheless an "urgent procedure" which allows the State to expropriate first and then make the payment to the affected person.

Unless the contract with the State provides otherwise, the Courts of Equatorial Guinea would have jurisdiction over any disputes that may arise.

In practice, bodies contemplated by the Expropriation Law 1954 such as the "Jurados de Expropiaciones Provinciales" do not exist in Equatorial Guinea and therefore, the correct price ("justiprecio") is not calculated. Forced expropriations occur by means of a presidential decree which includes:

(a) a declaration of the public utility or public interest in proceeding with the expropriation; (
b) the dimension of the forcibly expropriated land; and
(c) the full names of the registered proprietors of the forcibly expropriated land as indicated in the land registry. There are few instances in which the presidential decrees stipulate the compensation that the State will pay to the proprietors of the expropriated land. However, generally, the presidential decree is silent on compensation.

The proprietors have the right to exploit the land until the expropriation takes effect and also indicates that if once the public utility or public interest project has been completed, the portion of the expropriated land which has not been utilised by the State returns to the proprietors. The latter have the right to keep ownership of said land and continue occupying it.

Generally, once the presidential decree has been issued, the affected landowners send an administrative application letter addressed to the office of the presidency stating their case and attaching the title deeds of the expropriated land to demonstrate ownership and their national identity cards. The office of the presidency then issues an order confirming the rights of the proprietors to the expropriated land and applicants follow up on the application. The order stipulates the compensation per square meter that the office of the presidency has decided will be payable to the proprietor of the expropriated land and issues a cheque for said amount to be paid to the proprietor of the expropriated land by the public treasury.

Finally, mining and hydrocarbon activities may involve the expropriation of the land where such activities are to be carried out, which will be decreed by the government in accordance with current legislation on expropriations, and

such expropriations may also be requested, on a temporary basis, by contractors, in certain cases.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
Mainly the Mining Law and the Law No. 4/2021, dated 3 December on the General Labour Law (the "GLL").

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
Article 29 of the Constitution of Equatorial Guinea provides that mining activities are reserved for the State, and this aspect is also covered by the Mining Law. And as said above the EG Constitution protects the private property, except for causes of public utility and payment of the corresponding compensation, which is the expropriation.

Are there administrative appeals in the mining law?
Yes, articles 33.11 and 33.18 of the Mining Law empowers the MMH to solve administrative appeals, and article 37 of the same law contemplates that such appeals can be regarding any conflict arising amongst holders of concessions, contracts, licenses or mining authorizations.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
The regime under the Tax Law is applicable to contractors, in addition to surface fees, which will depend on the type of contract, and royalties.

Royalties are defined by the Hydrocarbons Law as the State's entitlement to the hydrocarbons produced and saved from a contract area and not utilised in petroleum operations, based on percentages calculated as a function of daily production rates as determined in accordance with article 58 of the Hydrocarbons Law and the applicable contract.

Are there any royalties payable to the State over and above any taxes?
From the first year of production, the contractor shall pay an annual royalty of 3% to the State, which will be calculated based on the gross market value of the ore depending on the type of ore and in accordance with the percentages set out in the respective production contract.

The Mining Law also provides that the MMH may negotiate a different royalty only in exceptional cases.

The Hydrocarbons Law provides for minimum royalties of 13%, which are payable based on the market price under the applicable contract on a monthly basis or more frequently and may be requested by the State, via the MMH, in kind or in cash, fully or partially. But the State's default position unless specified otherwise is in cash and in full.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The laws which regulate mining in Ghana are constitutional and statutory.

The 1992 Constitution, the highest legal authority, mandates in Article 268, Parliamentary ratification of all transactions, contracts or undertakings involving the grant of rights or concessions for the exploitation of any mineral, water or other natural resource of Ghana. Key legislation relating to the sector includes the:

- Minerals Commission Act, 1993 (Act 450), which establishes the Minerals Commission, which is the regulatory body for the mining sector, provides for its composition and prescribes its functions relating to the regulation and management of the utilisation of minerals;
- Minerals and Mining Act, 2006 (Act 703) ("Minerals and Mining Act"), which is the parent legislation that consolidates the law relating to minerals and mining;
- Minerals and Mining (Amendment) Act, 2015 (Act 900), which amends the Minerals and Mining Act in areas such as royalty payments and small-scale mining;
- Minerals Development Fund Act 2016 (Act 912), which establishes a Minerals Development Fund to address the development challenges affecting mining communities by setting aside 20% of mineral royalties received by the Government for development projects;
- Minerals Income Investment Fund Act, 2018 (Act 978) which establishes the Minerals Income Investment Fund ("Fund") to manage the equity interests of the Republic in mining companies, to receive mining related income due the Republic, including mineral royalties and to provide for the management and investment of the assets of the Fund;
- Minerals and Mining (Amendment) Act, 2019 (Act 995) which amends the Minerals and Mining Act to cater for increased penalties for buying or selling minerals without a licence and for engaging in mining contrary to the provisions of the Minerals and Mining Act;
- Minerals (Royalties) Regulations, 1987 (LI 1349), which provides for the payment of royalties by licence holders;
- Minerals and Mining (General) Regulations, 2012 (LI 2173), which prescribes guidelines for the mining industry on matters such as the disposal of minerals and general requirements for reconnaissance, prospecting and mining operations;
- Minerals and Mining (Support Services) Regulations, 2012 (LI 2174), which regulates entities that provide auxiliary services to the mining sector;
- Minerals and Mining (Compensation and Resettlement) Regulations, 2012 (LI 2175) which regulates the payment of compensation for lands, crops and buildings affected by mining operations;
- Minerals and Mining (Licensing) Regulations, 2012 (LI 2176), which prescribes the procedures for obtaining licences, maintaining licences and transferring licences;
- Minerals and Mining (Explosives) Regulations, 2012 (LI 2177), which regulates the use of explosives in the sector;
- Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182), which regulates safety, health and technical operation parameters in the industry;
- Minerals and Mining (Ground Rent) Regulations, 2018 (LI 2357) which prescribes the ground rent payable by mineral right holders;
- Minerals and Mining (Mineral Operations – Tracking of Earth Moving and Mining Equipment) Regulations, 2020 (LI 2404) which prescribes requirements for the registration and tracking of earth moving and mining equipment used in mineral operations to ensure that they are only used in the specific area subject to the registration;

Minerals and Mining (Local Content and Local Participation) Regulations, 2020 (LI 2431) which prescribes the minimum requirements for local content and local participation in the mining industry value chain;

- Environmental Protection Agency Act, 1994 (Act 490), which consolidates the law relating to environmental protection;
- Environmental Assessment Regulations, 1999 (LI 1652), which prescribes the procedure for acquiring and maintaining an environmental permit;
- Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (LI 2462) which prescribes procedures for the environmental management of mining activities in forest reserves; and
- Income Tax Act, 2015 (Act 896), which imposes a 'mineral income tax' on income derived from mining operations and establishes the framework for the tax.

Which Government bodies administer mining law?
The Ministry of Lands and Natural Resources is the sector ministry with oversight responsibility for the mining sector.

The Minerals Commission is the main regulatory body that administers mining laws in Ghana. Mandated by the Constitution and set up by the Minerals Commission Act, 1993 (Act 450), the Minerals Commission is responsible for the regulation, management of the utilisation and co-ordination of policies in relation to mineral resources. An application for a mineral right and licences to deal in minerals must be submitted to the Minerals Commission for processing.

Another major regulatory body is the Environmental Protection Agency ("EPA"), which is the regulator for all activities that have an impact on the environment. The EPA is mandated to issue environmental permits and every undertaking in the mining industry is required to register with the EPA and receive an environmental permit before it can commence operations. An Environmental Impact Assessment

is mandatory for activities including mining and processing of minerals in areas where the mining lease covers a total area in excess of 10 hectares.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
Reconnaissance Licence - a reconnaissance licence confers on the holder, or its authorised person, the exclusive right to carry on reconnaissance in the reconnaissance area for the minerals to which the licence relates and to conduct other ancillary or incidental activity. For that purpose, the licensee or its authorised person may erect camps or temporary buildings in the reconnaissance area. The licensee cannot, however, engage in drilling or excavation.

Prospecting Licence
A prospecting licence gives a licensee the right to enter the land to which the licence relates and:
- Prospect for the mineral in respect of which the licence is granted;
- Make boreholes and excavations that may be necessary for the prospecting purposes;
- Erect camps and put up temporary buildings necessary for the prospecting operations; and
- Conduct other activities ancillary or incidental to the prospecting operations.

Mining Lease
A mining lease authorises the holder, its agents, employees and properly authorised persons to enter the lease area and:
- Conduct mineral operations including mining for the specified minerals of the mining lease;
- Erect equipment, plants and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered during the mining operations;
- Take from the land, the specified minerals and dispose of them in accordance with the holder's approved marketing plan;
- Stack or dump a mineral or waste product as approved in the holder's Environmental Impact Statement; and
- Conduct other incidental or ancillary activity.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Articles 9 and 10 of the Mining Law only speaks of the Small scale mining is exclusively reserved for Ghanaians; hence a small-scale mining licence will only be granted to a Ghanaian.

Restricted licences, which are licences for the reconnaissance, prospecting and mining of industrial minerals such as clay, basalt, granite and sand, are mainly granted to Ghanaian citizens. Nevertheless, a non-citizen may apply for a mineral right in respect of industrial minerals provided the proposed investment in the mineral operations is US$ 10 million or above. If the holder of the mineral right fails, within a period specified

in the holder's programme of mineral operations which is given with the application, or further time permitted by the Minister responsible for mines ("Minister"), to expend an amount equal to or greater than US$ 10 thousand (sic), the Minister may suspend or cancel the mineral right.

A mining company whose planned capital expenditure exceeds the prescribed threshold must list at least 20% of its equity on the Ghana Stock Exchange ("GSE") within 5 years after commencement of mining operations. The current threshold is USD 100,000,000.

Are there any special rules or restrictions applicable to foreign applicants?
There are restrictions on the grant of a small-scale mining licence to a foreigner – a foreigner cannot engage in small scale mining in Ghana and will, therefore, not be granted a small-scale mining licence.

The Ghana Investment Promotion Centre Act, 2013 (Act 865) ("GIPC Act") mandates all enterprises in which foreign participation is permitted (including mining), to register with the Ghana Investment Promotion Centre. Under the GIPC Act, special rules relate to capital requirements for operations. Where a foreign national enters a joint enterprise with a Ghanaian citizen, the foreign partner must invest not less than US$ 200,000 in cash or capital goods relevant to the investment or a combination of both, by way of equity participation and the Ghanaian partner must not have less than 10% equity participation in the joint enterprise. Where the enterprise is wholly owned by the foreigner, the foreigner must invest a foreign capital of not less than US$ 500,000 in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise.

As stated earlier, for the grant of licences for the reconnaissance, prospecting and mining of industrial minerals, a foreigner may only apply if its proposed investment in the mineral operations is US$ 10,000,000 or above.

The State's rights to equity in mining projects
Where a mineral right is for mining or exploitation, the Government is entitled to a 10% free carried interest in the rights and obligations of the mineral operations. This does not preclude the Government from any additional or other participation in mineral operations that may be agreed with the holder. The free carried interest is held and managed by the Minerals Income Investment Fund on behalf of the Government.

The Minister may also give written notification to a mining company to issue to the Republic a special share in the company for no consideration. The special share constitutes a separate class of shares and has the rights that the Minister and the company will agree on. In the absence of the agreement, the special share has the following rights:

- The share is a preference share and carries no right to vote but the holder is entitled to attend and speak at a general meeting of the members of the company or a separate meeting of the holders of a class of shares in the company;
- The share may only be issued to, held by or transferred to the President, the Minister or another person that the President or Minister may authorise in writing;
- The share does not confer a right to participate in the dividends, profits or assets of the company or a return of assets in a winding-up or liquidation of the company;
- The holder of the share may require the company to redeem the share at any time for no consideration or for a consideration determined by the company and payable to the holder on behalf of the Republic; and
- A mining company, which for a period of 2 months, fails to comply with a notice to issue a special share commits an offence and is liable on summary conviction to a fine of not more than the cedi equivalent of US$ 10,000.

The Government also has the right of pre-emption of all minerals raised, won or obtained in Ghana and from any area covered by territorial waters, the exclusive economic zone or the continental shelf and products derived from the refining or treatment of these minerals.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?

There are no requirements to beneficiate minerals mined.

Restrictions on the export of minerals

Minerals cannot be exported, sold or otherwise disposed of without a licence granted by the Minister for that purpose. A licence issued is not transferable. Shipment of rough diamonds to and from Ghana is subject to prescribed rules and regulations and must be in accordance with the Kimberley Process Certification Scheme.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Statutory consents required to dispose of rights to explore and mine

A mineral right cannot, in whole or in part, be transferred, assigned, mortgaged or otherwise dealt in, without the prior written approval of the Minister. The approval must not be unreasonably withheld or given subject to unreasonable conditions.

Restrictions on disposals of controlling interests in entities holding exploration or mining rights

There are restrictions on the disposal of controlling interests in entities which hold mining rights. A person may not become a controller of a mining company unless:

- The person gives the Minister written notice of his intention to become a controller of the mining company; and
- The Minister has, within 2 months after being served with the notice, given the person written notice that there is no objection to the person becoming a controller of the mining company; or the 2 month period has elapsed without the Minister having served the person with a written notice of objection.

The notice served to the Minister loses effect if the person fails to acquire the controlling interest within 1 year from the date of service of the notice. If the Minister considers on reasonable grounds that the public interest would be prejudiced by the person becoming a controller of the mining company, the Minister will serve a written notice of objection on the person. If a person becomes a controller without giving the notice, the Minister will serve the person with a written notice of objection within 6 months after becoming aware of that fact.

Contravening these requirements is an offence punishable on summary conviction to a fine of not more than the cedi equivalent of US$ 20,000 or imprisonment for a term not more than 3 years or both.

When a person becomes or remains a controller after being served with a notice of objection, the Minister, acting on the recommendation of the Minerals Commission may, by Executive Instrument, order that specified shares must, until further order is made, be subject to one or more of the following restrictions:

- A transfer of, or agreement to transfer, those shares or, in the case of un-issued shares, a transfer of or agreement to transfer the right to be issued with them shall be void;
- No voting rights shall be exercisable in respect of the shares;
- No further shares shall be issued in right of them or in pursuance of an offer made to their holder; and/or
- Except in a liquidation, no payment shall be made for sums due from the mining company on the shares, whether in respect of capital or otherwise.

The Minister may also apply to the High Court for the sale of specified shares.

The specified shares subject to these measures are:

- Shares or rights to be issued with shares in the mining company of which the person in question is a controller which are held by the person or an associate of the person and which were not held immediately before the person became a controller; and
- Where the person in question became a controller of a mining company as a result of the acquisition by the person or an associate of the person of shares in another company, to all the shares or rights to be issued with shares in that

company which are held by the person or an associate of the person which were not held before the person became the controller.

A person who ceases to be a controller of a mining company must notify the Minister in writing prior to or within 14 days of ceasing to be a controller.

A mining company must also give written notice to the Minister of the fact that a person has become or ceased to be a controller of the company. The notice should be given within 14 days of the mining company becoming aware of the relevant facts. Failure to give the required notice makes the company liable to an administrative penalty of the cedi equivalent of US$ 1,000 payable to the Minerals Commission. The Minister may also, whenever considered desirable in the public interest, appoint one or more competent persons to investigate and report on the ownership or control of a mining company.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The rights of the holder of a mineral right are subject to limitations on surface rights that apply under an enactment or reasonably determined by the Minister.

The holder of a mining lease has the right to, within 30 days after the grant of the mining lease, designate an area within the lease area as a mining area. This should be done with the approval of the Minerals Commission and upon notification and payment of the appropriate compensation to the affected persons.

The holder of a mining lease may, from time to time, vary the boundaries of the areas designated as a mining area, subject to the approval of the Minerals Commission and to the notification of affected persons and the payment of appropriate compensation to said affected persons. Once compensation has been paid, no one can exercise surface rights in such a designated area. However, the holder of a mining lease cannot restrain or restrict any lawful occupier of land outside the mining area from exercising surface rights over that area.

Further, the owner or lawful occupier of land within a mining area needs the consent of the holder of the mining lease (or if the consent is unreasonably withheld, the consent of the Minister) before erecting a building or a structure.

A lawful occupier of land within an area subject to a mineral right retains the right to graze livestock on or cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations of a holder of a mineral right in the area. However, where compensation has been paid by the holder to the affected persons or claimants outside the mining area but within the lease area, a person or lawful occupier of land within that area shall not retain the right to graze livestock, cultivate the land or erect a building or structure without the consent of the holder of the mining lease.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Environmental protection of exploration and mining sites is generally governed by the Minerals and Mining Act, the Environmental Protection Agency Act, 1994 (Act 490) and the Environmental Assessment Regulations, 1999 (LI 1652) and Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (LI 2462). Before undertaking an activity or operation under a mineral right, the holder of the mineral right must obtain the necessary approvals and permits required from the Forestry Commission, Environmental Protection Agency for the protection of natural resources, public health and the environment and a water use right from the Water Resources Commission.

The Environmental Assessment Regulations, 1999 (LI 1652) protect the environment by ensuring that a mining company conducts an Environmental Impact Assessment of its activities before it can be granted an Environmental Permit with which to conduct its business. Once an Environmental Permit is granted, the mining company must submit an annual environmental report in respect of its undertaking to the Environmental Protection Agency (EPA).

The Environmental Protection (Mining in Forest Reserves) Regulations, 2022 (LI 2462) provide the criteria to address environmental constraints, challenges and issues related to mining within forest reserves and regulates the environmental management of mining activities in forest reserves through efficient uses of natural resources and effective stakeholder consultations. Civil society has raised concerns about the usefulness of this legislation and has pressured the government to revoke this law.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
There are no native land titles with implications for the exploration and mining industry. However, the mineral right holder must at least 30 days before commencing operations in a district, give written notice to the communities concerned on entry into the district to conduct mineral operations.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
A number of legislations control different aspects of health and safety in mining.

The Minerals and Mining (Explosives) Regulations, 2012 (LI 2177) regulate the conveyance, storage, possession, manufacture and use of explosives for mining and substances used for the manufacture of explosives.

The Minerals and Mining (Health, Safety and Technical) Regulations, 2012 (LI 2182) is a comprehensive legislation with extensive provisions on health and safety, including ventilation and dust prevention, the management of cyanide, discharge of dust, gas and fumes into the atmosphere, conveyance, fire protection, first aid, provision of health facilities, mine rescue brigades and medical examination of workers.

The Environmental Assessment Regulations, 1999 (LI 1652) protect the public health and safety by ensuring that a mining entity conducts an Environmental Impact Assessment of its activities before it can be granted an Environmental Permit with which to conduct its business. Once an Environmental Permit is granted, the mining entity must submit an annual environmental report in respect of its undertaking to the Environmental Protection Agency (EPA).

The Fire Precaution (Premises) Regulations, 2003 (LI 1724) governs fire safety by requiring that a fire certificate be acquired for mining premises before work can be commenced. The certificate is revocable if the fire precaution measures on the premises cease to conform to the requirements of the Regulations.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
Constitution of the Republic of Ghana ("the Constitution") requires parliamentary ratification of all transactions, contracts or undertakings involving the grant of rights or concessions by or on behalf of any person including the Government of Ghana, to any other person or body of persons for the exploitation of any mineral or other natural resource of Ghana.

Administrative appeals in Mining Law
There are no specific laid down procedures for administrative appeals. However, mutual discussions to resolve disputes are encouraged by the Minerals and Mining Act. Where a dispute arises between a holder of a mineral right and the Republic in respect of a matter expressly stated by the Minerals and Mining Act to be referable for resolution, all efforts should be made through mutual discussion and if agreed between the parties, by reference to alternative dispute resolution procedures to reach an amicable settlement. Thus, mutual discussions are offered as a first option for dispute resolution.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
Generally, mining companies are subject to a higher corporate income tax rate of 35%, and to the general withholding tax rates. In calculating the income of a mining company for a year of assessment, gains from the realisation of a capital or investment asset are included and taxed in accordance with the provisions of the Income Tax Act, 2015 (Act 896) ("ITA").

Other taxes include:
- Value Added Tax (VAT) at a rate of 15% of the value of a taxable supply of goods and services;
- National Health Insurance Levy at the rate of 2.5% of the value of a taxable supply of goods and services;
- Ghana Education Trust Fund Levy at the rate of 2.5% of the value of a taxable supply of goods and services;
- COVID-19 Health Recovery Levy at the rate of 1% of the value of a taxable supply of goods and services; and
- Growth and Sustainability Levy at the rate of 1% of gross production (gross revenue from the sale of minerals).

A supply of machinery and parts of machinery specifically designed for use in mining as specified in the mining list, are exempt from VAT and other levies. The mining list is a catalogue of mining machinery, equipment and consumables agreed by the Minerals Commission, the Ghana Revenue Authority, and the Ghana Chamber of Mines to be exempted or charged a concessionary rate for customs import duties and VAT.

The Minister may also, as a part of a mining lease, enter into a stability agreement with the holder of the lease to ensure that the holder will not, for a period not exceeding 15 years from the date of the agreement, be adversely affected by subsequent changes to:

- The level of and payment of customs or other duties relating to the entry materials, goods, equipment and any other inputs necessary to the mining operations or project;
- The level of and payment of royalties, taxes, fees and other fiscal imports; and
- Laws relating to exchange control, transfer of capital and dividend remittance.

The stability agreement is subject to parliamentary ratification.

A mining company may apply for tax exemptions by following the procedure stipulated under the Exemptions Act, 2022 (Act 1083) (Exemptions Act). Any grant of tax exemption that does not follow the Exemptions Act is null and void. Also, a person cannot negotiate or enter into an agreement to grant an exemption, except with the prior written approval of the

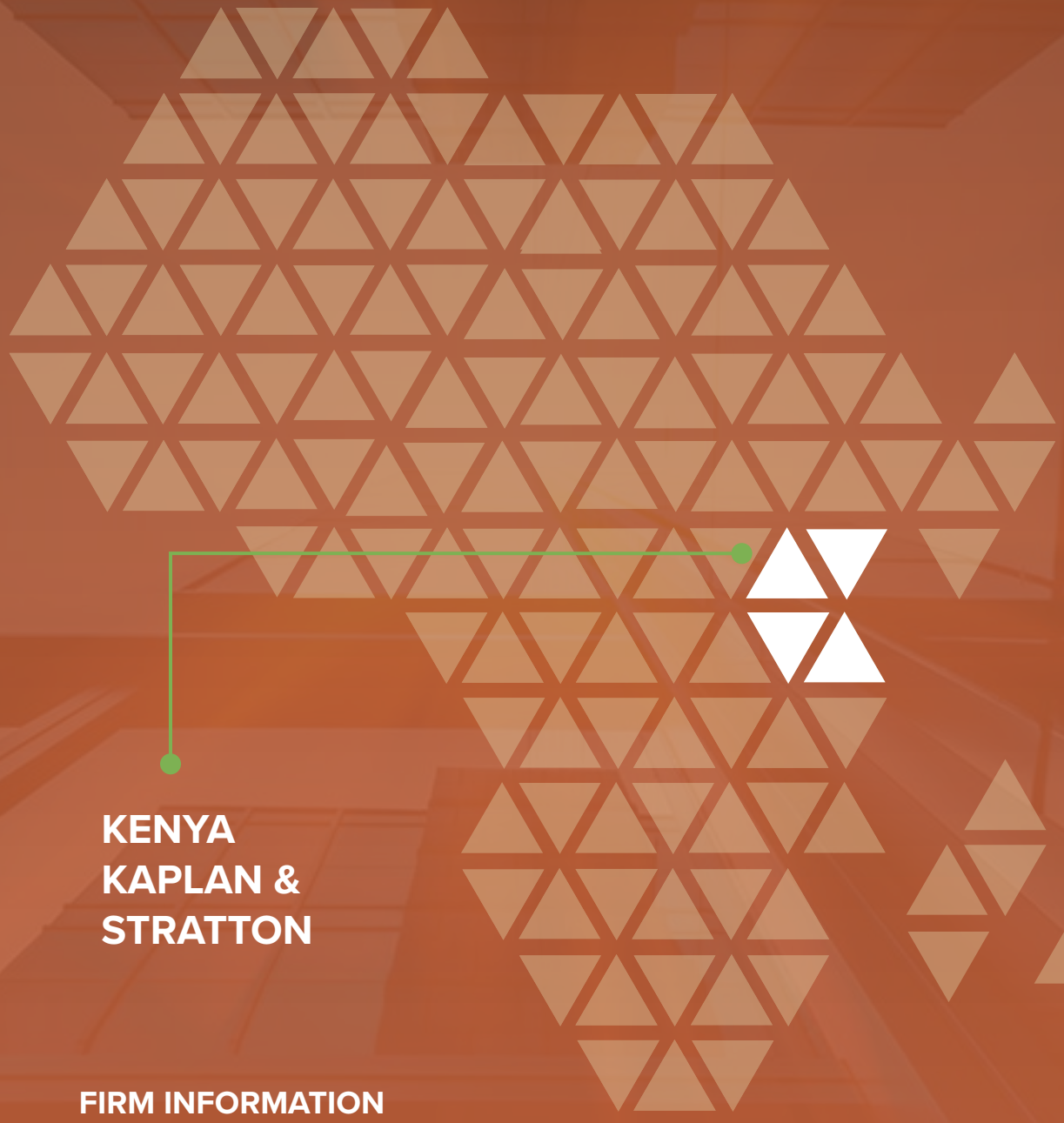
Minister of Finance. The Minister of Finance requires the approval of Cabinet and Parliament to grant an exemption.

Royalties payable to the State over and above any taxes
Currently, a holder of a mining lease, restricted mining lease or small-scale mining licence must pay royalty in respect of minerals obtained from its mining operations to the state at the rate to be prescribed by the Minister. The existing flat royalty rate of 5%, which was introduced by section 1 of the Minerals and Mining (Amendment) Act, 2010 (Act 794), remains the same until such time as the rate is altered or prescribed.

Annual ground rent, as may be prescribed must also be paid to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which should be paid to the Office of the Administrator of Stool Lands.

An annual mineral right fee is also payable to the Minerals Commission, at the rate prescribed in the Minerals and Mining (Licensing) Regulations, 2012 (LI 2176).





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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The primary legislation regulating mining in Kenya is the Mining Act, Cap. 306, Laws of Kenya ("Mining Act") and the regulations made under the Mining Act.

Which Government Bodies administer mining law?
The Cabinet Secretary for mining is responsible for the general administration of the Mining Act and is supported in that function by the Mineral Rights Board, the Directorate of Mines and the Directorate of Geological Survey.

The Mineral Rights Board advises and gives recommendations to the Cabinet Secretary on various matters in the administration of the Mining Act. The Director of Mines is responsible to the Cabinet Secretary for promoting and regulating and supervising activities related to exploitation of minerals among other roles and functions. The Director of Geological Survey is responsible to the Cabinet Secretary for providing geoscience expertise and data to the government on all matters related to geology and the development of minerals, undertaking geological and related surveys, investigation and mapping aimed at determining the mineral potential of Kenya as well as supporting the Director of Mines in the administration and supervision of prospecting and mining operations among other roles and functions.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
Rights granted depend on whether a prospecting or mining operation is classified under the Mining Act either as a large-scale operation or a small-scale operation. Separate from these, the Mining Act also provides for rights that may be granted to artisanal miners, that is, miners using traditional or customary ways and means of mining.

A prospecting or mining operation is classified as a small scale operation where, in the case of prospecting operations, the proposed prospecting area does not exceed twenty contiguous blocks; or, in the case of mining operations, the proposed mining area does not exceed two contiguous blocks; or the prospecting or mining operations do not employ specialised prospecting, mechanised mining technologies, chemicals including mercury and cyanide or explosives; or the proposed prospecting or mining operations do not involve an investment or expenditure which exceed an amount as may be prescribed by the Cabinet Secretary.

All other prospecting or mining operations that do not have the above characteristics of a small-scale operation are classified as large-scale operations.

Large Scale Operations
The following rights may be granted with regard to large scale operations:

- **Reconnaissance Licence** - this licence grants the holder a non-exclusive right to carry out reconnaissance activities on the area specified in the licence. The licence is valid for a period of up to two years and covers an area not exceeding five thousand contiguous blocks. Any mineral obtained under this licence is deemed the property of the National Government and cannot be removed from Kenya without the written consent of the Cabinet Secretary.
- **Prospecting Licence** - this licence grants the holder the exclusive right to carry out prospecting operations (defined as operations carried out offshore and on land to search for and define the extent of a mineral deposit and to determine its economic value). The licence covers an area not exceeding one thousand five hundred contiguous blocks and may be granted for a period of up to three years. Any mineral obtained under the licence is deemed the property of the National Government and is not to be disposed or removed from Kenya without the written consent of the Cabinet Secretary. The licence may be renewed for a further period of three years and may only be renewed twice.
- **Retention Licence** - this licence may be obtained where the holder of a prospecting licence has identified a mineral deposit that is of potential commercial significance within the prospecting area but the deposit cannot be developed immediately due to temporary factors that are beyond the reasonable control of the holder of the licence. The holder has the exclusive right to conduct prospecting operations in the retention area and apply for a mining licence in respect of all or a part of the retention area. The licence is issued for a period not exceeding two years and may be renewed for a further period not exceeding two years. The Cabinet Secretary may issue a written notice to a holder of a retention licence to apply for a mining licence before the expiry of the period stipulated in the licence, if based on an independent report it has become technically and commercially viable for the mineral deposit, subject to the retention licenced to be mined.
- **Mining Licence** - this licence may be granted to a holder of a prospecting licence who has given notice to the Cabinet Secretary of the discovery of minerals within the area covered under a prospecting licence and who has also satisfied the application requirements prescribed under the Mining Act. A mining licence grants the holder the exclusive right to carry out mining operations in respect of the mineral or mineral deposit specified in the licence and within the area specified in the licence. A mining licence may be issued for a period not exceeding twenty-five years or the forecast life of the mine, whichever is shorter. The

holder of the licence may apply for renewal of the licence at least one year before the expiry of the licence and the licence may be renewed for a period not exceeding fifteen years or the remaining life of the mine, whichever is shorter. The holder of this licence is required to notify the Cabinet Secretary if any new minerals are discovered and which minerals (if any) do not relate to the current licence, within 30 days of discovery.

Small Scale Operations

The following rights are available with regard to small scale operations:

- **Reconnaissance Permit** - this permits the holder non-exclusive rights to conduct reconnaissance of the minerals in the area covered under the permit.
- **Prospecting permit** - this may be issued for a period of up to five years and may be renewed for a further period of up to five years. The area covered by this permit should not exceed twenty-five contiguous blocks.
- **Mining permit** - this may be granted to a holder of a prospecting permit to carry out mining operations on a small-scale in an area that does not exceed two contiguous blocks. The permit may be granted for a period of five years and may be renewed for a further period of five years.

Artisanal Miners Operations

- **Artisanal Miners Permit** - this licence may only be granted to persons engaged in traditional and customary mining operations using traditional and customary ways and means and may not be granted in respect of land where any other mineral right has already been granted. The permit may only be granted to a Kenyan citizen who has attained age of majority and any such person who may be a member of an artisanal mining cooperative or group. The term of the permit is limited to three years but may be renewed for an additional period of three years.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

The exploration and production of oil and gas is regulated by the Petroleum Act, Cap. 308, Laws of Kenya ("Petroleum Act").

Rights to undertake upstream petroleum operations (which include all or any of the operations related to exploration, development, production, separation and treatment, storage and transportation of petroleum) may be granted under the Petroleum Act by way of:

- a petroleum agreement entered into with the Government of Kenya; or
- a non-exclusive exploration permit and operational permit granted by the Energy and Petroleum Regulatory Authority.

An application for a petroleum agreement should be made to the Cabinet Secretary responsible for energy and the agreement should take the form prescribed under the Petroleum Act.

Operational permits would be required for any of the following activities:

- Drilling a well;
- Developing and producing petroleum;
- Constructing petroleum gathering systems in the field;
- Building a crude oil storage facility;
- Plugging or abandoning an individual well;
- Operating an underground injection control well;
- Converting an individual well to an underground injection control well;
- Decommissioning or abandoning an upstream petroleum facility;
- Developing, building, constructing or operating a gas processing facility; or
- Remediating and reclaiming upon the abandonment of a well or facility.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

The holder of a mining licence whose planned capital expenditure exceeds an amount prescribed by the Cabinet Secretary would be required to list at least twenty percent of its equity on a local stock exchange within three years after commencement of production. The holder of the mining licence may apply to the Cabinet Secretary responsible for mining to execute an alternative mechanism to meet the listing requirement and the Cabinet Secretary may also after consultation with the National Treasury extend the period for listing for reasons that the market conditions do not allow for a successful completion of the offering in the stock exchange. The State is entitled to ten percent free equity participation in large scale mining operations and in mining operations relating to strategic minerals. The equity interest would be held by the National Mining Corporation which is the investment arm of the Government in respect of all prospecting or mining operations.

For small scale operations, where the applicant is a body corporate, at least sixty percent of the shareholding should be held by Kenyan citizens.

Are there any special rules or restrictions applicable to foreign applicants?

Where a mining right is to be granted to a company, the company must be registered and established in Kenya, that is, it must be operating in the registered office subject to the provisions of the Kenyan Companies Act Cap. 486, Laws of Kenya, and must be in operation within Kenya.

Also, a holder of a mineral right and any agent appointed by the holder must register an address in Kenya with the principal secretary in the ministry of mining to which all communications and notices made under the proposed law to the right holder or its agent may be sent.

Identify any rights that the State may have.
The State is entitled to ten percent free equity participation in large scale mining operations and in mining operations relating to strategic minerals.. The equity interest would be held by the National Mining Corporation which is the investment arm of the Government in respect of all prospecting or mining operations.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
No.

Are there any restrictions on the export of minerals?
Minerals may only be exported out of Kenya in accordance with an export permit granted by the Cabinet Secretary. An export permit may only be granted to the holder of a mineral right, a dealer's licence or a diamond dealer's licence.

An export permit would be required for each export consignment and would be valid for thirty days from the date of issue.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The consent of the Cabinet Secretary is required prior to the assignment, transfer, mortgage or trade of a mineral right or any part of the mineral right. The consent of the Cabinet Secretary should be granted on the recommendation of the Mineral Rights Board.

Within thirty days after receiving the consent of the Cabinet Secretary but prior to implementing the proposed assignment, transfer, mortgage or trade, the holder of the mineral right must notify the Kenya Revenue Authority of the proposed transaction.

The Cabinet Secretary shall not register the interest of a transferee until the transferor provides evidence of compliance with relevant tax provisions.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
Under the Mining Act, any significant proposed change in the ownership or control of a mining company involving any single interest exceeding twenty-five (25) percent interest in the licence must be approved in advance by the Cabinet Secretary.

There may also be a requirement under the Competition Act (Act No. 12 of 2010) to notify and obtain the approval of the Competition Authority of Kenya to a proposed change of control of a company.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Holders of mining rights are generally conferred the rights to use and erect equipment, plants and buildings as necessary within the land over which a mining right is granted in order to carry on mining operations. More particularly, the Mining Act confers the following rights to holders of mining rights relating to the use of the relevant land covered under a specific mining right:

The holder of a reconnaissance licence under the Mining Act may, in exercising the rights conferred under the licence:
- Enter on or fly over the reconnaissance area to carry out approved reconnaissance operations;
- Take and remove specimens and samples from the reconnaissance area not exceeding such limit as is reasonably required for reconnaissance purposes;
- Take timber and water from any lake or watercourse for the purposes of reconnaissance operations;
- Erect equipment, plant and buildings necessary to carry out the reconnaissance operations; and
- Remove on or before the termination of the reconnaissance operations, any camps, temporary buildings or installations which the holder may have erected in the licence area.

The holder of a prospecting licence may, in exercising the rights conferred by the licence:
- Demarcate the areas that fall within the licence area;
- Enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out prospecting operations; and
- Erect equipment, plant and buildings necessary to carry out the prospecting operations.

The holder of a retention licence may, in the exercise of the rights conferred under the licence:
- Demarcate areas that fall within the licence area;
- Enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out prospecting operations; and
- Erect equipment, plant and buildings necessary to carry out the prospecting operations.

The holder of a mining licence may, in exercising the rights conferred by the licence:
- Demarcate areas that fall within the licence area;
- Enter the area of land specified in the licence and take all reasonable measures on or under the surface of the land to carry out prospecting operations; and
- Erect equipment, plant and buildings necessary to carry out the prospecting operations.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The primary legislation governing environmental conservation and management in Kenya is the Environmental Management and Co-ordination Act, Cap. 387, Laws of Kenya ("EMCA").

The Mining Act requires holders of mineral rights to comply with any law on the protection of the environment and makes the grant of a mining licence subject to the applicant having obtained an environmental impact assessment licence in accordance with the EMCA and an approved environmental management plan.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
The Mining Act prohibits the granting of prospecting or mining rights over community land without the consent of either the authority responsible for the administration and management of community land (County Government) or the National Land Commission in respect of community land that is unregistered.
Community land is defined under the Constitution of Kenya 2010 ("Constitution") as including land that is:

- Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines; or
- Ancestral lands and lands traditionally occupied by hunter-gatherer communities; or
- Lawfully held as trust land by the county governments (but not including any public land held in trust by a county government); land lawfully registered in the name of group representatives under the provisions of any law and land lawfully transferred to a specific community by any process of law.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Occupational Safety and Health Act 2007 ("OSHA") is the main legislation regulating the safety, health and welfare of workers and persons lawfully present at all workplaces.

The Mining (Safety) Regulations made under the Mining Act ("Safety Regulations") also provide the safety standards, precautions and measures that should be maintained at all mines in Kenya. The Safety Regulations broadly prescribe safety requirements and standards for surface protection, opencast and underground workings, use of explosives, machinery and poisonous substances, preparation of mine plans and accident procedures.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
The Constitution vests all minerals and mineral oils in the national government in trust for the people of Kenya. Under the Constitution, the State is responsible for ensuring the sustainable exploitation, utilisation, management and conservation of natural resources (including minerals) and to ensure the equitable sharing of the accruing benefits. The Mining Act was enacted to give effect to the relevant provisions of the Constitution relating to the exploitation of minerals in Kenya.

The Constitution also provides for the protection of the right to property and prohibits the State from depriving a person of any interest in or right over property of any description without prompt and just compensation.

Are there administrative appeals in the mining law?
Appeals against any decree, order or decision of the Cabinet Secretary responsible for mining may be made to the High Court of Kenya or the Environment and Lands Court, as applicable, within thirty days.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
There are special rules relating to income tax contained in the Ninth Schedule of the Income Tax Act, Cap. 470 of the Laws of Kenya. These rules relate to the deductions in respect of mining operations in Kenya.
Also, the Value Added Tax Act 2013 provides for the exemption from VAT of taxable goods to be purchased or imported for direct and exclusive use in mining prospecting subject to the recommendation of the Cabinet Secretary in charge of mining.

Are there any royalties payable to the State over and above any taxes?
Royalties are payable in addition to other applicable taxes at rates prescribed in the regulations to the Mining Act. The rates are based on the gross sales value of the relevant minerals.





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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
Lesotho's mining industry is currently being guided by the adopted Minerals and Mining Policy, 2015 (the "Policy"). Further, there are multiple laws that regulate and/or affect the mining industry.

The Lesotho Constitution; the Land Act, 2010; Mines and Minerals Act, 2005 (hereinafter "MMA"); and the Precious Stones Order, 1970 (hereinafter "PSO") play an integral part in the handling of land and minerals in Lesotho. In addition to these laws mentioned there are numerous regulations promulgated under them.
The Constitution, among other laws and regulations, provides that all land and mineral rights vest in the Kingdom of Lesotho, and as such prospecting and mining can only be undertaken with the relevant mineral concessions provided by the Government of Lesotho.
The MMA, more specifically provides for rights to prospect and mine for minerals in the country. We note that the Government is currently working on a new regulatory framework – so that mining is regulated in a manner consistent with the countries adopted Policy.
The Environmental Act, 2008 (hereinafter "Environment Act"), further regulates mining and prospecting activities by making certain consents and licences peremptory in order to obtain mineral concessions in the country, this is further discussed herein below.

Which Government bodies administer mining law?
Predominantly, the Government Body tasked with the administration of mining law is the Ministry of Mining. In terms of the MMA, the Minister of Mining supported by the Commissioner of Mines and the Mining Board administer mining law in accordance with the MMA.
For matters related to environmental law, it is the task of the Department of Environment to regulate environmental issues in accordance with the Environment Act, with the assistance of the National Environment Council.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Prospecting Licence
Subject to the provisions of Section 54 of the MMA, a prospecting licence, issued in terms of the MMA,
provides the holder thereof the following rights:
- The right to prospect for minerals to which the licence relates;
- Make necessary excavations and drill boreholes; and
- Erect camps and put up temporary structures for machinery necessary for prospecting purposes.

A prospecting licence is acquired by way of application to the Mining Board through the Commissioner of Mines. It is the Minister's role to approve, issue, renew, cancel or suspend prospecting licences. In general, a prospecting licence is valid for a period not exceeding two years from the date of issue, and may be renewed, by way of application, for a further period not exceeding a year. The licence is transferable subject to certain conditions in the MMA.
It should be noted that where a discovery of minerals occurs the licensee is obligated to acquire the written consent of the Commissioner of Mines before the removal of minerals from the prospecting area.

Mining Lease
In general, a mining lease, issued in terms of the MMA, confers to the holder thereof the following rights:
- The right to take all reasonable measures on or under the surface to mine the mineral to which the lease relates;
- The right to erect the necessary equipment, plant and buildings for the purposes of mining, transportation, dressing, treating, smelting or refining minerals recovered by the lessee during mining operations;
- The right to dispose of any mineral product recovered;
- Prospect within the mining area for minerals for which the lessee holds the mining lease; and
- Stack or dump any waste product in a manner approved and in accordance with the Environment Act.

A person wishing to obtain such a lease is entitled to apply to the Mining Board through the Commissioner of Mines. It is for the Minister of Mines to approve, issue, renew, cancel or suspend mining leases. The mining lease is valid for a period not exceeding ten years and may be renewed for a further period of ten years, by way of application, not later than one year before the expiry of such lease. Such a lease may also be amended, by way of application, to include further mineral deposits found not included in the lessee's mining lease. A mining lease is transferable subject to the approval of the Minister of Mines and other conditions of the MMA.

Mineral Permit
In general, a mineral permit, issued in terms of the MMA, confers onto the holder thereof the following rights:
- The right to mine the mineral to which the permit relates;
- The right to dispose of the mineral to which the permit relates; and
- The right to erect such temporary structures, other than residential buildings, as may be necessary for the purpose of mining.

Mineral permits are provided to those who wish to conduct small scale mining operations, over an area not exceeding

100m2, for any mineral other than diamonds. Application for a permit can only be made to the Mining Board by a citizen of Lesotho. The permit is valid for a year from the date of issue and may, on application to the Mining Board, be renewed for a further period not exceeding a year from the date of issue of renewal.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
There are currently no rights granted to conduct oil and gas exploration in Lesotho.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
An individual cannot acquire a mining right in his/her own name if that individual is not a major citizen of Lesotho. A company can acquire a mining right provided it is registered and established in Lesotho.

Are there any special rules or restrictions applicable to foreign applicants?
Apart from having to register a company under the laws of Lesotho, there are no restrictions or special rules relating to foreign applicants.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The Government may, through the Ministry of Natural Resources, acquire not less than twenty percent shareholding in a proposed mine, and is required to inform an applicant of a mineral lease as to whether the Government is taking up shareholding in the proposed mine.

The shareholding of the Government with relation to diamond mines are negotiated between the Government and the proposed mining operation and subsequently reflected in the mining lease agreement.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
There are currently no requirements within Lesotho to beneficiate minerals mined. The Government is currently considering local beneficiation requirements.

Are there any restrictions on the export of minerals?
The Precious Stones Order, 1970 (hereinafter "Precious Stones Order"), regulates the export of precious stones with its main focus on the export and cutting of diamonds. Accordingly, no person may export diamonds mined in the Kingdom of Lesotho unless he/she is a licensed dealer or producer or an accredited agent of such producer who holds a permit to export that diamond. A permit in this regard is thus required. Further, all the rules and regulations governing the export of diamonds are implemented in accordance with the Kimberly Process Certification Scheme.
In terms of the Precious Stones Order, the Minister may request a provider to make available a percentage of the company's diamond production for sale for local cutting and polishing.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Statutory consents required to dispose of rights to explore and mine

Prospecting licence
Transfer may be made by application to the Mining Board to any person who meets the requirements to hold such a licence. Where the Minister is satisfied that the transferee is qualified to hold said licence, the Mining Board shall notify the applicant of the approval of the transfer of the prospecting licence or interests in the prospecting licence. Upon transfer, the transferee assumes all rights, obligations and liabilities under the prospecting licence.

Mining Lease
A mining lease, or any interest in the mining lease, may only be transferred with the approval of the Minister of Mines. Approval is acquired by way of application and is subject to the same requirements as an application for a mining lease. Upon transfer the transferee assumes all rights, obligations and liabilities in terms of the mining lease agreement transferred.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?

Prospecting license
There are currently no restrictions on the disposal of a controlling interest in a prospecting operation.

Mining Lease
The regulations governing the transfer of a mining lease are the same as those for the transfer of a controlling interest held in a mining operation. As such, where a controlling interest in a mining operation is transferred the approval of the Mining Minister is required.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The MMA provides that the holder of a mining lease may take all reasonable measures on or under the surface, to mine the mineral to which it relates.

That being said, however, the MMA provides certain restrictions to the exercise of rights under a mineral concession over certain specific land (e.g. land dedicated as a place of burial, land containing any ancient or national monument; land set aside for use by the Government, and national parks). Further, it provides for consent of the owner or lawful occupier of l the and as a requirement for the exercise of any right over such land. Where such consent is unreasonably withheld, authorisation can be acquired from the Minister, subject to conditions he may impose, including the payments of reasonable compensation.

The rights conferred by a mineral concession are required to be exercised reasonably and in a manner that affects the interests of any owner or lawful occupier of the land covered by such mineral concession as little as possible. The mining lease agreement would dictate the extent of the right the holder thereof has with relation to surface rights.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The Environment Act, provides an overall legal and regulatory view of environmental standards, procedures, and compliance requirements. Observation of the Environmental Act is peremptory for a mineral concession.

The Environment Act requires that an environmental impact assessment licence must be acquired for certain listed activities. These activities, more specifically, include mining, mineral extraction including quarrying and open-cast extraction of precious stones, minerals and metals, coal, stone and slate, aggregates, sand and gravel, clay, tunnelling, diamonds, limestone and dolomite, and base metals.

The MMA further provides that all mining operations are to comply with good mining industry practices and the law in preserving the natural environment, minimising and controlling waste or damage to natural and biological resources, and to promptly treat pollution and contamination of the environment.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
No native title is recognised to provide the holder thereof the right to prospect or mine. Application for a mineral permit would be required.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Mine Safety Act, 1981, was published to make provision for the purpose of governing health and safety for persons employed at mines, and for connected purposes. In addition, Occupational Safety and Health Act, 2024, and certain health and safety regulations in terms of the Labour Code Order, 1992, must also be observed.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
Yes, the Constitution, 1993, provides that all land in Lesotho vests absolutely and irrevocably in the Basotho Nation. As such, the Constitution affects the administration of minerals in Lesotho.
Further provisions may impact on rights to prospect and mine such as the right to property.

Are there administrative appeals in the mining law?
Lesotho currently has no specific procedures laid down for administrative appeals relating to mining law.
Where a conflict may arise due to the failure of a holder of a mineral concession, the Minister has the authority in terms of the MMA to suspend or cancel a mineral concession. The Minister shall, however, provide the holder notice in writing, specifying the particular contravention and call upon the holder to remedy the contravention within a certain period, being not less than 30 days.
This being said, certain administrative procedures may be agreed upon in a mining lease agreement.
Although there are no set statutory procedures for administrative appeals, the judiciary, namely the High Court and Court of Appeal, enjoy inherent powers of review and appeal over administrative actions and decisions.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
Currently, entities involved in mining activities are subject to taxes same as any other entity in terms of the Income Tax Act, 1993. It should be noted that the Policy makes

provision for special rules, however, to date none have been promulgated. Regulations published in terms of the Income Tax Act, 1993 do allow mining assets to be depreciated at a rate of 100% per annum.

Are there any royalties payable to the State over and above any taxes?

The MMA provides that the holder of a mineral concession shall be liable for royalties to the Government on any mineral obtained. The royalties payable are currently determined at ten percent for precious stones and three percent for other minerals or mineral products.

The royalty is calculated on the gross market value receivable at the mine gate and is payable by the holder of the mineral concession. A royalty may, in certain circumstances, be remitted by the Minister in terms of the MMA.

The royalty rate on diamonds may be negotiated between the holder and the Government in a lease agreement to a rate not more than 10%.

In addition to a royalty, the holder of a mineral concession is further obliged to pay an annual charge in respect of a maineral concession through the Ministry of Natural Resources.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
Mining law in Malawi is regulated by the Mines and Minerals Act, 2023 (MMA) and regulations made thereunder. The MMA regulates the development of the mineral resources of Malawi through adherence to sustainable development principles, in order to benefit the economy and promote the economic growth of Malawi, protect and improve the welfare of citizens of Malawi, and provide an attractive and conducive environment for investment in the mining sector.

The MMA repealed and replaced the Mines and Minerals Act of 2018 which had repealed the Mines and Minerals Act of 1981, Cap. 61:01 of the Laws of Malawi, which was outdated. All subsidiary legislation made under the repealed Acts and in force on the effective date of the MMA remains in force unless it is in conflict with the MMA.

The subsidiary legislation in force includes:
- the Mines and Minerals (Claims) Regulations;
- the Mines and Minerals (Disputes) Regulations;
- the Mines and Minerals (Miscellaneous Fees) Regulations;
- the Mines and Minerals (Non-Exclusive Prospecting Licence) Regulations;
- the Mineral Permits (Prescribed) Regulations;
- the Mines and Minerals (Prescribed Operations) Regulations;
- the Mines and Minerals (Public Purposes) (Prescription) Regulations;
- the Mines and Minerals (Reserved Minerals) Regulations;
- the Mines and Minerals (Reserved Minerals Licence) Regulations;
- the Mines and Minerals (Royalty) Regulations; and
- the Mining (Safety) Regulations.

All licences and permits issued under the repealed Act and effective on the effective date of the MMA remain in force as though issued under the MMA.

Which Government bodies administer mining law?
The MMA has dissolved the Mineral Resources Committee and vests the overall regulation of the mineral sector in the Mining and Minerals Regulatory Authority ("the Authority") whose function is to regulate the mineral sector in the development and utilization of mineral resources in line with sustainable development principles and practices and for the benefit of Malawians. The Authority shall consist of nine members comprising of an Accountant, Mining Engineer, Mining Expert, Legal Practitioner, Geologist, and ex officio members including the Secretary responsible for Mining, Secretary responsible for Local Government, Secretary responsible for Land, and the Secretary responsible for Trade. The Authority shall also have a secretariat which shall consist of the Director General who shall be the Chief Executive Officer.

The Authority is mandated to:
- regulate the mining sector and exportation of minerals;
- monitor the activities of licensees to ensure compliance with the MMA and terms and conditions of their licences;
- promote the harmonization of activities, plans and policies concerned with sustainable development and utilization of mineral resources and ensure consistency with the overall national development policy;
- promote and regulate local beneficiation and downstream processing of minerals and value addition;
- facilitate dispute resolution or resolve disputes relating to the mining sector; and
- perform any other functions necessary or incidental to the regulation of the mining and minerals sector.

The Authority, as part of its function, has the power to:
- receive and process mineral tenement applications;
- issue, review, approve, withhold, suspend, and revoke mining licences and permits;
- establish and maintain a web-based mining cadastral;
- inquire into and decide on disputes between mineral tenement applicants or holders and communities;
- determine Geological Survey Reserve Areas;
- carry out mine surveying and mineral auditing;
- impose administrative sanctions and penalties for any breach of the MMA or licencing conditions;
- collect fees prescribed under the MMA.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
All mining rights are acquired in accordance with the provisions of the MMA and issued by the Authority. A person may only undertake reconnaissance, prospecting, exploration, or mining operations under, or in accordance with, a mineral tenement or an artisanal mining permit granted by the Authority under the MMA

Exploration
To conduct exploration, one ought to apply for and be issued an Exploration Licence. An Exploration Licence holder must be a company duly incorporated in Malawi or registered as a foreign company (and have a licenced legal practitioner as its registered agent for purposes of accepting notices under the MMA and legal service of process under the Laws of Malawi) and must have the technical competence and financial ability to fulfill the licence obligations. The licence is valid for an initial term of five years, which may be extended for a period of up to three years, and may be extended only once for a further period of up to three years. It is expected for

exploration to have been completed within this time frame, and for the licence holder to move on to mining operations following the application and granting of a mining licence. However, one may apply for a Retention Licence and apply for a mining licence thereafter.

An exploration licence cannot be granted to a company if any director or major shareholder of the company has been convicted of an offence under the MMA or was an employee of the company at the time the company first applied for the licence, or if the company is a former licence holder whose licence was cancelled, and the company has applied within two years of the cancellation.

Reconnaissance
To conduct reconnaissance, one ought to apply for and be issued a Reconnaissance Licence. A Reconnaissance Licence holder must be a company duly incorporated in Malawi or registered as a foreign company (and have a licenced legal practitioner as its registered agent for purposes of accepting notices under the MMA and legal service of process under the Laws of Malawi) and must have the technical competence and financial ability to fulfill the licence obligations. An application shall consist of a sketch map showing the area for conducting reconnaissance and a reconnaissance work program giving particulars of the work to be carried out. The licence is valid for period of one year and may be extended only once, and for a period of one year.

A Reconnaissance Licence holder shall have the right to erect camps and temporary buildings and installations, erect installations in any waters, remove any camps, temporary buildings or installations the holder erected, fly over the area (which is subject to various flight permissions issued by the Civil Aviation Authority) for the purpose of performing geophysical and or aerial surveys, use remote sensing for gathering of data, enter upon any land for the purpose of carrying out reconnaissance, subject to obtaining permission of lawful occupiers and landowners.

Non-Exclusive Prospecting Licence
To engage in prospecting activities, one ought to apply for, and be issued, a Non-Exclusive Prospecting licence. A Non-Exclusive Prospecting licence holder must be a Malawian Citizen, or an entity or body corporate consisting of Malawian Citizens only. A person can hold a maximum of two Non-Exclusive Prospecting licences. The licence is valid for period of one year and may be extended only once, for a period of one year.

Retention Licence
An Exploration Licence holder may apply for a Retention Licence where it has demonstrated that it has located a mineral deposit which is of commercial significance, and the mineral deposit cannot justifiably be mined at the present time utilizing proven technology and the exploration work has progressed as far as is practicable at the time and therefore a Retention Licence is necessary. A Retention Licence may be granted for a term based on the justification provided for a maximum of five years, and shall not be extended, and for a maximum of twenty-five square kilometers. The MMA recognizes that certain factors may require a holder of an Exploration Licence to wait before proceeding with mining operations and require time to prepare for such investment into obtaining a mining licence, given the level of investment and effort into conducting exploration.

Medium Scale and Large Scale Mining Licence
The Minister may enter into an agreement, usually known as a Mining Development Agreement with respect to a medium or Large Scale mining licence.

A Medium or Large Scale mining licence holder must be a company duly incorporated in Malawi and must have the technical competence and financial ability to fulfill the licence obligations, and shall be legally constituted in such a way that Government may elect to acquire a free ownership equity interest in the company. A Medium or Large Scale mining licence shall not be granted to a company if any director or major shareholder of the company has been convicted of an offence under the MMA or was an employee of the company at the time the company first applied for the licence, or if the company is a former licence holder whose licence was cancelled and the company has applied within two years of the cancellation.

Any application for a Medium or Large Scale mining licence shall be supported by project approval issued under the Environment Management Act and a copy of the Environmental and Social Impact Assessment report, along with the prefeasibility study or feasibility study, and various other plans such as a mining operations plan, employment and training plan, goods and services procurement plan, business development assistance plan, mine site plan, mine waste management plan, resettlement management plan, community development agreements, and mine rehabilitation plan together with security for mine rehabilitation.

There is also a requirement to have a boundary survey plan, to establish clear boundaries for the areas being mined. A licence shall be issued for a period of twenty-five years or the lifetime of the mine, whichever is shorter, and can be extended for periods of up to fifteen years.

A Large Scale mining licence shall be required where the mining operation involves:
- the extraction of minerals from primarily alluvial mineral deposits if annual throughout is more than 1,000,000m3 per year;
- annual combined run of mine ore and waste production in the case of underground mining operations is more than 500,000 tonees per year;
- extracting minerals from primarily non alluvial deposits in the case of open cast mining operations is more than 500,000 tonnes per year;
- where after construction is complete, the licence holder employs or contracts more than 1,000 employees; or

- where capital investment in the project over its first ten years exceeds USD250million.

Small Scale Mining Licence
A holder of a Small Scale mining licence is required to be a Malawian Citizen, or a partnership, co-operative, or company whose members are Malawian Citizens. A Small Scale mining licence is usually granted for a term of two years and can be renewed fur further periods of two years at a time. There is no limit to the number of extensions of a Small Scale mining licence. A holder of such a licence is required to commence mining within 180 days from the registration date of the licence, and cannot employ more than fifty labourers at any given time, and may not use mechanized equipment for mining although minimal mechanization may be acceptable.

Artisanal Mining Permit
A holder of an artisanal mining permit is required to be a Malawian Citizen, or a company wholly owned by Malawian Citizens, and is usually granted for the mining of minerals used in local area construction such as sand, gravel, stones, clay etc. Such a permit if valid for a maximum period of one year, will not have a significant impact on the environment or land, be used to produce minerals for use in the local area, not use any form of mechanization for extraction of minerals, and not have any pit in excess of five meters from the contours of the land. Artisanal mining permits are usually granted by the local government authority who are under an obligation to file the issuance of such permits with the Authority.

Reserve Mineral Licence
A Reserve Mineral licence can be issued to any local bank in Malawi or company in Malawi, permitting them to possess, purchase, sell or dispose, any reserve mineral in its raw state from a holder of a Reserve Mineral licence. Reserve minerals are defined as gold, silver, precious stones, any other mineral which may be prescribed. Such a permit is valid for a period of one year and can be renewed upon application and payment of the prescribed fee. There is no limit to the number of renewals. A person who possesses, purchases, or sells any reserved mineral in its raw state without a valid licence, commits an offence and shall be liable to on conviction to a fine of K10,000,000 (approx. USD5,700) and to imprisonment for two years.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
The law governing exploration and extraction of natural oil and petroleum is different from the MMA. The Petroleum (Exploration and Production) Act, Cap. 61:02, Laws of Malawi (Petroleum Act) makes provision with respect to searching for and producing petroleum and provides for matters connected therewith and incidental thereto.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Under the Petroleum Act, no licence shall be issued to an individual except a Malawian Citizen. There are no requirements for local ownership by citizens of indigenous peoples.

Are there any special rules or restrictions applicable to foreign applicants?
There are no special rules or restrictions applicable to foreign applications.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The Government may elect to acquire a free ownership equity in a mining licence-holder company under section 229 of the MMA. However, there is no such right explicitly provided under the Petroluem Act for oil and gas exploration.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
There are no special regulatory provisions relating to processing or further beneficiation of minerals. However, the MMA provides that in considering applications for a licence for mining operations, the Committee shall look at whether the operations provide for beneficiation of the minerals. The position may encourage applicants to consider planning for the same.

Are there any restrictions on the export of minerals?
Under the MMA, one can only export minerals using a minerals export permit. In terms of the MMA, any person or body corporate that exports any mineral of commercial value from Malawi, other than in accordance with a minerals export permit granted under section 307 of the MMA, commits an offence and is liable to a fine and imprisonment (of individual management in the case of a body corporate). However, the Minister may prescribe minerals that do not require a permit prior to exportation. Currently there is no such prescription.

The MMA empowers the Commissioner for Mining to prohibit the exportation of minerals, even with a permit, unless and until all royalties due in respect of the mineral consignment have been paid or security acceptable to the Commissioner has been issued by the exporter.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?

The MMA allows the holder of a right to surrender such right. The application for surrender must be made not less than three months before the date on which the holder wishes the surrender to take effect. The holder of a Medium Scale mining licence may also apply for its cancellation no later than twelve months before ceasing operations, in the case that they wish to permanently cease operations before the expiration of their licence.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?

The only absolute restriction on change of control is in respect of a Reconnaissance Licence. A Reconnaissance Licence shall not be transferred to any person. Where there is a change of control in respect of a holder of an Exploration Licence, Retention Licence, Medium Scale mining licence or Large Scale mining licence, the licensee is required to notify the Commissioner within fourteen days.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
A Reconnaissance Licence holder is prohibited from engaging in drilling, trenching or excavation, or any activity that substantially disturbs the surface of the land covered by the Reconnaissance Licence, except when authorised to do so by the Commissioner upon application.

An Exploration or mining licence holder obtains rights to use the surface of land to the extent that their operations necessarily require within the terms of the licence. The operations of the holder of a Reconnaissance, Exploration or mining licence are restricted to the rights conferred on them by their licences as outlined in questions 3.1 to 3.3 above.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Section 270 of the MMA provides that the Mineral Resources Committee or the Commissioner, in approving applications, shall take into account: the environmental protection and management principles set out in the Environmental Management Act, the principles of sustainable development, in order to ensure that exploitation of mineral resources serves the present and future generations, any effects on human health and environment, and, where the proposed works may affect a neighbouring country, consultations with the relevant government authorities of the respective countries are held. In addition, where the Environmental Management Act requires an Environmental and Social Impact Assessment (ESIA) report to be prepared and approved, the applicant for a licence or tenement shall attach a copy of the approved ESIA, along with a certification from the Director of Environmental Affairs that the project has been approved by the Minister responsible for environmental matters.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Owners under native law hold the title as lawful occupiers in terms of the MMA. Section 4 of the MMA provides that the entire property in minerals in Malawi is vested in the Republic, but that the same shall not operate to prevent a citizen of Malawi from taking minerals from customary land in accordance with established custom, for customary use. Customary owners are however prohibited from taking the minerals for commercial activities or using mechanised mining methods. A licence holder's rights over a customary area are only bound by the licence itself, and customary title does not affect the usage of a licence.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Occupational Safety, Health and Welfare Act, Cap. 55:07, Laws of Malawi and the Mining (Safety) Regulations governs health and safety in mining.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
The Constitution of the Republic provides for rights to ownership of property and to carry out economic activity anywhere else within the Republic. The property rights so offered are not to be arbitrarily alienated. Effectively, the Constitution offers protection of licence holders so that their licences cannot be arbitrarily revoked without a remedy under section 43 of the Constitution for such an administrative decision.

Are there administrative appeals in the mining law?
The Commissioner may inquire into and resolve disputes and make administrative decisions or directions. Any person aggrieved with a commissioner's decision or direction may appeal to the Mineral Resources Committee within a period of thirty days from notice of the decision being given to the

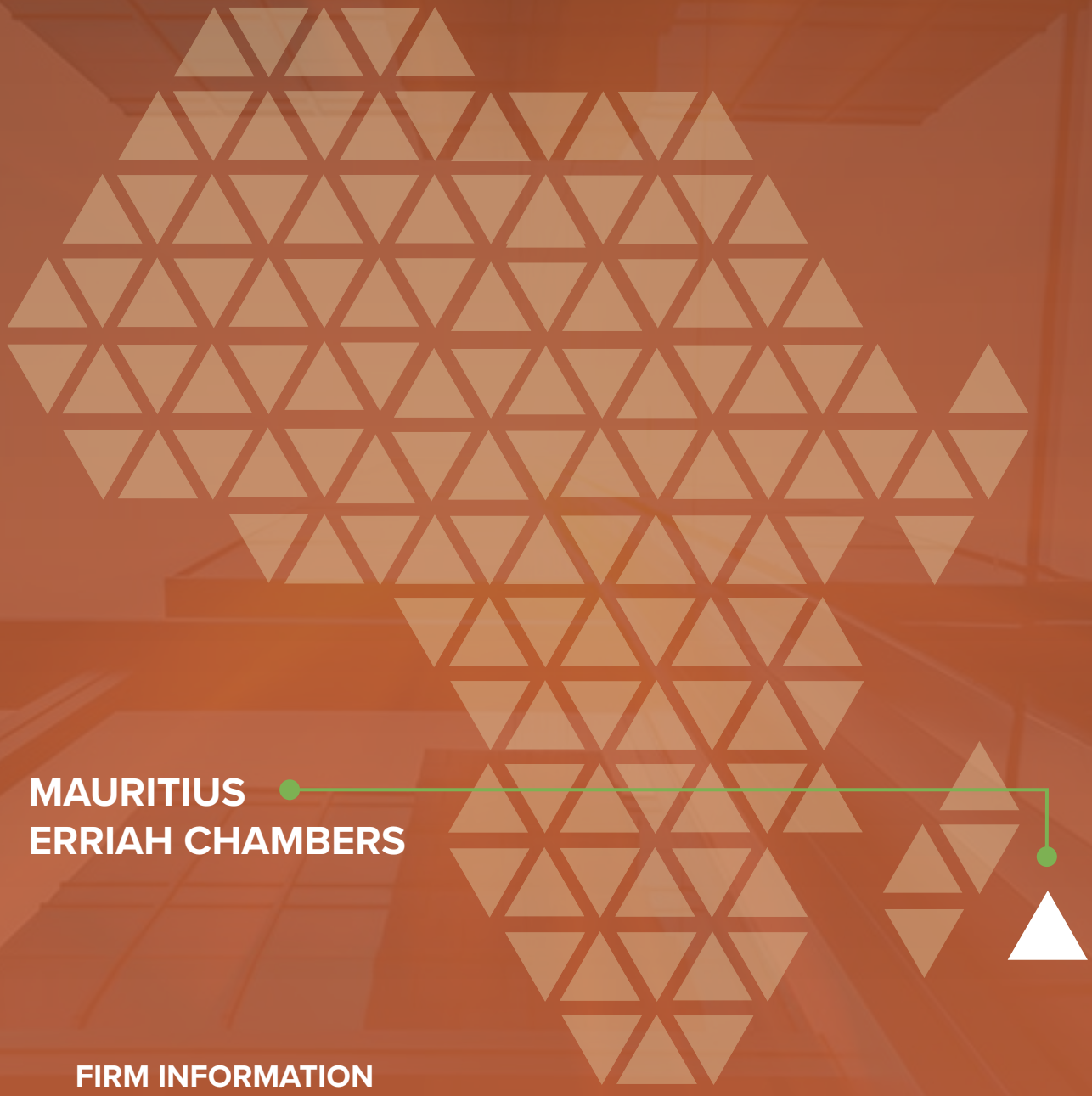
person. When a decision is made by the committee, the appellant has a final right of appeal before a High Court in the event that they are still aggrieved by the decision of the Committee.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
Sections 260 and 261 of the MMA and the Mines and Minerals (Royalties) Regulations specifically deal with rules applicable to the taxation of mining entities.

Are there any royalties payable to the State over and above any taxes?
The MMA requires that for every mineral export permit, royalties be charged as payable in respect of the consignment of minerals.





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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
In Mauritius, mining of ores is not a common activity in view of its volcanic origin. A few decades ago, lagoon sand mining was carried out by sand miners and boat owners in the shallowest parts of the largest lagoons on the north and east coast of the island. The extracted coral sand was used mainly as a raw material in the construction industry. Coral sand extraction from the lagoon has been banned since October 2001.

In any event, in spite of the practically non-existent mining activity, the principal legislation governing mining in Mauritius is the Minerals Act 1966 (the "Act") which is still enforceable.

Which Government Bodies administer mining law?
According to the Act, the main governing body responsible for mining and for authorising prospecting operations is the Minister of Commerce and Consumer Protection.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?
The Act grants the right to prospect minerals, i.e., search for minerals, which also includes such working as is reasonably necessary to enable the prospector to test the mineral-bearing qualities of the land.

The Government shall have the exclusive right to prospect for minerals in or under any land. Subject to the Act, and until such time as the President may by regulations prescribe, no person shall prospect for, mine or work minerals in or under any land in Mauritius whether he is the owner of the land or not. The Minister may authorise in writing any person to carry on prospecting operations in or under any land on behalf of the Government.

It should be noted that under the Act, minerals include:
- metalliferous minerals containing aluminum, antimony, arsenic, barium, bismuth, cadmium, cerium, chromium, cobalt, columbium, copper, iron, lead, lithium, magnesium, manganese, mercury, molybdenum, nickel, potassium, sodium, tantalum, tin, titanium, tungsten, uranium, vanadium, zinc, zironium, and all other substances of a similar nature to any of them, and all ores containing them and combinations of any of them with each other or with any other substance, other than those occurring in the form of precious minerals;
- Combustible carbonaceous minerals including – coal; lignite, which includes brown coal and any coal which the President may prescribe to be lignite;
- Other minerals, including those used for their abrasive or refractory qualities and asbestos, barytes, bauxite, china clay, crystals, fuller's earth, graphite, laterite, marble, mica, nitrates, pipeclay, potash, pumice, quartz, slate, soda, sulphur, talc, and all other substances of a similar nature to any of them; and
- Precious minerals, including - precious stones (that is, diamonds, emeralds, opals, rubies, sapphires, turquoises, and such other stones as may be prescribed to be precious stones for the purposes of this Act) and semi¬precious stones including amber, amethyst, beryl, cat's eye, chrysolite, garnet, and all other semi-precious stones, whether of the same kind as those enumerated or not and precious metals.

Minerals shall not include:
- Pottery, clay or rock salt;
- Any materials, such as clay, sand, limestone, sandstone, or other stones, commonly used for the purpose of road making, building or for the manufacture of any article used in the construction of buildings where such material does not contain any valuable metal or precious stone;
- Petroleum and associated substances as defined in the Petroleum Act 1970.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
Oil and gas explorations and production are governed by the Petroleum Act 1970 (the "Petroleum Act"). Under the Petroleum Act, petroleum is meant to include any mineral oil or hydrocarbon, whether gaseous, liquid or solid, existing in its natural condition in strata, including crude oil, casing head spirits, ozokerite, asphalt and natural gas.

The governing body shall be the Minister to whom the responsibility for the administration of the Petroleum Act is assigned.

The Minister may:
- On application made in the prescribed manner;
- By auction or tender; and
- On being satisfied that the applicant, the bidder or the tenderer, as the case may be, has sufficient technical knowledge, experience and financial resources to ensure the proper prospecting and mining for petroleum, grant to the applicant, bidder or tenderer a prospecting licence or a mining lease.

A prospecting licence shall confer on the licensee exclusive rights to conduct prospecting operations over the area comprised in the licence.

A mining lease shall be granted only in respect of an area which has been comprised in a prospecting licence and in which petroleum has been found and shall confer on the lessee exclusive rights to prospect and mine for petroleum and associated substances over the area comprised in the lease.

A prospecting licence or a mining lease may be granted for such consideration, over such area, for such period and such other terms and conditions as the Minister may determine. A prospecting licence or a mining lease may, on application being made in the prescribed manner, be renewed for such consideration, over such area, for such period and on such other terms and conditions as the Minister may determine.

Notwithstanding the above, the terms and conditions of any prospecting licence or mining lease may provide for:

- The royalty or other payment to be made in respect of petroleum obtained in the exercise of the rights conferred by the licence or the lease, the method of calculating the royalty or other payment, and its manner of payment;
- The rent to be paid in respect of an area comprised in the licence or lease;
- The working obligations attached to the licence or lease;
- The method of measuring petroleum obtained from an area comprised in the licence or lease;
- Directions relating to the drilling, location and plugging of wells, the avoidance of harmful methods of working, the avoidance of interference with other activities in or about the area comprised in the licence or lease;
- Directions relating to – (i) the nationality of persons employed by the licensee or lessee for the purposes of his operations under the licence or lease; (ii) the safety, health and welfare of such persons;
- The supply of information by way of returns, reports, notices, plans and records of operations carried out under the licence or lease; and
- The terms and conditions under which the licence or lease may be terminated.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Mauritius does not have any indigenous people. As regards to petroleum, the property in petroleum existing in Mauritius shall be deemed to be, and always to have been, vested in the State.

Are there any special rules or restrictions applicable to foreign applicants?
As mentioned above, whether with respect to minerals and/or petroleum, the Government has all exclusive rights thereto. Therefore, foreign applicants shall only be authorised to carry out prospecting operations with the authorisation of the Government.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
As mentioned above, the property of petroleum shall be deemed to have always been vested in the State and as regards to minerals, the State shall have the exclusive right to prospect for minerals under any land.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
No, there are no requirements in local laws as to the beneficiation of minerals.

Are there any restrictions on the export of minerals?
Yes, there are some minerals in Mauritius which are subject to export restrictions. Some minerals such as sand, limestone, cement, and rough diamonds, require an export permit from the Ministry of Industry, Commerce and Consumer Protection.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The law does not provide for any disposal of exploration and mining rights.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
There are no such statutory restrictions.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The holder of an exploration right or mining right shall have all rights over the area for which mining leases or prospecting licences have been granted.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
As per the First Schedule of the Environment Protection (Amendment) Act 2008, both offshore sand mining and rock quarrying are undertakings that warrant an Environment Impact Assessment licence (EIA). To date only two EIA licences have been granted for rock quarrying and one quarry site is presently operational. EIA licences are usually granted subject to terms and conditions.

The conditions attached to the EIA licence granted for rock quarrying also require the proponent to, amongst others:

- Provide for earth bunds to inhibit dust emissions and noise propagation;
- Provide for a buffer zone from public access road;
- Provide for the reinstatement of the quarry zone concurrently with the progression of the quarry;
- Exploit the quarry in conformity with the methodology proposed in the EIA report;
- Submit an environmental monitoring plan prior to starts of works with subsequent monitoring reports.

Use of explosives for blasting purposes is normally not allowed except under the control and supervision of a special branch of the Police Force. Information pertaining to the decommissioning of the project at the end of its life cycle and associated impacts and the reinstatement plan of the quarry zone should also be submitted to the Department of Environment for approval.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
The Government shall pay compensation to the owner or occupier of the land in or under which prospecting operations are carried out for any:

- Disturbance of the rights of the owner or occupier;
- Damage done to the surface of the land; or
- Damage caused to any crops, trees, buildings or works on the land.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
There is no specific legislation as regards health and safety in mining. However, the Occupational Safety and Health Act 2005 governs health and safety in employment.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?
Yes, Mauritius has a Constitution which has an impact upon rights to prospect and mine.

Are there administrative appeals in the mining law?
No.

ROYALTIES AND TAXES

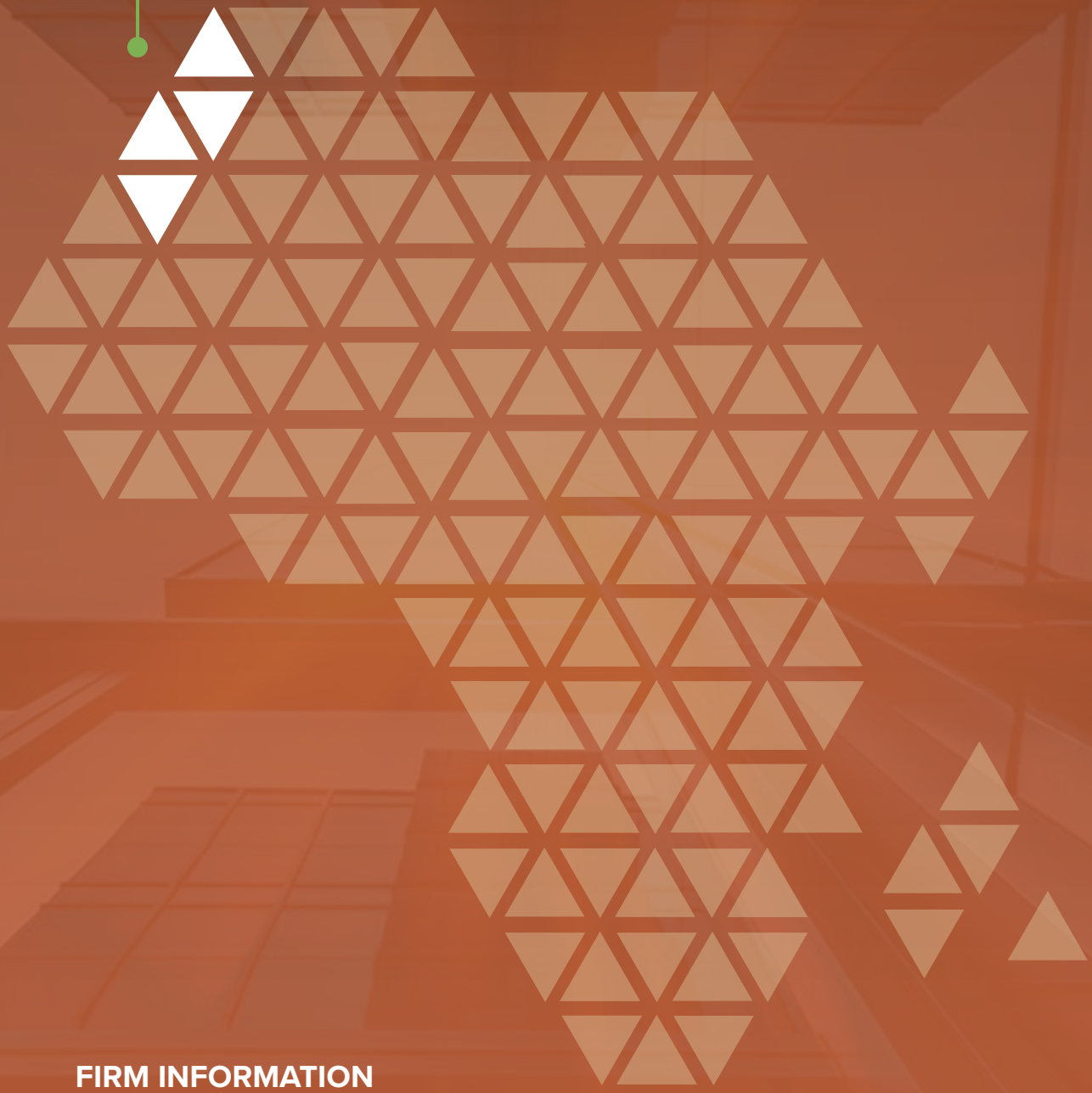
Are there special rules applicable to taxation of exploration and mining companies?
There are no special rules applicable to same. It should be noted however that a domestic company is taxable at the rate of fifteen percent on its income. Entities are usually set up in Mauritius with respect to mining activities outside Mauritius and these are set up as Global Business Licence (GBL). The latter are taxable at a maximum rate of three percent after application of deemed foreign tax credit. This Deemed Foreign Tax Credit regime available to companies holding a GBL has ceased to apply as from 31st December 2018. A partial exemption regime has been introduced whereby eighty percent of specified income will be exempted from income tax.

The exemption will be granted to all companies in Mauritius, except banks, and shall apply to the following income:

- Foreign source dividends and profits attributable to a foreign permanent establishment;
- Interest and royalties; and
- Income from provision of specified financial services.

Are there any royalties payable to the State over and above any taxes?
Please refer to royalty payment provisions described under Section 3 above regarding petroleum products. The Minerals Act 1966 is however silent regarding royalties on minerals.

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
For more than 60 years, the 1951 Mining Code had governed the sector, making it de facto obsolete. Law no. 33-13 of July 2015 and its implementing decree of April 2016 created a new Code that is both realistic and ambitious. In July 2021, the council of government had approved the draft law n°46-20 which is currently by the House of Representations.

The sector operates under a specific and detailed regulatory framework, primarily based on the following key texts:

- Law no. 33-13, which forms the backbone of the modern Mining Code;
- Dahir No. 1-60-007, dated December 30, 1960, concerning the status of employees in mining companies;
- Dahir No. 1-99-340, regulating the exploration and exploitation of hydrocarbon deposits;
- The Hydrocarbons Code (Law No. 21-90), as amended by Law No. 27-99, which governs the exploration and exploitation of hydrocarbon deposits;
- Decree No. 2.57.1647 of December 17, 1957, which establishes rules for implementing provisions of the Mining Regulations, particularly regarding taxes related to mining titles and the obligations of mine concessionaires and permit holders;
- Law No. 39-89, which enabled the privatization of mineral exploration activities, signaling the progressive withdrawal of the State from the exploitation and management of mining companies.

Which Government Bodies administer mining law?
The main authorities involved in the regulation of the Moroccan mining sector are the:

- Ministry of Energy, Mines and Sustainable Development (MEM). Under Decree No 2-20-413 Establishing Attributions and Organisation Rules of the Mining and Energy Department of the MEM dated 3 July 2020. The MEM has delegated authority to:
  - o the Walis (representative of the central government in the local region) for the award of exploitation authorisations for projects of a value less than MAD200 million; and
  - o regional directors of the Energy and Mines Department of the MEM for the award of research permits.
- National Office of Hydrocarbons and Mines (ONHYM). ONHYM is a public establishment regulated by Law No 33¬01 promulgated by Dahir No 1-03-203 dated 11 November 2003 and its Decree No 2-04-372 dated 29 December 2004. It is subject to the state supervision and financial controls applicable to Moroccan public establishments.
- Land Registry. The Land Registry (Agence Nationale de la Conservation Foncière du Cadastre et de la Cartographie) is a public establishment (établissement public) regulated by Law No 58-00, promulgated by Dahir No 1-02-125 dated 13 June 2002. It is subject to the state supervision and financial controls applicable to Moroccan public establishments. The Land Registry is in charge of the issuance of special titles (titres spécial) relating to each mining title registered with it.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Mines form part of the state's public domain
A research permit and operating licence provide mining operators rights in rem (droits immobiliers) over mining products excavated from underground or available on the surface.

These rights in rem are granted for a limited duration and must be distinguished from the ownership of the land surrounding the mine, meaning that mining operators must secure applicable occupancy rights separately from the applicable mining title.

OIL AND GAS

Mining titles under the New Mining Code
Mining licences are limited real estate rights that may be subject to mortgage but are distinct from the ownership of the land. Therefore, mining operators must always secure applicable occupancy rights separately from the applicable mining title.

Exploration permit
It is valid for a period of two years and renewable once for a one-year period, for an area comprised between 100 km2 and 600 km2. Applicants must enter into a contract with the mining administration detailing the contemplated exploration and investment activities. An exploration permit can only be granted to a legal entity. The exploration area depends on the works programme and the investments contemplated by the applicant. It is not possible to hold.

Research permit
It is valid for a three-year term for a square area with sides of at least 4 km in length and is renewable once for four years, subject to a program detailing at least the contemplated expenditures and work. The research permit confers to its holder, under the conditions set out in the New Mining Code, the exclusive right to search for the products of mines found within the perimeter covered by such permit, including by carrying out geological, geochemical and geophysical studies and work, drilling holes and mining work, for the purpose of determining the existence of a deposit.

Mining licence
The mining license grants its holder the exclusive right to extract and/or develop mining products from a deposit with a view to obtaining merchantable mining products, in particular by means of studies, preparatory work, exploitation work and/or enrichment and/or beneficiation operations of these products, as well as the realization of the infrastructure necessary for such work.

It is valid for a term of ten years and successively renewable for ten years periods until the reserves are exhausted. Under the former regime, the license was only valid for four years. Furthermore, the granting of a mining licence will now revoke the research permit only for the area it covers. A second exploration permit will be granted for the area that is not covered by the same licence.
The discovery of a deposit gives the holder of the research permit the exclusive right to apply for a mining license for the perimeter of the said discovery, the application having to be filed before the expiry of the permit. These provisions imply that an application for a license may be refused for reasons other than the failure to file the application within the validity period of the license. However, the New Mining Code does not provide for any guidance as to the reasons for such a refusal.
Unlike exploration permits and research permits, which do not specify any constraint relating to the nationality of the holder, the beneficiary of a mining license must be a Moroccan law company.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Permits and concessions may not impede the rights granted to indigenous persons (droits coutumiers) for the extraction of certain substances. However, permit or concession holders may be allowed to override those rights for all or part of the perimeter of their permit, if they agree with the indigenous persons on the payment of compensation which, if they fail to agree, is determined by the authorisation.

The three above-mentioned mining rights may only be granted to legal entities. There is no restriction relating to the nationality of the holder of the authorisation except for mining licenses, which may only be granted to Moroccan law companies. It must be noted that the exploration and exploitation of phosphates are a monopoly of the Moroccan State.

Through the investment charter (charte d'investissement), foreign investors may benefit from certain tax and regulatory advantages, in particular if the investment meet certain requirements (size, number of workers etc.).

Investments which are made by foreign investors in foreign currency into Morocco benefit from the so-called convertibility regime provided for by the Moroccan foreign exchange regulations, including in particular the Instruction Générale de l'Office des Changes.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Moroccan law does not impose any specific restrictions on the processing of extracted mineral resources or on the sale, export or import of extracted or processed minerals.

TRANSFER OF RIGHTS

Participating interests held by an operator in an exploration permit or in a concession can be transferred if:

- the transferred interests apply to the totality of the area of interest covered by the applicable exploration permit;
- It receives prior approval from the Ministry of Energy.

The approval is granted by the Ministry of Energy in the form of an order (arrêté) authorising the assignment. In a transfer of participating interests, the assignee must assume all the obligations initially undertaken by the assignor. If the assignment is made in favour of a third party (that is, not an affiliate of the assignor), the state is always entitled to exercise a pre-emption right. Reconnaissance rights are not transferrable.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Law No 12-03 on environmental impact assessment promulgated by the Dahir No 1-03-60 dated 12 May 2003 (Law No 12-03) has implemented an EIA "Etude d'Impact sur l'Environnement" process in Morocco.

Under Article 2 of Law No 12-03, any project undertaken by legal or physical persons that, due to their nature, dimension or location could imply adverse effects for the biophysical and social environment, are subject to an EIA. The exploration and production of oil and gas is therefore subject to an EIA.

Under Article 6 of Law No 12-03, the EIA must include:

- A description of the initial condition of site to be affected by the project, including in particular its biological, physical and human features;
- A description of the prominent components, features and steps of the project, including the contemplated:
  - o production processes;
  - o use of raw materials and energy resources;

  - o liquid, gaseous and solid emissions, releases and disposals and waste generated by the project;
- An evaluation of the positive and adverse effects of the project on the biophysical and social environment;
- Proposed measures to mitigate adverse effects on the environment;
- A monitoring programme;
- A summary of the legal and regulatory framework applicable to the project;
- A summary of the assessment.

A project subject to an EIA must receive prior approval from the relevant regional and/or national environmental assessments committees in charge of delivering a prior decision on environmental acceptability (decision d'acceptabilité environnementale). This approval process usually lasts about three to four months.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The holder of a mining title must operate mining activities in compliance with laws and regulations related to health, hygiene and environmental protection (Article 56, Mining Law). Viziriel Order dated 18 February 1938 Forming Internal Rules for the Exploitation of Mining Products Other Than

Combustibles Mining Products (as amended by Viziriel Order dated 9 September 1953) sets out detailed health and safety requirements for carrying out exploitation activities, including obligations to:

- Maintain work areas in a constant state of cleanliness and to respect the hygiene and sanitary conditions necessary to preserve employees' health;
- Make devices such as telephones or acoustic pipes available in underground circulating areas to enable discussions between employees, supervisors and extraction technicians;
- Take measures to prevent water stagnation and the accumulation of mud in the working area and galleries.

Under Article 32 of Decree No 2-93-786, the holder of a reconnaissance authorisation, exploration permit, or concession must:

- Respect the hygiene and health and safety requirements of its employees and neighbouring habitants;
- Minimise social and ecological burdens;
- Avoid injury or damage to public or private properties.

In particular, the holder must take precautions to ensure the protection of:
- Vehicular traffic and shipping navigation;
- Aquatic resources and the prevention of pollution of seas, lakes, beaches, rivers and groundwater;
- Forests, farmlands and plantations.

The holder must also take out insurance against any damage caused to the environment. Under Article 33 of Decree No 2-93-786, the holder of a reconnaissance authorisation, exploration permit, or concession must:

- Inform the Ministry of Energy and the local authorities of any serious accident.;
- Have sufficient supply of medicine and other indispensable rescue materials at the location of the works.



MOZAMBIQUE
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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?

The Mozambique mining legal framework comprises the laws and regulations listed below:

- Law no. 20/2014, of 18th August - The Mining Law ("Mining Law");
- Law no. 28/2014, of 23rd September - Mining Tax and Incentives Regime, as amended by Law no. 15/2017, of 28th of December;
- Law no. 21/2014, of 18 of August – Petroleum Law;
- Decree no. 26/2004, of 20th August - Environmental Regulation for Mineral Activities;
- Decree no. 61/2006, of 26th December - Regulation on Health and Safety for Mineral Activities;
- Decree no. 20/2011, of 1st June - Regulation for the Sale of Mineral Products, as amended by Decree no. 34/2019, of 2nd of May;
- Decree no. 63/2011, of 7th December - Regulation on the Hiring of Foreigners for the Mining and Petroleum activities;
- Decree no. 28/2015, of 28th December - Regulations on the Mining Tax and Incentives Regime;
- Decree no. 31/2015, of 31st December - Mining Law Regulations, as amended by Ministerial Decree 65/2022, of 15th of June;
- Decree no. 63/2021, of 1st of September – Regulation for the Sale of Diamonds, Precious Metals and Gemstones;
- Decree no. 13/2015, of 3rd July – Regulation of Mining Work;
- Decree no. 54/2015, of 31st of December – Approves the Regulation for the Environmental Impact Assessment;
- Ministerial Diploma no. 189/2006, of 14th December - The Basic Rules on Environmental Management for Mineral Activities;
- Ministerial Diploma no. 92/2007, of 11th July - Rules and Procedures on Activities report;
- Resolution no. 21/2014, of 16th May – Approves the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources; and
- Ministerial Diploma no. 8/2017, of 16th January – Approves the Guidelines for the Implementation of the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources.

Which Government Bodies administer mining law?

Several key bodies are currently responsible for regulating mining activities, namely the Council of Ministers, the Ministry of Mineral Resources and Energy (Ministério dos Recursos Minerais e Energia) ("MIREME"), the National Directorate of Geology and Mines (Direcção Nacional de Geologia e Minas) ("NDM") and the National Institute of Mines ("INAMI").

The Council of Ministers, the highest Governmental body in Mozambique, includes the president, prime minister and other Government ministers and is responsible for creating primary legislation for the mining sector.

MIREME is the central body of the State which manages and ensures the execution of the Government policies relating to geological research and the exploration of mineral and energy resources.

NDM is a body of MIREME with the authority to, among other things, elaborate and propose strategies, programs, plans, rules, guidelines and regulations for the development of geology and mining activities and ensure its implementation, planning, coordinating, controlling and ensuring the cataloguing of mineral resources in the country and ensuring the licensing of mining activities.

INAMI is the regulatory authority of the mining industry, under the tutelage of MIREME.

The Mining Law provides that a new authority, the High Authority for the Extractive Industry (Alta Autoridade da Indústria Extractiva) ("AAIE"), will be created to oversee the extractive industry, however, the Mining Law is silent as to the powers and role of this High Authority.

In particular, it is uncertain as to whether the new authority will be regulatory in nature or will take the role of ombudsman and/ or whether its role will conflict or overlap with INAMI. AAIE is yet to be formalised and created eight years after the creation of the Mining Law.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Under the new Mining Law, a prospective investor may obtain the following types of concession contracts:
Exploration Licenses govern any exploration and prospecting activities. Exploration Licences will be valid for:

- 2 years for mineral resources being supplied for the construction industry, and are renewable once for same period; or
- 5 years for other mineral resources, including mineral water, and may be renewed once for an additional 3-year period.

Mining Concessions provide the concessionaire (incorporated and registered under the Mozambique Laws) the right to extract, develop and process mineral resources which are discovered under an Exploration Licence. Mining Concessions will be valid for a period of 25 years and may be extended by another 25 years.

Mining Certificates govern small-scale mining operations. Mining Certificates are only granted to Mozambican nationals, in addition to legal entities and will be valid for a period of 10 years and may be extended by another 10 years.

Mining Treatment Licenses In circumstances when the investor does not hold a valid Mining Concession, Mining Certificate or Mining Pass which authorises such activities, Mining Treatment Licences govern mining processes through which usable ore and derivatives are recovered in valuable mining products by physical treatments. The treatment of radioactive minerals (e.g. uranium) will require further authorisations in accordance with legislation regarding atomic energy and radioactive materials. The Mining Treatment Licence is valid for a maximum of 25 years and can be renewed once.

Mining Processing Licenses In circumstances when the investor does not hold a valid Mining Concession, Mining Certificate or Mining Pass which authorises such activities, Mining Processing Licenses govern those processes required to achieve ore concentrate by means of (among others) physical, chemical and metallurgical treatments. The processing of radioactive minerals (e.g. uranium) will require further authorisations in accordance with legislation regarding atomic energy and radioactive materials. The Mining Processing Licence is valid for a maximum of 25 years and can be renewed once.

Mining Products Commercialisation Licenses govern the activity of the sale and purchase of mineral products sourced from outside of Mozambique. We note that Mining Products Commercialisation Licences may be awarded to Mozambican nationals in addition to legal entities. The Mining Products Commercialisation Licenses is valid for a maximum of 5 years renewable.

Mining Passes govern "artisanal" mining operations generally being undertaken by individuals, and allow for the sale of mineral products arising from such small-scale mining activities. We note that Mining Passes may be awarded to Mozambican nationals, in addition to legal entities.

Save for Mining Passes and Mining Products Commercialisation Licences, only entities incorporated and registered in accordance with Mozambican law that are able to evidence their technical and financial capacity are eligible for any licence under the Mining Law. As noted above, Mining Passes and Mining Products Commercialisation Licenses may also be awarded to Mozambican nationals (i.e. natural persons).

Mining Contracts
Pursuant to the Mining Law, the Government of Mozambique may launch a public tender in respect of entering into public-private undertakings in relation to mining activities with the holder of an Exploration License or a Mining Concession (a Mining Contract).

The Mining Contract must contain clauses regarding:
- The level of participation of the Government of Mozambique in the undertaking;
- Minimum local content;
- Local employment and training requirements;
- Incentives in relation to increasing the value of the minerals to be extracted;
- Corporate social responsibility requirements;
- Memorandum of understanding between the licence holder, the State and the community;
- Disputes resolution mechanics, including provisions relating to the settlement of disputes by way of arbitration; and
- The way that the communities in the area will be involved and benefit on the undertaking.

The Mining Law provides that Mining Contracts must be published in the Mozambique's Official Gazette and are subject to the Administrative Court's prior approval.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

Licensing Regime
The four types of concession contracts prescribed in terms of the new Petroleum Law are the following:

Reconnaissance Concession Contract
Unlike in the old Petroleum Law, reconnaissance concession contracts entered into under the new Petroleum Law:
- Can only be entered into on a non-exclusivity basis;
- Shall be for a non-renewable two-year term; and
- May not give rise to a right of first refusal in the granting of prospection and production concession.

Prospection and Production Concession Contract
While under the old Petroleum Law prospection and production concession contracts were stated only to grant exclusive rights to explore and produce petroleum and a non-exclusive right to build and operate pipelines, under the new Petroleum Law such concession contracts grant an exclusive right to conduct petroleum operations and a non-exclusive right to build and operate the infrastructures used in the production and transportation of petroleum.

Also, unlike in the old Petroleum Law:
- The approval of the Government shall be required for joint-bidding or joint-operation agreements;
- The right to carry prospection activities cannot arguably be extended beyond eight years even if necessary to complete the works;
- There is no specified term for the extension of prospection activities in case a discovery is made; and
- There is no specified term for the extension of the contract for the purpose of production.

Oil or Gas Pipeline System Concession Contract
Previously covered in similar terms under the old Petroleum Law. An oil pipeline or a gas pipeline system concession contract grants the right to construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession

contract. An oil pipeline or a gas pipeline system concession contract shall be accompanied by the relevant development plan, which is an integral part of the concession contract.

Infrastructure Concession Contract
This is a concession contract for the construction and operation of infrastructures. Such concessions shall grant the right to build and operate infrastructures for petroleum production, including liquefaction. Such concessions shall only be required if the relevant infrastructures are not covered by an approved plan of development for prospection and production.

In addition to the four types of concession contracts above mentioned, the Petroleum Law also contains a provision in respect to gas liquefaction, providing that the Government may authorise concessionaires which have discovered deposits of oil and non-associated gas to develop projects for the design, construction, installation, ownership, financing, operation, maintenance, use of wells, installations and ancillary equipment, either onshore or offshore, for the production processing, liquefaction, delivery and sale of gas in the domestic or foreign markets. It is therefore now clear that liquefaction activities, either onshore or offshore can be undertaken under EPCC´s, subject to Government approval, but without the need for a separate agreement.

All prospection and production concessions must be granted by way of public tender and, unlike under the old Petroleum Law and as mentioned above, the types of concession contracts foreseen in terms of the new Petroleum Law now include a concession for the construction and operation of infrastructures.

The State reserves the right to participate in petroleum operations in which any legal entity is involved. The State may also decide to participate in any given project and at any stage under the terms to be established by contract between the State and the holder of the rights.

In addition to what was already established under the old Petroleum Law, the new Petroleum Law provides that the State shall promote a progressive increase of its participation in all oil and gas ventures.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
The Mining Law establishes that the Mining Contract must be signed with companies that have the State as shareholder and a minimum local content.

The Mozambique Government must create mechanisms of involvement of Mozambican companies or individuals on the mining ventures and shall promote, gradually, the increase of the level of its participation on mining ventures.

Under the Mining Law, preference should be given to goods and services purchased or obtained from Mozambican individuals or entities. Further, the Mining Law requires that goods or services, the value of which exceeds the amount of 15.000.000,00 MT (fifteen million Meticais), must be purchased by way of a public tender. Such public tenders must be published in widely read newspapers in Mozambique and on the website of the relevant interest holder.

In addition, foreign entities that provide services to mining operations in Mozambique are required under the Mining Law to ”associate with” Mozambican entities. Details of how this obligation is fulfilled remain unclear and we expect this to be detailed in future regulations and/or secondary legislation.

Are there any special rules or restrictions applicable to foreign applicants?
The Mining Law establishes that the Mining Contract must be signed with companies that have the State as shareholder and a minimum local content, meaning foreign applicants must have a minimum local content, which terms and conditions will be soon regulated.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The Mining Law establishes that the Mining Contract must be signed with companies that have the State as shareholder and a minimum local content. The Government must create mechanisms for the involvement of the national businessmen on the mining undertakings and promote the listing of mining companies in the Mozambique Stock Exchange.

Pursuant to the Mining Law, the State is required to progressively increase its participation in mining projects. Nevertheless, the Mining Law is unclear as to whether this means that the State shall be a larger participant in mining projects in the future, or whether the State is expected to obtain greater interests in particular projects over time.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
The Mining Law establish that whenever the availability of resources and the economic feasibility so justifies the processing and benefit of minerals mined in Mozambique must be undertaken within Mozambique territory.

Are there any restrictions on the export of minerals?
Mineral products are subject to a special export customs regime, pursuant to the Mining Law and Customs Clearance Laws and Regulations, holders of exploration licenses are only allowed to export mineral samples for analysis and testing abroad.

Holders of mining concession are allowed to export mineral products they produced in the area covered by the title and

exportation of mineral products are only permitted after payment of due Production Tax.

TRANSFER OF RIGHTS

Are there any statutory consents required to dispose of rights to explore and mine?
The transfer of title, rights and obligations under a mining licence, whether to an affiliate or a third party, may only take place two years after the commencement of the relevant mining activities authorised by the mining licence. Such transfers must be in accordance with Mozambican law and will be subject to the approval of the Government of Mozambique.

The Mining Law expressly provides that indirect transfers of participating interests, titles and/or mining rights, notably by way of change of control of any licence holder, shall be considered as a transfer of rights and obligations under a mining licence and shall, therefore, require prior governmental approval.

Non-compliance to any transfer requirements results in any such transfers being void and invalid.
Such transfers of rights may also be subject to the payment of capital gains tax. As of 1 January 2014, capital gains derived from the sale of shares of a resident company by a non-tax resident are taxable.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The Mining Law states that the use and occupation of land for purposes of mining activities are regulated by law and that the pre-existing land rights are considered extinct after payment of just compensation to land title holders and revocation of such titles, under the terms of applicable laws. The right of use and benefit from land obtained by the mining title holder has a specific validity period and dimension established on the mining title.

When the development, use and benefit of certain mineral resources is considered of public interest for the national economy or for future development of the region were occurring, the Government may declare that such land on which the mineral resources are located to be reserved for preservation purposes, specifying the type of incompatible activities and not permitted on such mining reserved area.

No rights of land use and benefit can be acquired in total and partial protections zones, and the exercise of mining activities on such areas is subject to specific legislation. The total and partial protection zones are part of the public domain, which are areas considered to be destined for the satisfaction of the public interest.

Areas that are intended for nature conservation or preservation activities and area for State security and defence are considered total protection zones.

The following areas are considered partial protection zones:
- The bed of interior waters, the territorial sea and the exclusive economic zone;
- The continental platform;
- The strip of maritime coastline, including that around islands, bays and estuaries, which is measured from the high tide line mark 100 meters inland;
- The land strip of up to 100 meters surrounding water sources;
- The land strip of up to 250 meters along the edge of dams and reservoirs;
- The land occupied by public interest railway lines and their respective stations with a bordering strip of 50 meters on each side of the line;
- The land occupied by motorways and four lane highways, aerial, surface, underground and water installations and conduits for electricity, telecommunications, petroleum, gas and water, including a bordering strip up to 50 on each side, as well as the land occupied by roads including a bordering strip of 30 meters for primary roads and 15 meters for secondary and tertiary roads;
- The 2 kilometer strip of land along the terrestrial border;
- The land occupied by airports and aerodromes with surrounding strip of land of 100 meters; and
- The 100 meters strip of land surrounding military or other defence and security installations of the State.

Special licenses may be issued for specific activities, which will authorise the carrying out of any economic activity within total or partial zones.

The Mozambique State has priority over other land rights and the land rights may be extinct in favour of the State upon just indemnification paid by the applicants of the mining exploitation.

When the area subject to concession, in part or whole, is occupied by families or communities that imply the resettlement, the company/applicant is obliged to indemnify such populations on terms to be regulated.

The mining right is distinct of the right of use and benefit of land or of any other pre-existing rights.

The attribution of the mining rights does not necessarily imply the attribution of the right of use and benefit of land or of other pre-existing rights, which are kept under the Mozambique State custody up to the closing of the mining activities.

After the closing of the mining activities the Mozambique State may attribute the right of use and benefit of land to other applicants.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?

The main legislation is Decree no. 61/2006, of 26th December

- Regulation on Health and Safety for Mineral Activities and Decree no. 26/2004, of 20th August - Environmental Regulation for Mineral Activities and Ministerial Diploma no. 189/2006, of 14th December - The Basic Rules on Environmental Management for Mineral Activities.

Pursuant to the above legislation and prior to the commencement of mineral operations, holders of mining licenses are required to prepare and lodge security, health and safety plans to the Ministry of Mineral Resources and Energy and to the Ministry of Labour, including risk assessment, potential sources of fire explosion, use and maintenance of equipment, working conditions and measures to mitigate and prevent risks, accidents and occupational diseases.

Under the Mining Law, mining activities are classified under the following categories:

- Category A: The activities exercised under the mining concessions;
- Category B: The mining activities in quarries, activities of exploration (prospecting and research) for the pilot project and activities under mining certificate; and
- Category C: The activities under mining passes and mineral exploration (prospecting and research) that do not involve mechanized equipment.

It is important to note that each category will be subject to different types of environmental assessment processes, namely:

- Category A – is subject to an Environmental Impact Assessment (EIA);
- Category B - is subject to a Simplified Environmental Impact Assessment (simplified EIA); and
- Category C - is subject to an Environmental Management Program (PGA).

The Mining Law indicates that differing levels of environmental impact assessments are required for each classification of mining activities. That said, no further details are provided as to the substantive requirements for each type of environmental impact assessment and how these obligations may be fulfilled, given that these provisions are regulated in specific legislation – Decree no. 54/2015, of 31st of December.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?

The Mining Law states that the pre-existing land rights are considered extinct after payment of just compensation to land title holders and revocation of such titles, under the terms of applicable laws. The Mozambican State has priority over other land rights and these may be extinct in favour of the State upon just compensation which must be paid by the applicants of the mining rights.

When the area subject to concession, in part or whole, is occupied by families or communities that implicate the resettlement, the company/applicant is obliged to compensate such populations on terms to be regulated in a memorandum of understanding.

The just compensation must be executed by means of memorandum of understanding between the Government, the company and the communities, and the memorandum is pre-requisite for the granting of the mining exploitation rights.

HEALTH AND SAFETY

What legislation governs health and safety in mining?

Labour Law and its regulations contemplate provisions and rules, of general application, dealing with health and safety. The Mining Law states in its Article 41(1) that persons who extract mineral products under a permit as defined in this Article, shall comply with all the regulatory provisions applicable to mining management, health and safety.

Under that context, by the Decree no. 61/2006, of 26th of December, the Government approves the Regulation on technical safety and health for geological and mining activities. Article 297 of this legal document provides guidelines for risk assessment to assure the safety of workers and equipment. Companies, miners´ associations and the workers shall be involved in the discussion of the risk analysis.

According to Article 313 of the referred Regulation, the breach of the provisions of the Regulation shall be penalised with a fine, which varies from five up to one hundred minimum national salaries, without prejudice of the criminal procedure, in terms of Criminal Law, the companies that:

- Do not comply with the provisions of this Regulation regarding health, safety, transport, equipment in underground or outdoor work;
- Incorrect use of the mercury while processing the gold; and
- Do not comply with the minimum limits of the oxygen concentration in the air, presence of pollutant gases, as well as other chemical elements in concentrations above the maximum limits, which could influence the environment on site, endangering workers´ health.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?

The Constitution of the Republic of Mozambique of 2004 states that natural resources on the soil and subsoil and in the offshore areas within the jurisdiction of Mozambique are

owned by the State of Mozambique, and the access to such resources is subject to statutory provisions.

Are there administrative appeals in the mining law?
Administrative appeals are governed by specific administrative legislation.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
Under the Mining Law, concessionaires shall pay, along with any relevant specific taxes on petroleum operations:
- Income Tax;
- Value Added Tax;
- Production Tax;
- Surface Tax;
- Municipal Tax, when applicable; and
- Any other relevant taxes required by law.

The Mozambique Parliament approved the enabling law in respect of Specific Regime of Taxation and Fiscal Benefits for Mining Operations (Law no. 28/2014, of 23rd of September), which provides further specificities, in respect to specific taxes in the mining sector and repeals the previous regime (Laws no. 11/2007 and 13/2007, both of 27th of June). The Specific Regime of Taxation and Fiscal Benefits for Mining Operations entered into force on the 1st of January of 2015.

Such Law provides that the Production Tax applies to the extracted mineral product after treatment. If no treatment is required then the Tax is applied over the extracted mineral product. The value is calculated based on the price at which the last consignment of mineral was sold by the mining holder and shall corresponds to international market reference price.

Holders of mining rights are also subject to pay surface tax. The Production Tax (royalty) is applied as follows:
- 8% for diamonds;
- 6% for precious metals, precious and semi-precious stones and heavy sands;
- 3% for basic metals, coal, ornamental rocks and remaining mineral products not included above points; and
- 1.5% for sand and stone.

All mineral products utilised for the development of the local industry benefits of reduction of 50% of the Production Tax. Indirect transfers of participating interests, titles and/or mining rights, notably by way of change of control of any licence holder, shall be considered as a transfer of rights and obligations under a mining licence, irrespective if within or outside of Mozambique territory, are subject to capital gains rated at 32%.

Law no. 28/2014, of 23rd of September and its subsequent amendment created a new tax under the name of Tax over the Mineral Resource Revenue, which applies to all Mining Concessions and Mining Certificates holders over the net cash flow resulting from the mining activity during the fiscal year end and which revenue before Corporate Tax is equal or superior than 18%. Such tax is rated at 20%.

Furthermore, the new tax regime provides tax stability for a period of up to 10 years, counting from the date of production and may be extended up to the termination of the primary concession, subject to the additional payment of 2% of the Mining Production Tax.

Moreover, under the new mining tax regime the Corporate Income Tax liability of companies holding concession contracts will be calculated separately for each concession contract, as it was already provided in the general tax law. This means that a separate tax return has to be submitted for each concession (mining activities are subject to ring-fencing principle, on a mineral right or license basis).

The law requires all mining companies in Mozambique to comply with the local transfer pricing rules, under the principle of independent entities and lists the specific transactions in which this principle is applicable, among them are the transactions that refer to different concessions held by the same taxpayer.

Law no. 28/2014 further establishes that mining rights are considered as immovable property and that all capital gains arising from the direct or indirect transfer of mining rights, by non-resident entities with or without permanent establishment in Mozambique, irrespective of the place where such transaction is completed, will be taxed at a fixed rate of 32%. The capital gains tax shall become due and payable by the seller or transferor but the purchaser and the Mozambican entity holding the mining rights has separate and joint liability for the payment of the tax. In the case of doubt on the price of the transaction, the tax authorities may refer to the best international practices to determine the price.

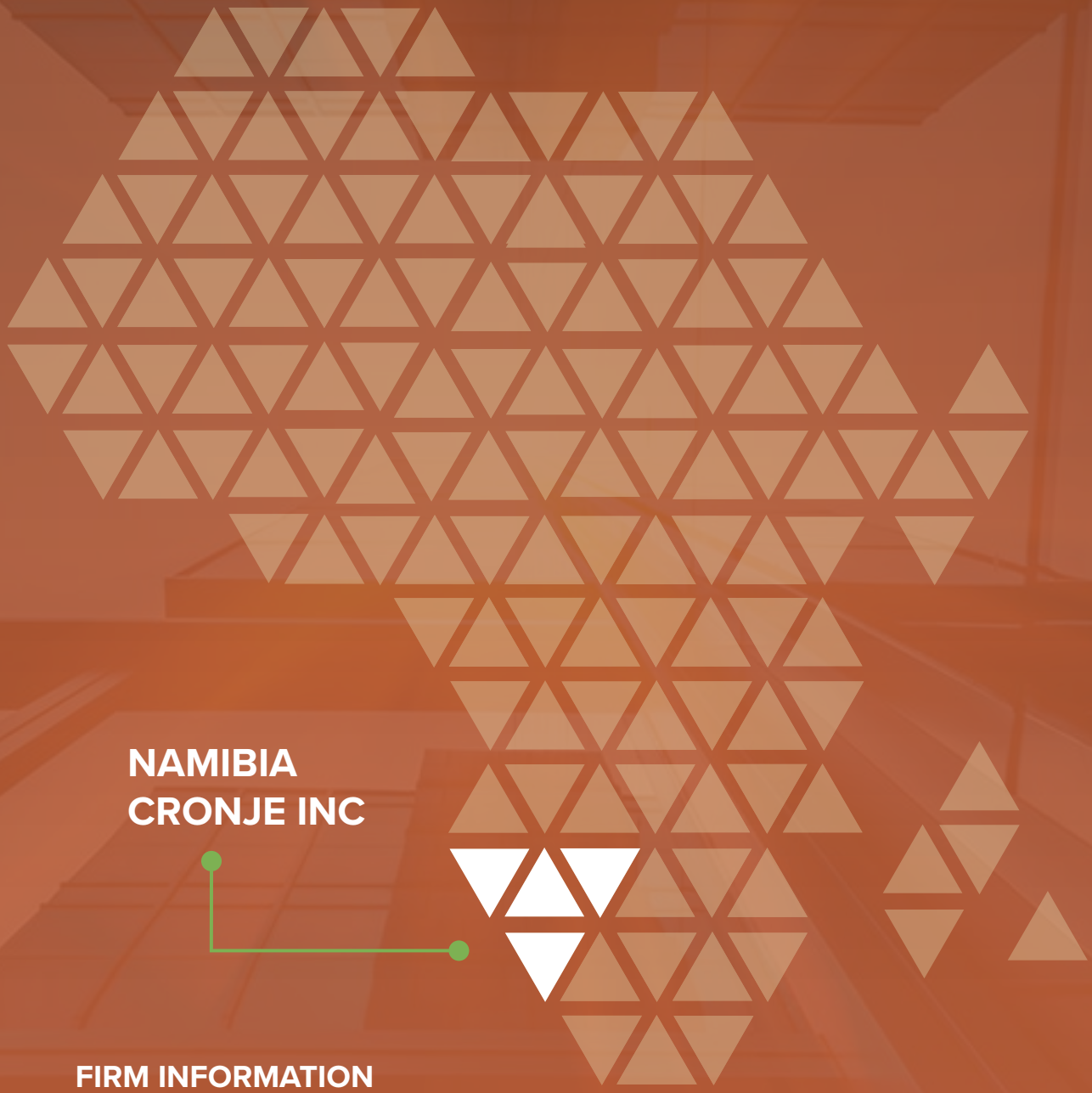
In fact, the law sets out specific rules relating to the calculation of gains, taxable income, deductible costs and amortization in the framework of mining activities, rules that were previously established under the different concession agreements. Another change introduced by this law is that income from the provision of services rendered by non-resident entities to Mozambican mining companies is subject to a withholding tax at the rate of 10%.

Finally, the new mining tax regime grants exemptions from custom duties for a period of five fiscal years, particularly in relation to the importation of capital and goods. Note that such goods are subject to Value Added Tax.

Mining companies are obliged to have audited accounts duly certified by an independent, authorised auditor.

Are there any royalties payable to the State over and above any taxes?

Law no. 28/2014, of 23rd September provides for a tax named, Tax over the Mineral Resource Revenue which applies to all Mining Concessions and Mining Certificate holders over the net cash flow resulting from the mining activity during the fiscal year end and is rated at 20%.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The Constitution of the Republic of Namibia of 1990 (the "Constitution") provides that all natural resources (including minerals) below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia belong to the State, unless they are otherwise lawfully owned. This includes mineral resources.

Namibia's mining industry is primarily governed by the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992) ("the Act") which provides a comprehensive framework for the reconnaissance, prospecting, and mining of minerals within the country. This Act outlines the procedures for obtaining various mineral rights, including non-exclusive prospecting licenses, mining claims, reconnaissance licenses, exclusive prospecting licenses, mineral deposit retention licenses, and mining licenses.

In 2008, the Act was amended by the Minerals (Prospecting and Mining) Amendment Act, 2008 (Act No. 8 of 2008) to address evolving industry needs and regulatory requirements.

Environmental considerations in mining activities are regulated by the Environmental Management Act, 2007 (Act No. 7 of 2007), and the Environmental Impact Assessment Regulations passed in terms of thereof, which mandates environmental impact assessments and the issuance of environmental clearance certificates for mining projects. The Environmental Management Act provides for a process of assessment and control of activities which may have significant effects on the environment; for example, no person may undertake a listed activity without an environmental clearance certificate. Listed activities include mining and quarrying activities. The Minister of Mines and Energy may not issue a mineral licence before the applicant has obtained an environmental clearance certificate.

Labour practices within the mining sector are governed by the Labour Act, 2007 (Act No. 11 of 2007), ensuring safe working conditions and the protection of workers' rights.
Additionally, the Diamond Act, 1999 specifically regulates the diamond industry, covering aspects such as the possession, purchase, and sale of diamonds.

Health and safety aspects relating to the minerals industry were passed in terms of the previous Mines, Works and Minerals Ordinance 20 of 1968 (the "Ordinance"). The Ordinance is still in force in terms of the Minerals Act and will remain in force, until it is repealed. The general health and safety regulations passed in terms of the Labour Act 6 of 1992 (which are still applicable under the Labour Act 11 of 2007) also apply to all employment relationships in Namibia, including those in the minerals industry.

Which Government Bodies administer mining law?
In Namibia, the mining sector is primarily regulated by the Ministry of Mines and Energy (MME), which oversees the administration of the Minerals (Prospecting and Mining) Act, 1992, and is responsible for issuing licenses for reconnaissance, prospecting, and mining activities. The Ministry also ensures compliance with mining regulations, promotes sustainable exploitation of resources, and maintains the country's geological database. Within the MME, the Directorate of Mines handles licensing and mine safety, the Geological Survey of Namibia conducts geological research, and the Directorate of Diamond Affairs regulates diamond-related activities.

Environmental compliance in the mining industry is administered by the Ministry of Environment, Forestry and Tourism (MEFT), which enforces the Environmental Management Act, 2007. The MEFT issues Environmental Clearance Certificates (ECCs) for mining projects, conducts Environmental Impact Assessments (EIAs), and monitors adherence to environmental management plans (EMPs). Labor and workplace safety in the mining sector are regulated by the Ministry of Labour, Industrial Relations and Employment Creation, which ensures compliance with the Labour Act, 2007, addressing health and safety conditions in mines and resolving labor disputes.

The Namibia Revenue Agency (NamRA) manages the collection of taxes and royalties from mining operations, ensuring compliance with national taxation laws. The Namibia Investment Promotion and Development Board (NIPDB) plays a key role in attracting and facilitating investments in the mining sector, supporting both foreign and local investors. Finally, the Namibian Ports Authority (Namport) oversees the export of minerals, ensuring proper handling and regulatory compliance at Namibia's ports. Together, these government bodies create a cohesive framework for regulating the mining industry, balancing resource utilisation with environmental and economic considerations.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

In Namibia, the rights to conduct reconnaissance, exploration, and mining operations are granted under the Act. These rights are issued through specific licenses and permits, each tailored to different stages of mineral resource development.
Non-Exclusive Prospecting Licence (NEPL)

This licence allows the holder to prospect for minerals over large areas without exclusivity. It is typically used for preliminary investigations and does not permit the holder to claim rights to discovered resources.

Reconnaissance Licence (RL)
This licence grants the holder the right to conduct geological and geophysical surveys over a specified area. Reconnaissance is usually limited to non-intrusive methods, such as remote sensing or mapping, and does not include drilling or excavation. It is valid for up to two years and is non-renewable.

Exclusive Prospecting Licence (EPL)
The EPL grants exclusive rights to prospect for specified minerals within a defined area. It allows for detailed exploration activities such as sampling, drilling, and geological studies. EPL's are issued for a period of three years and can be renewed for up to two additional two-year terms, provided the holder meets the stipulated requirements and obligations.

Mining Claim
A mining claim grants rights to individuals or small-scale operators to extract minerals on a relatively small scale. These claims are usually limited to specific types of minerals and are available only to Namibian citizens or entities. The holder must demonstrate an intention to develop and work the claim.

Mining Licence (ML)
This licence is issued for large-scale mining operations and grants the holder the exclusive right to mine specific minerals within a defined area. A mining licence is valid for up to 25 years and can be renewed. The holder must meet environmental, social, and economic obligations, including submitting a feasibility study and obtaining an Environmental Clearance Certificate (ECC).

Mineral Deposit Retention Licence
This licence allows a holder of an EPL or mining licence to retain rights to a mineral deposit that is not currently economically viable to develop. It is valid for up to five years and is renewable.

These rights are subject to strict regulatory requirements, including environmental compliance under the Environmental Management Act, 2007, and adherence to labour laws and royalty payments. Holders of these licenses must also comply with reporting and performance obligations to maintain their rights.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
In Namibia, the exploration and production of oil and natural gas are governed by the Petroleum (Exploration and Production) Act of 1991, commonly referred to as the Petroleum Act. This legislation vests all rights to petroleum resources within the state, regardless of land ownership. Consequently, any individual or entity seeking to engage in petroleum operations must obtain the appropriate licenses from the Ministry of Mines and Energy.

The Petroleum Act provides for three primary types of upstream petroleum licenses:

- **Reconnaissance License:** This non-exclusive license permits the holder to conduct preliminary exploration activities, such as geological and geophysical surveys, to assess potential petroleum resources;
- **Exploration License:** This exclusive license allows the holder to carry out detailed exploration operations, including drilling, within specified blocks. It grants the holder exclusive rights to explore for petroleum in the designated area; and
- **Production License:** This license enables the holder to undertake production operations, including the development and extraction of petroleum resources within the licensed blocks. It also permits the sale or disposal of the recovered petroleum.

Applications for these licenses must adhere to the stipulations outlined in the Petroleum Act. Notably, there are no prescribed application forms; instead, applicants are required to compile their submissions in accordance with guidelines specified in the Act.
It's important to note that Namibia has transitioned from an open licensing system, where rights were granted on a "first come, first served" basis, to a more structured approach. This shift aims to better manage the increasing interest and applications in the oil and gas sector, especially following significant offshore discoveries.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
The Minerals Act does not provide for rights of indigenous people.

Are there any special rules or restrictions applicable to foreign applicants?
The Foreign Investments Act 27 of 1990 (the "Foreign Investments Act") provides for the promotion of foreign investments in Namibia. It is generally considered to be investor friendly. The Foreign Investments Act was repealed by the Namibia Investment Promotion Act 9 of 2016 (the "Namibia Investment Promotion Act"), which has not come into force since it was passed by Parliament. When and if the Namibia Investment Promotion Act will come into force is uncertain. The Foreign Investments Act therefore continues to apply.

As set out above, the mining sector is governed by the Minerals (Prospecting and Mining) Act of 1992, which allows both domestic and foreign entities to obtain mineral rights. However, specific regulations and policies impose certain requirements and restrictions on foreign applicants.

Since April 2021, the Namibian government requires that all applications for new mining licenses include at least 15% ownership by Namibian citizens. This policy aims to promote local participation and ensure that the benefits of mining activities are shared with the Namibian populace.

Furthermore, foreign companies seeking mineral rights must either incorporate a company under the Namibian Companies Act or register as an external company (branch) in Namibia. This ensures that foreign entities have a formal and accountable presence within the country.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
In Namibia, the state holds significant rights and interests in mining projects under the Minerals (Prospecting and Mining) Act, 1992 and related policies. All mineral resources within Namibia are considered state property, with the government having exclusive authority to grant, deny, or revoke mining and exploration licenses. While individuals or entities, whether local or foreign, do not own mineral resources outright, ownership transfers under the terms of a license once extraction occurs. The state also actively participates in mining projects, particularly through the Epangelo Mining Company, a state-owned enterprise mandated to ensure government involvement in strategic mining ventures. This participation often includes acquiring equity stakes in critical commodities such as diamonds, uranium, copper, and rare earth elements.

Additionally, Namibia enforces local ownership policies requiring a minimum of 15% Namibian ownership in new mining projects. In some cases, the government declares certain minerals as "strategic," granting the state exclusive rights to their development, often through partnerships or exclusive licenses to state-owned entities. Beyond equity participation, the state benefits economically through royalties and corporate taxes.
Recent revisions to Namibia's
Minerals Policy emphasize modernizing the regulatory framework and enhancing local content, beneficiation, and state equity in mining projects. These measures are designed to ensure the state and Namibian citizens share in the benefits of mining activities, while the government retains strategic control over its valuable natural resources.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Namibia has prioritised mineral beneficiation—the process of transforming raw minerals into higher-value products—as a key component of its economic development strategy. While there are no explicit legal mandates compelling mining companies to undertake beneficiation, the government actively promotes this practice through various policies and strategic initiatives.

In 2021, Namibia introduced its Mineral Beneficiation Strategy, aiming to enhance local value addition across the mining sector. This strategy seeks to create a conducive environment for investment in beneficiation activities, thereby fostering industrialisation and economic diversification. It outlines specific objectives, including increasing the level of mineral beneficiation activities along value chains and facilitating economic diversification through various linkages. The government's commitment to beneficiation is further reflected in its broader economic policies, such as the Growth at Home strategy, which emphasises industrialisation and value addition to local resources. These policies collectively aim to transform Namibia from an exporter of raw materials to a producer of finished goods, thereby maximising the economic benefits derived from its mineral wealth.

While not legally obligatory, mining companies operating in Namibia are encouraged to align with these national objectives by engaging in beneficiation activities. This alignment not only supports the country's economic goals but also enhances the sustainability and social responsibility of mining operations within Namibia.

Are there any restrictions on the export of minerals?
Namibia has implemented specific restrictions on the export of unprocessed minerals to enhance local value addition and capitalise on the growing global demand for critical minerals essential to clean energy technologies. In June 2023, the Namibian government announced a prohibition on the export of certain unprocessed minerals, including crushed lithium ore, cobalt, manganese, graphite, and rare earth elements. This policy aims to encourage domestic processing and beneficiation, thereby fostering industrialisation and economic diversification within the country.

Under this regulation, the export of these unprocessed minerals is generally banned. However, the Minister of Mines and Energy holds discretionary authority to permit the export of limited quantities for specific purposes, subject to Cabinet endorsement. This provision ensures that while the overarching goal is to promote in-country value addition, there remains flexibility to accommodate particular circumstances that may warrant exceptions.

The Namibian government's stance is clear: to cease the export of raw minerals and instead develop local processing, refining, recovery, and recycling capacities. This approach is intended to improve the sustainability of the extractive industry and ensure that the country derives maximum economic benefit from its natural resources.

In summary, Namibia enforces restrictions on the export of unprocessed minerals, particularly those critical to renewable

energy technologies. These measures are designed to stimulate local beneficiation and processing industries, thereby enhancing the country's economic growth and self-reliance in the mineral sector.

Certain limitations exist on the export of source material. No person may, except with the written permission of the Minister of Mines and Energy, export any source material from Namibia. The exportation of diamonds are also strictly regulated in terms of the Diamond Act and the regulations made in terms of the Diamond Act.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Statutory consents required to dispose of rights to explore and mine

Reconnaissance licenses and non-exclusive prospecting licenses are non-transferable and non-disposable. Mining claims, exclusive prospecting licenses and mining licenses (collectively referred to as 'mineral licenses'), on the other hand, may be transferred with the consent of the Minister of Mines and Energy. In addition, no interest in a mineral licence may be granted, ceded or assigned, and no person may be joined as a joint holder of a mineral licence, without the consent of the Minister of Mines and Energy.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
There are no restrictions on the disposal of a controlling interest in companies that hold exploration or mining rights. However, there is an obligation to notify the Mining Commissioner of any change in ownership of more than 5% beneficial shareholding in the licence holder. In practice, the Minister of Mines and Energy has interpreted 'interest in a mineral licence' to include a controlling interest in the holder of a mineral licence as well.

Under the Competition Act, 2003, any merger or acquisition that results in a change of control over a business, provided certain monetary thresholds are met, necessitates approval from the Namibian Competition Commission. This ensures that changes in control do not adversely affect market competition.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Mineral license holders are entitled to enter land to conduct authorised reconnaissance, prospecting, or mining activities. They may also erect or construct accessory works essential for these operations, such as buildings, plants, or other structures. However, these rights are subject to obtaining the necessary permissions from landowners or lawful occupiers in accordance with section 52 of the Minerals Act. If such permissions are unreasonably withheld, the license holder can apply to the Minerals Ancillary Rights Commission to obtain the required rights. This process ensures that while license holders can access and utilise the surface land for their operations, the rights of landowners are also considered and protected.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The Constitution mandates the State to actively promote and maintain the well-being of people by taking measures aimed at the conservation of ecosystems, essential ecological processes and biological diversity and the use of living natural resources on a sustainable basis for benefit of all Namibians, both present and future; in particular, the Government must take measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Further, the environmental protection of exploration and mining sites in Namibia is primarily governed by the following key pieces of legislation:

- Environmental Management Act, 2007 (EMA): This is the principal legislation for environmental protection in Namibia. It mandates that all exploration and mining projects undergo an Environmental Impact Assessment (EIA) and obtain an Environmental Clearance Certificate (ECC) before commencing operations. The Act aims to ensure sustainable use of natural resources and to mitigate adverse environmental impacts;
- Minerals (Prospecting and Mining) Act, 1992: This Act includes provisions requiring mining companies to comply with environmental obligations during exploration and mining activities. Operators must rehabilitate disturbed sites and adhere to environmental management plans as part of their license conditions;
- Water Resources Management Act, 2013: This legislation regulates the use and protection of water resources, ensuring that exploration and mining activities do not pollute or excessively deplete water resources. Mining companies must obtain permits for water use and wastewater discharge;
- Pollution Control and Waste Management Bill (Draft): Although not yet enacted, this draft legislation provides guidelines on managing pollution and hazardous waste, including regulations for the mining sector.
- Nature Conservation Ordinance, 1975: This ordinance regulates the protection of wildlife and natural habitats, particularly where mining activities occur in or near protected areas; and
- National Heritage Act, 2004: This Act protects Namibia's cultural and archaeological heritage, which may be

impacted by mining operations. Exploration and mining activities must avoid disturbing heritage sites.

Key Requirements for Environmental Compliance:

- Environmental Impact Assessments (EIAs): Required under the EMA for all exploration and mining projects to identify potential impacts and propose mitigation measures;
- Environmental Management Plans (EMPs): Detailed plans outlining how environmental impacts will be managed during operations; and
- Rehabilitation Obligations: Mining companies are required to rehabilitate disturbed land to its original or an agreed-upon state after operations.

Namibia's environmental legislation emphasises sustainable development, balancing mineral resource exploitation with environmental conservation. Non-compliance can lead to fines, revocation of licenses, or operational suspension.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?

In Namibia, the concept of native title as recognised in jurisdictions like Australia, where indigenous peoples' traditional rights to land are protected does not have a direct legal equivalent. The Minerals Act does not recognise native title. However, there are important considerations related to land rights, customary law, and communal land ownership that can significantly impact the exploration and mining industry.

These considerations are governed by the Communal Land Reform Act, 2002 and related legal frameworks:

- Communal Land Ownership: Approximately 41% of Namibia's land is communal land, owned and managed by traditional authorities under customary law. This land is held in trust by the state for the benefit of local communities. Mining or exploration activities on communal land require consultation and consent from the traditional authorities and affected communities;
- Requirement for Surface Rights: While mineral rights are owned by the state under the Minerals (Prospecting and Mining) Act, 1992, mining companies must obtain surface rights or access agreements with landowners or occupiers, including traditional authorities in communal areas;
- Consultation with Traditional Authorities: Exploration and mining license holders must engage in meaningful consultation with traditional authorities and community members to secure consent for operations. Failure to do so can result in disputes and delays;
- Environmental and Social Impact: Projects on communal land may face stricter scrutiny regarding environmental and social impacts. Community concerns about displacement, loss of grazing land, or environmental degradation can lead to challenges if not addressed proactively; and
- Land Reform Policies: Namibia's land reform initiatives aim to address historical inequities in land distribution. While these reforms do not directly impact mining rights, they influence how land access and use are negotiated in communal areas.

HEALTH AND SAFETY

What legislation governs health and safety in mining?

Occupational health and safety in the extractive and mining industry is primarily governed by the regulations relating to Health and Safety of Employees at Work, made in terms of the repealed Labour Act 6 of 1992, and the regulations made in terms of the repealed Mines, Works and Minerals Ordinance 20 of 1968 which, although the principal acts have been repealed, continue to apply. New regulations have been drafted but are not yet in force.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?

The Constitution states that all natural resources (including minerals) below and above the surface of the land and in the continental shelf and within the territorial waters and the exclusive economic zone of Namibia belong to the State unless they are otherwise lawfully owned. Importantly, the Constitution protects the right to property (which extends to mining titles), the right to fair treatment, the right to just administrative action, and the right to have disputes determined by a court of law or by an independent and impartial tribunal.

Several constitutional principles and articles are relevant to the mining industry:

- Sovereignty Over Natural Resources (Article 100): The Constitution explicitly states that all natural resources, including minerals, are owned by the state unless otherwise lawfully owned. This provision ensures that mineral resources remain under the control of the Namibian government, which has the authority to grant, regulate, or revoke rights to prospect and mine;
- Environmental Protection (Article 95(l)): The Constitution mandates the state to promote environmental sustainability and ensure the protection of Namibia's ecosystems and natural resources. Mining activities must comply with environmental laws and policies to uphold this principle, including conducting Environmental Impact Assessments (EIAs) and adhering to regulations that mitigate environmental damage;
- Fundamental Human Rights and Freedoms (Chapter 3): The Constitution guarantees fundamental rights, such as the right to property (Article 16), which impacts how land and mineral rights are allocated and exercised. While the state owns mineral resources, landowners' and communities' rights must be respected, particularly in cases of communal or private land;
- Customary Land Rights: Although not explicitly mentioned

in the Constitution, the recognition of customary laws and practices in communal areas indirectly affects mining operations. Mining companies must consult and engage with traditional authorities and affected communities to gain access to land for exploration and mining.
- Equality and Equity (Article 23): Namibia's Constitution emphasises addressing historical inequalities, which has influenced policies requiring local participation in mining projects. This includes mandatory local ownership or equity stakes in mining operations; and
- Protection of Heritage (Article 95(k)): The Constitution also calls for the preservation of Namibia's cultural, historical, and natural heritage. This provision impacts mining operations, particularly in areas of archaeological or cultural significance.

Are there administrative appeals in the mining law?
Any person who feels adversely affected by any act or decision of the Mining Commissioner with respect to any provision of the Minerals Act may appeal such act or decision within 30 days of the date such act or decision was made known to that person, and thereupon the Minister of Mines and Energy may uphold, reverse, or amend such action or decision.

Disputes involving access to surface rights or compensation for land use can be referred to the Minerals Ancillary Rights Commission (MARC). The MARC is an independent body tasked with resolving disputes between mining license holders and landowners or lawful occupiers. Its decisions may be appealed to the High Court if one of the parties is dissatisfied with the outcome.

The right to fair and reasonable administrative justice is guaranteed in the Constitution. The Mining Commissioner and Minister of Mines and Energy are administrative bodies, and any decision made by them can be brought before the High Court for review. However, if the decision has been made by the Mining Commissioner, the High Court can suspend any application until the internal appeal has been exhausted.

Decisions related to environmental compliance, such as the issuance or denial of Environmental Clearance Certificates (ECCs) required for mining activities, can be appealed under the Environmental Management Act, 2007. These appeals are reviewed by the Environmental Commissioner and, if necessary, the Minister of Environment, Forestry, and Tourism.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
Overview
The statute imposing income tax in Namibia is the Income Tax Act 24 of 1981 (the "Income Tax Act").
Namibia has a source-based tax regime which means that income from a source or deemed source within Namibia is taxable in Namibia unless a specific exemption applies. The territory of Namibia, when used in geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf over which Namibia exercises sovereign rights in accordance with its national and international laws concerning the exploration and exploitation of the natural resources of the sea-bed and its subsoil and the super-jacent waters.

A mining company's taxable income is determined in the same manner as any other trade except for prospecting, capital development and rehabilitation costs. However, mining companies are subject to different tax rates than other companies. In other words, companies that derive taxable income from the mining of any mineral or substance other than diamonds, or from services rendered by a company in connection with such mining on behalf of any person authorised to carry out such mining activities, are subject to corporate income tax at a flat rate of 37,5%. Mining companies that derive taxable income from diamond mining or from services rendered by such companies in connection with diamond mining on behalf of a person authorised to carry out such mining activities, are subject to corporate income tax at a rate of 50% plus a surcharge of 10%, which corresponds to an effective tax rate of 55%.

Namibia uses the royalty system combined with corporate income tax to capture revenue, spreading the risk of mining between the state and corporate entities.

Namibian Withholding Taxes
Non-residents who do not have a place of business in Namibia may be subject to withholding taxes. Namibia has four types of withholding taxes (each of which will be discussed in more detail below):
- Non-resident shareholders tax ("NRST");
- Withholding tax on services ("WTS");
- Withholding tax on royalties ("WTR"); and
- Withholding tax on interest ("WTI").

A withholding tax is a final tax, meaning that when it is paid, no further tax arises on the amounts.

Non-resident shareholder's tax
A NRST is levied on dividends received by a non-resident shareholder. NRST is payable at a standard rate of 10% if at least 25% of the shares are held in the Namibian company and the shareholder is a company. In all other cases, the NRST will be payable at 20%.

Withholding tax on services
A WTS is applicable to any Namibian resident paying a management, consultancy, director's or entertainment fee to a non-resident. The ITA specifically defines "management and consultancy fees" as "any amount payable for the administrative, managerial, technical or consultative services, whether such services are of a professional nature or not" .
"Entertainment fees" are further defined as "any amount payable to an entertainer (including a cabaret, motion picture, radio, television or theatre artiste and any musician)

or a sportsperson, and includes any payment made to any other person in relation to such activity".
WTS is payable at a rate of 25% on directors' fees and foreign entertainment. In all other cases a WTS is payable at a rate of 10%.

Withholding tax on royalties
WTR is payable when a Namibian company pays a royalty to a non-resident. The terms "royalty" encompasses payments made for:
- the use of any patent, design, trademark, copyright or any property of a similar nature;
- the use of any motion picture film;
- the imparting of any scientific, technical, industrial or commercial knowledge; or
- the use of commercial, industrial or scientific equipment.

WTR is levied at a fixed rate of 10%.

Withholding tax on interest
The Namibian ITA provides for two types of withholding taxes applicable to interest.
- Firstly, in terms of section 34A of the ITA, a withholding tax is payable at a rate of 10% on interest accruing to any person, other than a Namibian company, from a registered Namibian banking institution or unit trust scheme; and
- Secondly, section 34B of the ITA, provides for a withholding tax on interest received by or accrued to non-residents.

The scope section 34B overlaps to some extent with the scope of section 34A but there is a presumption against double taxation, and the scope of the types of interest to which each section applies prevents both taxes applying in respect of the same amount. In terms of both sections, a WTI is levied at a rate of 10%.

Stabilisation
There are currently no specific tax stabilisation arrangements in Namibia. Provisions for tax stabilisation could be introduced as part of an investment agreement, but experience has shown that the Namibian government is very reluctant to enter into stabilisation arrangements by way of an agreement.

Tax incentives
The Income Tax Act provides for special deductions related to the taxation of mining operations.

Capital Allowances
The cost (including finance charges) of vehicles, machinery, equipment, and other articles used by the taxpayer to generate income is deductible in three equal annual allowances claimable from the date the costs were incurred and not only when the asset was taken into use. No apportionment is allowed where an asset is held for less than 12 months.

Buildings used by the taxpayer to generate income qualify for an initial allowance of 20% of erection costs in the year they are first brought into use. Thereafter, an annual allowance of 4% is deductible for the 20 following years. Additions to existing buildings (not alterations, improvements, or repairs) qualify for the same 20% and 4% deductions. Note that the allowance is calculated on the cost of erection and not the cost of acquisition. The allowance is also only calculated for a period of 21 years from the date of erection.

Registered manufacturers can claim 20% of the erection costs of the building in the year it is first brought into use, and 8% for ten years thereafter (see Manufacturing in the Tax credits and incentives section).

Mining exploration expenditure incurred before commencement of mining production is deductible in full in the first year that income is generated from the mine. Initial development and subsequent developmental expenditures are written off in three equal annual allowances.

Capital allowances may also be deducted with respect to patents, trademarks, leasehold improvements, etc.
A recovery or recapture of allowances previously claimed should be included in the gross income of a taxpayer in the event that the allowance is recovered or recaptured by way of disposal, withdrawal from trade for non-trade purposes, or removal from Namibia. The recapture is calculated at the market value of the asset.

Start-up Expenses
The Income Tax Act allows exploration and initial development expenditure to be deducted in full during the year in which the mine commences with production. All exploration expenses incurred before the commencement of mining is therefore deferred until such time that the mine commences production.

Charitable contributions/donations
A specific deduction for donations is allowed, provided that it is made to a registered welfare organisation or an approved educational institution. It is a further requirement that a certificate should be issued by the welfare organisation/ educational institution in respect of the donation and submitted with the entity's tax return in order for it to qualify as a deduction. However, this deduction may not create or increase a tax loss.

The setoff against taxable income of the balance of assessed loss incurred by the taxpayer in any previous year and which has been carried forward from the preceding year of assessment is now limited to N$1,000,000, or 80% of taxable income, whichever is the greater, before taking into account the provisions of Section 21 or Section 36 of the ITA.

Net operating losses
Assessed losses will not be allowed to be carried forward for a period exceeding 5 years in respect of any taxpayer, or 10 years in respect of entities in the mining, petroleum, or green hydrogen industries. It is important to note that temporary discontinuance in the carrying on of your trade will not affect the 5 / 10 years limit.

The balance of assessed loss accumulated before 01 January 2024 can be carried forward for 5 / 10 years. These

amendments are effective for financial years commencing on or after 01 January 2024. Assessed losses are also reduced in the event of a compromise agreement with creditors.
Namibian tax legislation does not provide for the carrying back of tax losses. A recovery or recapture of allowances previously claimed should be included in the gross income of a taxpayer in the event that the allowance is recovered or recaptured by way of disposal, withdrawal from trade for non-trade purposes, or removal from Namibia. The recapture is calculated at the market value of the asset.

Namibia has entered into double taxation agreements with the United Kingdom, South Africa, Mauritius, Malaysia, Sweden, France, India, Russia, Romania, Botswana, and Germany.

Transfer of mineral rights
The Income Tax Act states that gross income in respect of any year or period of assessment for any person is the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within Namibia, excluding receipts or accruals of a capital nature, but including amounts (whether of a capital nature or not) so received or accrued from (amongst other things) the alienation of a mineral licence or right to mine minerals in Namibia and a petroleum licence or right to mine petroleum.
Mineral licence or right to mine minerals

Any amount received by or accrued to any person by way of an alienation of a mineral licence or right to mine minerals in Namibia and includes an alienation of interests in an entity holding such mineral licence or right to mine minerals in Namibia (whether directly or indirectly).

In addition, such amount will be deemed to be from a source within Namibia regardless of where the contract is concluded, or payment of any such amount is made or where the monies from which payment is made are held.

Petroleum licence or right to mine petroleum
Any amount received or accrued by way of a sale, donation, expropriation, cession, grant or other alienation or transfer of ownership of a petroleum licence, or right to mine petroleum in Namibia, and includes a sale, donation, expropriation, cession, grant or any other alienation or transfer of ownership of any share or member's interest in a company that holds a petroleum licence or petroleum right, whether directly, or indirectly, less any acquisition costs and exploration expenditure relating to the petroleum licence or right, and costs of improving the value of the petroleum licence or right, but the acquisition costs, exploration expenditure and cost of improvement of the value of the licence or right may not create a loss.

Taxable gains are generally not taxable in Namibia, the above are one of the specific exceptions.

Are there any royalties payable to the State over and above any taxes?
Namibia imposes ad valorem royalties which is based on the value of the mineral produced. In its simplest form, an ad valorem royalty consists of a uniform percentage (rate) of the value (base) of the mineral in the products sold by the miner. The calculation of value-based royalty varies hence the percentages should not be taken at face value. For instance, Namibia's royalty value is based on sales revenue minus some costs. In addition, alternative royalty rate can be negotiated.

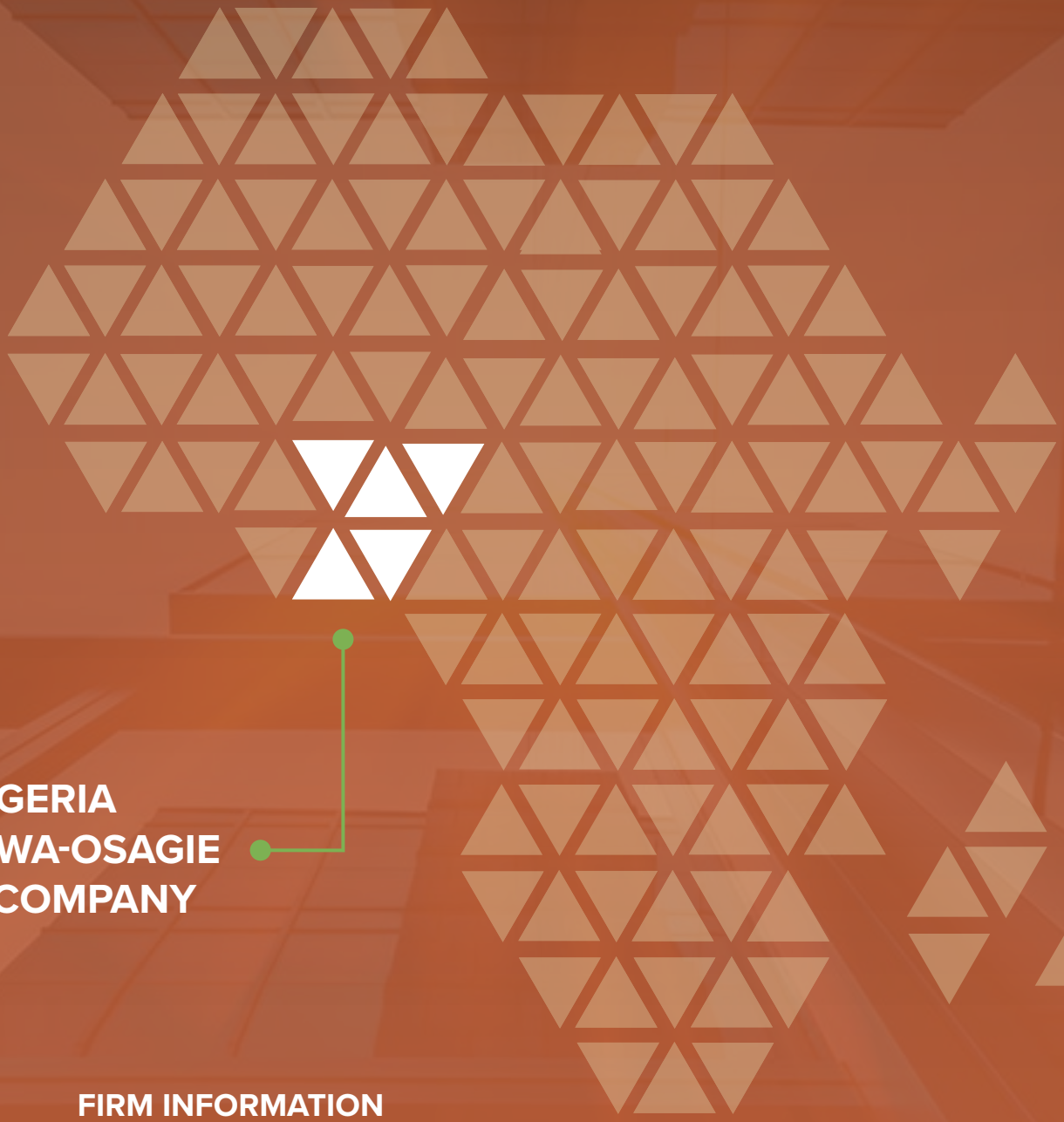
The Minister of Mines and Energy is granted a wide discretion to levy royalties on minerals mined. The holder of any mineral licence may be required to pay the Mining Commissioner:
- for any rough and uncut mineral of the precious stone group, a 10% royalty on the market value;
- for any rough or unprocessed mineral of the dimension stone group, a 5% royalty on the market value; and/or
- for any other mineral, a royalty that is determined by the Minister of Mines and Energy. Currently, royalties are collected at 3% for precious metals, 3% for base and rare metals, 2% for semi-precious stones, 3% for nuclear fuel minerals, 2% for industrial minerals and 2% for non-nuclear fuels. All these royalties are levied on the market value of the minerals.

Below is a brief overview of the royalties payable to the State in addition to any taxes:

GROUPSOF MINERALS	ROYALTY %
Precious Metal / Base and rare metals	3%
Semi-precious stones / Industrial metals / Non-Nuclear fuel minerals	2%
Nuclear fuel minerals	3%
Oil and Gas	5%

The State is granted wide discretion with regard to the rate at which royalties are to be imposed. The Minerals (Prospecting and Mining) Amendment Act 8 of 2008 ("Amendment Act") amends the existing legislation by deleting the maximum percentage of royalties that the Minister can charge on all minerals excluding precious stones and dimension stone and introduces the possibility of a windfall royalty. The Amendment Act, therefore, confers discretion on the Minister to levy a windfall royalty on the holder of a mining claim, a non-exclusive prospecting licence or a mineral licence, if there is an increase in the market price or, alternatively, mining operations are made more profitable by new technology or any other circumstances. These amendments concerning windfall taxes are applicable to all minerals. The Amendment Act also introduces a new type of royalty in respect of all minerals other than precious stones and dimension stone. It is not certain what the nature of this royalty is, but it could possibly be a penalty royalty.





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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The notable legislation governing mining in Nigeria are as follows:

The 1999 Constitution of the Federal Republic of Nigeria (as amended)
The Constitution is the primary law of the land and prevails over all other laws. Any law inconsistent with the provisions of the Constitution is null and void. The Constitution vests all mineral resources in the Federal Government, which reserves the right to transfer the said resources subject to compliance with extant laws.

The Nigerian Minerals and Mining Act, 2007
The Nigerian Minerals and Mining Act, 2007 (the "Mining Act"), serves as the cornerstone of the legal framework for solid minerals in Nigeria. It provides a comprehensive regime for the exploration and exploitation of solid minerals, replacing the Minerals and Mining Act of 1999. Some of the key provisions of the Act include:

- Ownership and Control: The Act vests control of all mineral resources in the Nigerian State, which holds these resources in trust for the people. This framework ensures that private individuals or companies do not own mineral resources but can obtain licenses or leases to explore and mine them.
- Licensing Regime: The Act establishes a structured licensing regime, which includes:
  - o Reconnaissance Permit: This permit allows holders to conduct preliminary surveys without the right to remove minerals;
  - o Exploration License: Grants exclusive rights to explore for specific minerals within a designated area;
  - o Mining Lease: Permits commercial extraction of minerals following successful exploration;
  - o Small Scale Mining Lease: Intended to promote local entrepreneurship in the mining sector; and
  - o Quarry Lease: Grants the right to extract building materials.
- Environmental and Social Obligations: The Act mandates rigorous environmental protection and rehabilitation measures. Companies are required to submit Environmental Impact Assessments (EIAs) and Community Development Agreements (CDAs), ensuring that mining activities benefit local communities and minimize impact on the environment.

The Nigerian Minerals and Mining Regulations, 2011
These regulations provide further details on the implementation of the Nigerian Minerals and Mining Act, specifying the technical, financial, and operational obligations of mining companies. They cover licensing procedures, the handling of royalties, and environmental requirements for mining operations.

Nigerian Extractive Industries Transparency Initiatives Act 2007
This Act was enacted to monitor and develop a framework for transparency and accountability by companies in the extractive industry in reporting and disclosures of revenue due to or paid to the Federal Government.

Companies and Allied Matters Act 2020
This Act was signed into law in 2020 to govern the registration of companies in Nigeria. A company which intends to obtain a mining license must be incorporated in Nigeria under this Act.

National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act, 2018
It establishes an enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines.

Environmental Impact Assessment Act Cap E12 LFN 2004
This Act guides decisions that affect or may have an impact on the environment. It stipulates that before a decision is taken by any person, authority or government to undertake any activity that will affect the environment, an assessment is to be conducted.

Mines and Quarries (Control of Building etc.) Act 1969
This Act regulates quarrying activities that include granting of quarrying license, inquiries and safety of quarrying activities. Apart from the statutory and regulatory provisions, English Common Law, Equity and Statutes of General Application are important sources of Nigerian law.

The Business Facilitation (Miscellaneous Provisions) Act, 2022
This Act streamlines business registration and regulatory processes. It also reduces bureaucratic barriers, accelerates the licensing and approval process, and offers tax incentives to mining companies. By implementing a single-window registration system, the Act facilitates faster processing for mining operators, making it easier for foreign and local investors to engage in mining activities in Nigeria. Also, the Act provides tax reliefs and incentives for businesses, including those in the mining sector, to encourage investment. It also promotes the development of Special Economic Zones, where companies engaged in mining activities can benefit from enhanced infrastructure and regulatory support.

National Minerals and Metals Policy 2009
The Federal Government of Nigeria issued the National Minerals and Metals Policy in 2009. The main thrust of this policy is to promote a new legislative framework that encourages private sector-led growth and development of the sector. Some of the policy strategies include:

- Ensuring compliance with environmental best practices;
- The promotion of small-scale mining activities; and
- The formalization of informal mining activities.

The Nigeria Investment Promotion Commission (NIPC) Act (1995)
This Act provides the legal framework for foreign direct investment in Nigeria. Under the Act, foreign investors in the mining sector are entitled to certain incentives, such as tax holidays, import duty exemptions, and guarantees against nationalization, subject to complying with local laws. The Commission also plays a key role in promoting the mining sector to potential foreign investors.

The Mining (Safety) Regulations (2010)
These regulations focus on ensuring safety standards in the mining sector. They set forth safety protocols that mining companies must adhere to in order to protect workers and minimize accidents on mining sites. It provides specific guidelines for managing hazardous materials, explosions, and other risks.

The Nigeria Customs Service (NCS) Regulations
The NCS regulations govern the importation and exportation of minerals in Nigeria. Mining companies involved in the export of minerals must comply with customs requirements, including the proper declaration of mineral exports and payment of export duties, if applicable.

Mineral Value Chain Regulations, 2021
It seeks to boost the country's revenue through the local development (processing and refining) of raw materials into refined products before export.

Which government bodies administer mining law?
Pre-2023, the erstwhile Ministry of Mines & Steel Development (MMSD) oversaw the mining sector in Nigeria. However, in 2023, the administration of President Bola Ahmed Tinubu, split the Ministry into two (2) separate ministries namely the Ministry of Solid Minerals Development (MSMD) with focus on all minerals in the value chain of the mining sector other than steel, and the Ministry of Steel Development (MSD) with the sole mandate to accelerate the development of the country's steel potentials. Both Ministries administer the provisions of the NMMA as applicable. The following departments established under the NMMA, aid the Ministries in performing their respective functions:
- Mines Inspectorate Department;
- Mining Cadastre Office;
- Mines Environment and Compliance; and
- Artisanal and Small-Scale Mining Department.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

The following are the types of mineral titles and rights granted by the MCO:
- **Reconnaissance permit:** This enables the holder to carry out reconnaissance on a non-exclusive basis in an environmentally and socially responsible manner and to compensate for any damage to crops or property in the course of prospecting. This does not permit the holder to engage in drilling, excavation or other sub-surface techniques;
- **Exploration licence:** An exploration licence is issued/granted within 30 days upon receipt of a valid application to the MCO. This licence will not be granted over any land that is subject to an existing Exploration Licence, Mining Lease, Small Scale Mining Lease, Quarry Lease or closed to prospecting/mining activity (e.g. forest reserves, military areas, government development areas, national heritage area etc.);
- **Mining Lease:** A mining lease confers on the holder (among other rights) the right to obtain access to and enter the mining lease area and the exclusive use, occupation and carrying out of mineral exploitation within the mining lease area. A Mining Lease will not be granted in respect of any area within an Exploration Licence area or a Small-Scale Mining area except to the holder of an Exploration Licence or Small Scale Mining Lease covering such an area. The lease area is determined in relation to the ore body as defined in the feasibility study submitted in respect of the Mining Lease together with an area reasonably required for the workings of the mineral resources;
- **Quarry Lease:** A quarry lease confers on its holder the right to carry out quarrying operations on the land within the area of the lease and to remove and dispose of any quarriable mineral specified in the lease. A quarry lease is granted in respect of a land area not exceeding 5 square kilometres and covers a 5-year period unless renewed; and
- **Water Use Permit:** The area of land in respect of which any water use permit is granted shall not exceed the area reasonably required for the purpose of the permit.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
- **Concessions:** Further to the enactment of the Petroleum Industrial Act in 2021, the newly established Nigerian Upstream Petroleum Regulatory Commission is responsible for the grant of the following licences:
  - o Petroleum exploration licence, to explore for petroleum;
  - o Petroleum prospecting licence, to prospect for petroleum; and

  - o Petroleum mining lease, to search for, win, work, carry away and dispose of petroleum.
- **Production Sharing Contracts ("PSC"):** The essence of a PSC is that Nigerian National Petroleum Company Limited ("NNPC") engages a competent contractor to carry out petroleum operations on NNPC's wholly held acreage. The contractor undertakes the initial exploration risks and recovers his costs if and when oil is discovered and extracted. This policy is designed to transfer exploration risks and the funding of exploration and development efforts on new acreage to interested oil companies. Under the PSC, the contractor has a right to only that fraction of the crude oil allocated to him under the cost of oil (oil to recoup production cost) and equity oil (oil to guarantee a return on investment). He can also dispose of the tax oil (oil to defray tax and royalty obligations) subject to NNPC's approval;
- **Service Contracts:** A Service Contract could be Risk-Service, Pure-Service or Technical Assistance Agreement. In the Risk-Service arrangement, the host country owns the concession covered by the arrangement as well as the petroleum discovered, while all risks are borne by the oil company employed as a contractor in a certain area and for a specific period. The contractor provides the upfront money and furnishes the technical expertise for the operations and only gets fully reimbursed from the sale of the concessions of oil production. This type of contractual arrangement is successful where there is commercial discovery or upon other contractual terms. The Pure Service contract or Technical Assistance Agreement is a simple contract of work. All risks are borne by the government and the contractor performs its stipulated services and is paid fees for its services; and
- **Joint Venture Agreements:** Also known as Joint Operating Agreements ("JOA"), JOA is the basic, standard agreement between the NNPC and the operators. Under a JOA, one of the partners is designated the operator. The NNPC reserves the right to become an operator. All parties are to share in the cost of operations. Each partner can lift and separately dispose of its interest share of production, subject to the payment of Hydrocarbon Tax and Royalty. The operator is the one to prepare proposals for the programme of work and budget of expenditure jointly on an annual basis, which is to be shared on a shareholding basis. Each party can opt for and carry on sole risk operations. Technical matters are discussed and policy decisions are taken at operating committees where partners are represented on the basis of equity holding.

Please see the manner of acquisition of rights described above. Applicants for any of the licences/leases in the oil and gas industry are required to submit their relevant application(s) to the Nigerian Upstream Petroleum Regulatory Commission before they are granted the right to explore oil and gas licences/ leases. The primary law in this area is the Petroleum Industry Act 2021.

In addition, an applicant for mineral rights is required to apply to the MCO for such a right. Please note that the principal law that regulates mining in Nigeria is the Nigerian Minerals and Mining Act.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

The Nigerian Oil and Gas Industry Content Development Act (Local Content Act) 2010 which provides for the development of Nigerian content in the oil and gas industry, only applies to the oil and gas sector. However, the Nigerian Investment Promotion Commission ("NIPC") Act allows foreigners to hold 100 per cent equity in companies in Nigeria with the exemption of companies that carry out business in the negative list. The mining sector is not on that list.

Are there any Special Rules or Restrictions Applicable to Foreign Applicants?

Section 78 of the Companies and Allied Matters Act, 2020 requires every foreign company intending to carry on business in Nigeria to incorporate a separate entity (company) in Nigeria for that purpose. However, this section does not apply to foreign companies who have been granted an exemption under the Act or granted exemption under any treaty to which Nigeria is a party. The Mining Act stipulates that a qualified applicant for a Reconnaissance Permit, an Exploration Lease, a Small Scale Mining Lease and/or a Quarry Lease must be:

- A citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence;
- A body corporate duly incorporated under the Companies and Allied Matters Act 2020; or
- A mining cooperative.

Of note, Section 25 of the Nigerian Investment Promotion Commission (NIPC) Act guarantees foreign investments against expropriation by the Federal Government of Nigeria. For a Mining Lease, a qualified applicant must be a body corporate duly incorporated under the Companies and Allied Matters Act 2020 or any other legal entity that has demonstrated, under conditions stated in the Regulations that a commercial quantity of mineral resources exists in the area. It is however a prudent business decision to have at least a Nigerian as a shareholder.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?

The State does not have any free-carry or contributory rights in mining projects. However, the Nigerian Minerals and Mining Act (NMMA) vests the control, regulation and ownership of all mineral resources in the Federal Government of Nigeria.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
No. Please note that persons eligible for the fiscal regime under the NMMA, include companies or enterprises engaged in mining operations in Nigeria.

The Act provides for the following fiscal and tax incentives
A licence holder is entitled to deduct a Capital Allowance of 95% of Qualifying Capital Expenditure from its assessable profits incurred in the year in which the investment was made on all certified exploration, development and processing expenditure including feasibility study and sample assaying cost.

Infrastructure costs incurred regardless of ownership or replacement
The amount of any loss incurred by a licence holder shall be deducted as far as is possible from the assessable profits of the first year of assessment after that in which the loss was incurred, and insofar as it cannot be so made then from such amounts of such assessable profits of the next year of assessment and so on up to a limit of four years after which period any unregistered loss shall become lapse.

All operators shall be granted the following benefits:
- Exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations;
- Expatriate quota and resident permit in respect of the approved expatriate personnel; and
- Personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

The machinery, equipment and accessories to be imported shall be approved by the Mines Inspectorate Division. The plant, machinery, equipment and accessories imported pursuant to this section may be disposed of by the holder of the mineral title upon full payment of customs and import duties in respect thereof.

The Central Bank of Nigeria ("CBN") may permit a holder of a mineral title who earns foreign exchange from the sale of his minerals to retain, in a foreign exchange domiciliary account, a portion of his earnings for use in acquiring spare parts and other inputs required for the mining operations which would otherwise not be readily available without the use of such earnings.

The Mining Act also guarantees free transferability of funds through the CBN in the convertible currency of payments in respect of loan servicing where a certified foreign loan has been obtained by the holder for his mining operations. The remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.

The Mining Act provides a tax relief period of 3 years for any company granted a Mineral Title under the Mining Act. The tax relief period may be extended for a further period of 2 years by the Minister on the fulfilment of certain conditions. The tax relief period commences on the date that the licence holder commences operations.

Section 30 of the Mining Act provides for the deductibility of environmental costs. It specifically states that:
- A tax-deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs shall be established by companies engaged in the exploitation of mineral resources, provided, however, that the appropriateness of the reserve is certified by an independent qualified person taking into account the determination made under the provisions of this Act;
- the reserve is recorded in the audited financial statements of the companies;
- tax deductibility will be restricted to the actual amount incurred for the purpose of the reclamation; and
- a sum equivalent to the reserve amount is set aside every year and invested in a dedicated account or trust fund managed by independent trustees appointed pursuant to the provisions of the Act.

Section 32 of the Mining Act provides for Annual Capital Cost Indexation. It states that the unclaimed balance of capital cost shall be increased yearly by 5 per cent for mines that start production within 5 years from the date of enactment of the Mining Act.

The Mining Act provides that any mineral obtained in the course of exploration or mining operations shall be liable to pay royalty as prescribed in any regulations made under the Act. However, the Minister may also defer the payment of royalty on any minerals for a specific period, on the approval of the Federal Executive Council.

Are there any restrictions on the export of minerals?
The applicant will need to apply to the Mining Cadastre Office (MCO) for a permit to export minerals. The application is accompanied by a list of minerals to be exported and the destination. The fee for exporting minerals for commercial purpose is N10,000.00, whilst N1,000.00 is paid for a permit to export minerals and samples for analysis purposes.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
Yes. The holder of such right is required to seek and obtain the consent of the Minister before disposal of such right and the same will be registered with the MCO.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
The holder of a Mineral Licence/lease is required to seek and obtain the consent of the Minister before disposal of such right and the same will be registered with the MCO. In practice, disposal of controlling interest in entities holding exploration or mining rights is another way of transferring the exploration or mining right and as such will require the consent of the Minister. Section 147(10) of the Mining Act provides that no title mineral or rights therein shall be assigned to a person to whom that mineral title could not have been granted under the Mining Act.

The mineral title holder is required to make an application for approval for the transfer of a mineral title to the MCO in the prescribed format. Approval for a transfer of a mineral title is given by the MCO if the transferee is a qualified applicant, provided that the application for transfer shall be deemed automatically approved if not acted upon by the MCO within 30 days from the official receipt thereof. No mineral title or rights therein can be assigned to a person to whom that mineral title could not have been granted under the Mining Act.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
An exploration right enables the holder (among other rights) to obtain access and enter the mining lease area, for the exclusive use, occupation and carrying out of mineral exploitation within the mining area.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The Constitution of the Federal Republic of Nigeria, 1999, as amended ("Nigerian Constitution"). Chapter Two of the Nigerian Constitution, under Section 20, contains directive principles on the environment.

The Environmental Impact Assessment Act, 2004. An environmental impact assessment must be conducted for any project or activity that is likely to significantly affect the environment. The Environmental Impact Assessment Act requires that any person planning a project/activity, which may or is likely to a significant extent, to affect the environment or have an environmental effect on those activities, to prepare an Environmental Impact Assessment Report.
The Report must set out the potential impact of the activity on the environment and plans for preventing/mitigating the same. In addition, the public or private sector of the economy shall not undertake or embark on or authorise projects or activities without prior consideration of the effect on the environment.

The Harmful Waste (Special Criminal Provisions) Act. By virtue of this legislation, activities relating to the purchase, sale, importation, transit, transportation, deposit or storage of harmful waste is a crime.

The Climate Change Act, 2021. It seeks to achieve low greenhouse gas emissions through inclusive green growth and sustainable economic development.

The National Environmental Standards and Regulation Enforcement Agency (NESREA) Act: This imposes obligations on operators in relation to the protection of the environment.

The Nigerian Minerals and Mining Act No. 20, 2007; and **Nigerian Minerals and Mining Regulations 2011.**

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Under the Land Use Act, ("LUA") Cap L5, Laws of the Federation, 2004, a Governor of a State is empowered to revoke a statutory or customary right of occupancy granted over a parcel of land, for mining purposes. In addition, section 22 of the Mining Act provides that the use of land for mining operations shall have priority over other uses of land.

Section 1(2) of the Mining Act provides that all land in which minerals have been found in commercial quantities shall, from the commencement of the Mining Act be acquired by the Federal Government in accordance with the provisions of the LUA.

The Mining Act also recognises the fact that mining operations will one way or the other affect the wellbeing of the aborigines of the land upon which mineral title is granted. The Mining Act mandates the holder of a mining lease, small-scale mining lease or quarry lease to, prior to the commencement of any development activity within the lease area, conclude with the host community where the operations are to be conducted in an agreement referred to as a Community Development Agreement or other such agreement that will ensure the transfer of social and economic benefits to the community.

Section 29 of the LUA provides for compensation to be paid to the titleholder of land where such title is revoked by a State Governor for mining purposes. Section 107 of the Mining Act also makes provision for the payment of compensation to the Mineral Title holder of the land acquired for mining purposes. This is in addition to any other amounts payable.

In a bid to ensure improved collaboration between mining companies and their host communities, on November

16, 2023, the Honourable Minister of Solid Minerals Development, Dr. Dele Alake, officially launched the 'Guidelines for the Production of Community Development Agreement in the Solid Minerals Sector' (the "Guidelines"). It was issued pursuant to Section 116 of the Nigerian Minerals and Mining Act, 2007 which stipulates that the holder of a Mining Lease, Small Scale Mining Lease, or Quarry Lease is required to finalize with the host community, an agreement known as a Community Development Agreement ("CDA" or the "Agreement") or such other agreement that will ensure the transfer of social and economic benefits to the host community prior to the commencement of mining activities within the lease area.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Mining Act and Regulations made pursuant to the Mining Act.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
Section 44(3) of the Constitution of the Federal Republic of Nigeria (as amended) 1999 vests the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria in the Federal Government of Nigeria, which shall be managed in such manner as may be prescribed by the National Assembly."

Are there administrative appeals in the mining law?
Under the Nigerian Minerals and Mining Regulations 2011, any person aggrieved by any decision of the Ministry or any of its agencies on any application or matter under the Regulations, may within seven days after being notified of the decision, appeal to the Minister for a review. The Minister may set up a committee to consider the appeal and forward to the aggrieved person a report which shall include its findings and recommendation. On receiving the report, the Minister may uphold, set aside or vary the decision. A notice of the Minister's decision on the appeal may be sent to the parties within seven days of the receipt. However, any delay in issuing the notice will not nullify the decision of the Minister. The mineral title holder, if not satisfied with the outcome of the appeal to the Minister, may seek redress from the Federal High Court.

ROYALTIES AND TAXES

Are there special rules applicable to the taxation of exploration and mining companies?
There are rules applicable to the taxation of exploration and mining companies. Under the Mining Act, a licence holder enjoys a three-year tax relief period from the date of the commencement of mining operations. At the end of the tax relief period, the Minister may also extend the period for one further period of 2 years for any Mineral title holder.
In addition, there are certain statutory incentives given to licence holders which include the following:

- deduction from their assessable profits capital allowance of 95% of qualifying capital expenditure incurred in the year in which the investment is incurred;
- all certified exploration, development and processing expenditure, including feasibility study and sample assaying costs;
- all infrastructure costs incurred regardless of ownership and replacement;
- exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations;
- personal remittance quota for expatriate personnel, free from any tax imposed by any enactment of the transfer of external currency out of Nigeria; and/or
- a holder of a mineral title is guaranteed free transferability through the Central Bank in convertible currency payment of a certified foreign loan obtained in respect of its mining operations in Nigeria and the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.

Are there any royalties payable to the State over and above any taxes?
Any mineral obtained in the course of exploration or mining operations is liable to pay royalty as prescribed by the regulations made under the Mining Act; the Minerals and Mining Regulations, 2011, specifies the royalties payable by holders of mining rights. The applicable royalty rates range from 3% to 5%, depending on the type of mineral. However, the government can grant concession to a mineral title holder to defer payment of royalty on any mineral for a specific period.



REPUBLIC OF GUINEA
THIAM & ASSOCIÉS

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?

In the Republic of Guinea, the mining sector is mainly governed by the Mining Code, adopted in September 2011 (Law 2011/006/CNT of 9 September 2011 on the "Mining Code of the Republic of Guinea" as amended by Law N° 2013/053/ CNT of 8 April 2013).

The Mining Code constitutes the legal framework for State intervention in the mining sector. It fixes the conditions for obtaining a mining title or an authorization. It defines the various types of mining and quarrying titles and their characteristics. It describes the rights and obligations attached to the exercise of mining or quarrying activities by the holders of mining titles, their relationship with the State and with the Local Communities. It also constitutes the fiscal framework for the exercise of mining activities in Guinea.

In addition, the 'Mining Code' is supplemented by several laws, decrees and orders, including (but not limited to):

- Law N°L/2011/005/CNT of 11 August 2011 on the constitution and management of mining assets;
- Decree D/2014/012/PRG/SGG of 17 January 2014 on the Management of Mining Permits and Titles;
- Decree D/2014/013/PRG/SGG of 17 January 2014 on the application of the financial provisions of the Mining Code;
- Decree D/2014/014/PRG/SGG of 17 January 2014 adopting a guideline for carrying out an environmental and social impact assessment of mining operations;
- Decree D/2014/015/PRG/SGG of 17 January 2014 adopting a model standard mining agreement;
- Order A/2016/5002/MMG/SGG of 1 September 2016 establishing a new cadastral procedure; and
- Joint Order A/2016/6074/MEF/MGG/SGG of 26 September 2016 setting the rates and tariffs of fixed fees, taxes and royalties relating to the granting, renewal, extension, transfer and/or amodiation of mining permits and authorizations.

Finally, other laws also have or are likely to have an impact on projects and operations relating to mining resources.

These include:

- Law L/94/005/CTRN of 15 February 1994 on the Water Code;
- Ordinance n°1987-45/PRG of 28 May 1987 on the Environmental Protection and Development Code;
- Ordinance no. 1992-19 of 30 March 1992 on the Land and Property Code;
- Law no. 1999-13 of 22 June 1999 on the Forestry Code;
- Law no. 1995-51 of 29 August 1995 on the Pastoral Code;
- the General Tax Code; and
- Law L/95/046/CTRN of 29 August 1995 on the Livestock and Animal Products Code.

Which government organizations manage the mining law?

The Ministry of Mines and Geology is the entity responsible for the promotion and control of prospecting and mining activities in the Republic of Guinea. The same Ministry is also responsible for the elaboration of legislative and regulatory dispositions applicable to the mining sector. Article 9 of the Mining Code sets out the main governance structures of the sector.

The governance of the mining sector is provided by a central and other deconcentrated departments and services forming the Mining Administration.

These include:

- the National Directorate of Geology;
- the National Directorate of Mines;
- the National Bureau of Expertise for Diamonds, Gold and other Precious Materials (BNE);
- the Centre for Mining Promotion and Development (CPDM);
- the Study and Strategy Office (BES);
- the Precious Goods Anti-Fraud Brigade;
- the Directorate General of Mining Projects;
- the General Inspectorate of Mines and Geology;
- the Directorate General of Geo Services;
- the Mining project coordinators and deputy coordinators;
- the Centre for Mining Promotion and Development (CPDM);
- the Guinean Mining Heritage Company (Soguipami); and
- the Bureau d'Etude et de Stratégie (BES).

The attributions, composition, organization and functioning of the said services are determined by a decree of the President of the Republic. A National Mining Commission is created, made up of representatives of the State and the other entities of the Nation, responsible for participating, on the basis of the dispositions of the Mining Code, in the examination of applications for the granting, renewal, transfer, extension and withdrawal of mining titles. Its powers, organization, composition and functioning are set by decree of the President of the Republic.

Similarly, a Technical Committee on Titles is created, an internal committee of the Mining Administration responsible for examining applications for the granting, renewal, extension and withdrawal of mining titles prepared by the CPDM. Its attributions, organization, composition and functioning are fixed by order of the Minister in charge of Mines.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Article 15 of the Mining Code provides that:

"Any physical or moral person with the technical and financial capacity to carry out these activities may carry out the recognition of showings, the search for mining substances or quarries, under the conditions of the present law. The following may exploit mining or quarrying substances under the conditions of this law:

- any physical or moral person, public or private, under Guinean law, justifying the technical and financial capacities to undertake the requested exploitation.
- any physical or moral person of Guinean nationality duly authorized to engage in semi-industrial or artisanal exploitation.
- A decree of the President of the Republic specifies what is meant by "technical and financial capacity.
- Persons or companies subject to international sanctions or criminal investigations related to fraud, corruption or money laundering may not obtain Mining Titles or Authorizations".

Furthermore, any mining activity in the Republic of Guinea is subject to the prior issuance of a mining title. Thus, in accordance with Article 17 of the Mining Code, the right to engage in mining or quarrying activities can only be acquired by virtue of the following mining titles and authorizations.

Mining titles:
- research permit;
- industrial and semi-industrial mining permits; and
- mining concession.

Authorizations:
- authorization for the exploration of mining or quarrying substances;
- authorization to search for careers;
- authorization for artisanal exploitation of mining or quarrying substances; and
- authorization for the exploitation of quarry substances permanent or temporary authorization).

Research permits
The Exploration Permit is granted by order of the Minister, on the recommendation of the Centre de Promotion et de Développement Minier (CPDM), after a favourable opinion of the Technical Committee on Titles, to the applicant who has submitted an application that complies with the requirements of this Code and its implementing texts and who has sufficient technical and financial capacity, as well as work and expenditure commitments that are deemed acceptable.

The CPDM is responsible for examining the application and carrying out the cadastral evaluation. The technical and environmental assessment and the related opinions are the responsibility of the National Directorate of Mines and the Ministry of the Environment in relation to the Technical Committee for Titles. The decision to approve or refuse the Mining Title, its notification and publication are the responsibility of the Minister in charge of Mines.

The terms and conditions of the award are as follows:
- for areas without geological information or with geological information that does not allow a deposit to be identified: "the first applicant is granted title"; and
- for the perimeters already prospected, containing a known deposit or arousing the interest of several companies, the award procedure will be that of competition by competitive and transparent invitation to tender according to rules to be defined in the regulatory texts, and approved by the National Mining Commission. The tender must be concluded within a maximum period of one year from the entry into force of the Ministerial Order reserving the deposit to be tendered.

On the proposal of the Minister in charge of Mines, a decree of the President of the Republic opens the invitation to tender:
- The Exploration Permit for semi-industrial exploitation will be granted exclusively to natural persons of Guinean nationality, to companies with capital held entirely by Guineans and to nationals of countries granting reciprocity to Guineans;
- The acts that enshrine the attribution, extension, renewal, transfer, farm-out, withdrawal or renunciation of mining titles must be published in the official gazette and on the official website of the Ministry in charge of Mines, or any other site designated by the Minister. The opening up of geographical areas for exploration must be widely publicized; and
- The placing on the market, by invitation to tender, of the Perimeters already prospected, with a view to the granting of an Exploration Permit, must be published in at least two widely circulated newspapers, at least 45 days before the deadline for the submission of bids.

Operating permits
The Industrial or Semi-Industrial Mining Permit is granted by right, to a company under Guinean law, by Decree issued by the Council of Ministers on the proposal of the Minister in charge of mines, after a favourable opinion from the National Mining Commission, to the holder of the Exploration Permit who has complied with the obligations incumbent on him by virtue of the Mining Code and who has submitted an application in accordance with the regulations, at least three months prior to the expiry of the period of validity of the Exploration Permit by virtue of which the application has been made.

The company holding the Exploration Permit shall, for this purpose, create a subsidiary under Guinean law.

Composition and modalities of examination of the file constituting the application for the granting of the Exploitation Permit
The application for an Industrial or Semi-Industrial Mining Permit must be accompanied by a dossier, the details of which are set out in the mining regulations, and which must include, inter alia, each of the following elements:

- a copy of the valid Research Permit and proof of payment of taxes and royalties due; the report on the results of the

investigations as regards the nature, quality, volume and the geographical location of the identified mineral resource;
- a plan of the first or second handover, as the case may be, accompanied by the results of the results of the research work and corresponding to half of the previous area;
- a feasibility analysis including a plan for the development and exploitation of the deposit including, among others:
- a detailed Environmental and Social Impact Assessment, complete with an Environmental and Social Management Plan, including a Hazard Plan, a Risk Management Plan, a Health and Safety Plan, a Rehabilitation Plan, a Relocation Plan for Populations Affected by the project and measures to mitigate negative impacts and optimize positive impacts;
- the economic and financial analysis of the project and the plan for obtaining the necessary permits and authorizations;
- plans and estimates for industrial infrastructure;
- a plan to support Guinean enterprises for the creation and/or strengthening of the capacities of PME/PMI or enterprises owned or controlled by Guineans for the supply of goods and services widely used in their activities and a plan to promote the employment of Guineans, the minimum of which should be in line with the quotas set out in this Code;
- the detailed timetable of the work to be carried out;
- a plan for community development annexed to the Local Development Agreement which covers, among other things, training, medical, social, school, road, water supply and electricity infrastructures. The signing of this Local Development Agreement will take place upon obtaining the Title; and
- an architectural plan of the company's headquarters together with a request for the allocation of a plot of land addressed to the competent Administration; the headquarters must necessarily be built within a maximum period of three years from the granting of the Mining Permit for iron ore, bauxite, gold and diamond.

For Semi-Industrial Permit holders, the environmental obligations and those relating to the Community Development Plan will be specified in the decree establishing the permit. The CPDM is responsible for the application and the cadastral evaluation.

The technical and environmental assessment and related opinions are the responsibility of the Direction Nationale des Mines and the Ministry of the Environment in conjunction with the Comité Technique des Titres and the Commission Nationale des Mines.

The decision to approve or refuse the Mining Title, its notification and publication remain subject to the provisions of this Code and are the responsibility of the Minister.

Status of the Exploration Permit after award of the Mining Concession

The granting of a Mining Concession results in the cancellation of the Exploration Permit within the perimeter of the Mining Concession.
However, research related to exploitation may continue. Within the framework of this research, in the event of the discovery of a Mining Substance of a category other than that for which the Concession has been granted, the holder will have a right of pre-emption for its exploitation. This right must be exercised within a maximum period of eighteen months from the date of notification of the said discovery to the State.

The examination of the application and the cadastral evaluation are carried out by the CPDM. The technical and environmental assessment and related opinions are the responsibility of the Direction Nationale des Mines and the Ministry of the Environment in conjunction with the Comité Technique des Titres and the Commission Nationale des Mines. The decision to approve or refuse the Mining Title, its notification and publication are the responsibility of the Minister in charge of Mines.

A Mining Convention setting out the terms of exploitation of the Concession shall be negotiated and signed in accordance with the provisions of Article 18 of this Code. In the absence of a valid Exploration Permit and for an identified Deposit, the Mining Concession is granted following a competitive and transparent tender procedure according to rules to be defined in the regulatory texts. The call for tenders is implemented by the Technical Committee on Titles in relation to the National Mining Commission.

Publication of acts relating to the Concession

Acts granting, extending, renewing, transferring, amending, withdrawing or renouncing a Mining Concession must be published in the official gazette and on the official website of the Ministry in charge of Mines, or any other site designated by the Minister. The placing on the market, by invitation to tender, of the Perimeters already prospected with a view to the granting of a Mining Concession, must be published in at least two widely circulated newspapers, at least forty-five days before the deadline for the submission of tenders.

Authorization for recognition

The authorization for recognition is issued by the National Director of Mines on the proposal of the CPDM, after advice from the National Directorate of Geology to applicants for Exploration Permits in the areas referred to in Article 42, with the exception of the areas referred to in Articles 111 and 112 of this Code.
With regard to artisanal mining, an individual prospector's charter is issued to any individual of Guinean nationality wishing to prospect for minerals in an artisanal manner within a given prefecture. This card is equivalent to an Artisanal Reconnaissance Authorization. The procedures for issuing and renewing the individual prospector's card are set out in regulations.

Authorization for quarrying

The Authorization to search for quarries is issued in the same form and under the same conditions as the Authorization to recognize mining substances. The Authorization for quarry research is issued by the National Director in charge of Mines through his deconcentrated services after a favourable

opinion from the Technical Committee for Titles. The surface area for which an Authorization to Search for Quarries is issued may not exceed the limits of the prefecture concerned.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production activities?
As a preliminary point, it should be noted that oil and gas exploration and production activities are governed by Law L/2014/034/AN of 23 December 2014 on the Petroleum Code of the Republic of Guinea.

According to Article 32 of the Petroleum Code: "The Petroleum Contract confers on the Contractor the exclusive right to carry out, within the perimeter defined by the said contract, indefinitely in depth, research activities, as well as exploitation activities in the event of a declared commercial discovery and after approval by the Minister in charge of Hydrocarbons of the development plan relating to the said discovery."

Thus, Article 35 of the same code in its paragraph 1 provides that: "in the event of the discovery of Natural Gas, the State and the Contractor must together evaluate the possible outlets, both on the local market and for export, as well as the means necessary for its commercialization, and consider the possibility of joint commercialization of the shares of the Contractor and the State".

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Based on the Mining Code and our experience in the field, the local population does not have equity rights in mining projects. However, it should be noted that in accordance with Article 130 of the Mining Code, any holder of a mining title must enter into a local development agreement with the local community residing on or in the immediate vicinity of its mining title. The purpose of this local development agreement is to create the conditions for effective and transparent management of the local development contribution paid by the mining title holder, and to build the capacity of the local community in planning and implementing the community development program.

Are there any special rules or restrictions applicable to foreign applicants?
In accordance with Article 15 of the Mining Code, only legal persons under Guinean law may be granted a mining title. Similarly, non-industrial mining activities can only be carried out by natural persons of Guinean nationality.

Identify what rights the state may have. Does the state have any equity rights in mining projects?
Under the terms of Article 150-I paragraph 1 of the Guinean Mining Code: "From the date of entry into vigour of the present Code, the attribution by the State of a Mining Title immediately gives the right to a free participation of the State, up to a maximum of fifteen percent (15%), in the capital of the company holding the Mining Title".

It appears from the above that the Guinean State is entitled to a free participation in the share capital of all companies holding mining titles in Guinea and that this participation of the State in the provision of mining resources is fixed at 15% and covers all substances. Also, notwithstanding the above-mentioned right of free participation of the State in mining projects, it would be important to note that the Guinean Mining Code in its articles 137, 138 and 150 also grants the State in mining projects, the right of commercialization, the right of transport and an additional participation right.

TREATMENT AND ENRICHMENT

Are there any requirements for the recovery of extracted minerals?
In accordance with Article 139 of the Mining Code of the Republic of Guinea, the holder of an exploitation title, except for artisanal exploitation, or any other Guinean or foreign investor is exhorted to establish in the Republic of Guinea installations for the conditioning, treatment, refining and processing of mining or quarrying substances, including the elaboration of metals and alloys, concentrates or primary derivatives of these mining substances, in accordance with the regulations in force.

Thus, it should be noted that any mining title holder who engages in the processing of ore benefits from the incentives provided for in Article 161 of the Code relating to mining tax, in particular the application of reduced rates to finished products and the exemption from the increase in mining tax applied to title holders who have not invested in processing after an initial period.

Are there restrictions for the exports of minerals?
As a preliminary point, it should be noted that in accordance with Article 141 of the Mining Code, the purchase, sale, import and export of mineral or fossil substances as well as the packaging, treatment, refining and processing operations, including the production of metals and alloys, concentrates or primary derivatives of these mineral or fossil substances carried out on the territory of the Republic of Guinea are subject to prior declaration to the Minister.

The export of precious materials (gold, diamonds, etc.) in Guinea is also subject to prior declaration to the BCRG.

Also, in accordance with Article 137 of the Mining Code, the State reserves a maritime transport right of fifty percent (50%) on exports of the production.

Mining substances extracted in Guinea by holders of a mining title exported in their raw state, without having first been processed into semi-finished or finished products in Guinea, are also subject to a specific export tax.

TRANSFER OF RIGHTS AND VOTING RIGHTS

Are there any statutory approvals required to dispose of the exploration and mining rights?
In accordance with Article 90 of the Mining Code, the Exploration Permit, being non-divisible, may not be assigned or transferred in whole or in part, even in the event of death. However, mining permits and concessions may be partially or totally assigned or transferred.

Thus, when a Mining Permit or Concession has several holders, the consent of all of them is required for the assignment or transfer of the rights of one of them, and in the event of the death of one or more of them, the consent of the successors is required. Any decision to assign, transfer or lease out all or part of a mining title, and any formal acquisition of a mining title, must receive a favorable opinion or validation from the National Mining Commission before being submitted to the Minister in charge of mining for approval.

In addition, any contract or agreement by which the holder of a mining title promises to entrust, assign or transfer, in whole or in part, or entrusts, assigns or transfers, in whole or in part, the rights and obligations resulting from a mining title must also be submitted for prior approval by the Minister in charge of Mines. This authorization is granted by Decree with respect to transactions involving mining concessions.

Are there any restrictions on the transfer of voting interest in entities holder of exploration or mining rights?
In accordance with Article 90 of the Mining Code, any change in the direct or indirect control of any holder of an interest in a mining title shall be subject to the approval or endorsement of the Minister in charge of Mines. Any direct or indirect, partial or cumulative acquisition equal to or greater than five percent (5%) of the capital of the company holding the mining title must be submitted to the Minister in charge of Mines for validation.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
In accordance with Article 123 et seq. of the Guinean Mining Code, mining rights do not extinguish property rights. No right of exploration or exploitation is valid without the consent of the landowner, his assignees, with respect to activities involving the surface or affecting it. The rights of the owners, usufruct and occupants of the land as well as those of their assignees are not affected by the issuance of mining titles and authorizations except as provided for in this section.

The holder of a mining title or authorization may occupy the land necessary for his activities within the perimeter of the title or authorization if he is authorized to do so by his title or authorization or by order of the Minister. It may also be authorized by the decree concerning the project of national interest (PIN) or public utility (DUP). So, the holder of the mining title or authorization must pay compensation to any lawful occupants of the land required for his activities, to compensate for the disruption of enjoyment incurred.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
In addition to the provisions of the Mining Code on environmental protection, any mining activity undertaken must comply with the legislation and regulations on environmental protection and management and on health. Any application for a mining permit or title must include an environmental and social impact assessment in accordance with the Environmental Code and its implementing regulations as well as international standards in this area.

The requirements of the administration are adjusted according to the scale of the planned work, ranging from a simple Environmental Impact Statement for an Exploration Permit to a detailed Environmental and Social Impact Assessment, accompanied by an Environmental and Social Management Plan, including a Hazard Plan, a Risk Management Plan, a Health and Safety Plan, a Rehabilitation Plan, a Resettlement Plan for Populations Affected by the project and measures to mitigate negative impacts and optimize positive impacts for an Exploitation Permit or a Mining Concession (article 142 of the Mining Code).

INDIGENOUS TITLE & LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
To be lawful and enforceable under Guinean law, property rights (land rights) must be registered in the cadastral plan, and the land registry. However, a significant portion of Guinean land, particularly in rural areas, has neither been registered on the cadastral plan nor on the land register and remains subject to customary laws. It should be noted that the Land Code does not explicitly recognize customary rights in the Republic of Guinea.

However, it should be noted that if there are persons (legal entities or individuals) who currently occupy a portion of the

mining project site and can demonstrate that they occupy that portion in person, peacefully, on an ongoing basis and in good faith, it would be necessary to:

- have such occupants register their rights in accordance with the Land Code (a detailed procedure is provided for in the Land Code);
- establish that such occupants have no property rights in the project site; or
- enter into an agreement with such occupants whereby they agree to relinquish any rights they may have in the relevant part of the project site.

HEALTH AND SAFETY

What legislation governs health and safety in mining?

With regard to the safety and health of employees in mining companies, it is the Labor Code, in particular articles 231.1 and following which applies:

- The first paragraph of article 211.1 provides that: "The drafting of internal regulations is mandatory in all companies and establishments usually employing at least twenty-five employees". Article 211.2 provides in its first paragraph that "To protect the life and health of employees, the employer is required to take all useful measures that are adapted to the operating conditions of the company. [...]";
- This submission of mining companies to the labor code is confirmed by Article 108 of the Mining Code, which provides that: "The holder of a Mining Title or Authorization, as well as the companies working on his behalf, must comply with the requirements of the applicable law with respect to labor standards";
- However, Articles 142 et seq. of the Mining Code set out the rules for health and safety protection in the mining industry;
- In addition, Article 142 of the Mining Code provides that: "In addition to the dispositions of the present law, any Mining Activity undertaken must obey the legislation and regulations concerning the protection and management of the environment and health. [...]";
- The second paragraph of this disposition provides that: "The requirements of the Administration are modulated according to the importance of the planned works, varying from a simple Environmental Impact Notice for an Exploration Permit to a detailed Environmental and Social Impact Assessment, accompanied by an Environmental and Social Management Plan, including a Hazard Plan, a Risk Management Plan, a Health and Safety Plan, a Rehabilitation Plan, a Resettlement Plan for Populations Affected by the project and measures to mitigate negative impacts and optimize positive impacts for an Exploitation Permit or a Mining Concession".
- In addition, the first two (2) paragraphs of Article 145 of the same code provides that: "Any holder of a Mining Title or Authorization is required to respect the most advanced health and safety standards as established by the Minister in charge of Mines in collaboration with the Minister in charge of Public Health, the Minister in charge of Labour and the Minister in charge of the Environment. In the event that these standards are lower than those observed elsewhere by the holder, the latter shall prevail. In this respect, he is obliged to make and apply regulations in accordance with these standards to ensure optimal health and safety conditions for workers".

Local Content

In the Republic of Guinea, Local Content is governed primarily by Law L/2022/010/CNT on Local Content.

In accordance with its Article 1, local content is a set of requirements linked to aspects of local development, and the improvement of living conditions for local populations, encompassing initiatives to promote the use of national goods and services, the integration of the national private sector, the employment of nationals and the development of local workforce participation, and the transfer of technologies and skills throughout the project value chain.

Furthermore, in accordance with article 3 of the Local Content Act, with the exception of local micro, small and medium-sized enterprises (MSMEs), all companies, whether local or foreign, whatever their sector of activity, are subject to the provisions of this Act. This law applies to all projects, whether sector-specific or not, whether financed by public resources or carried out by operators under public-private partnership contracts or otherwise.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?

As a preliminary point, it should be noted that since September 5, 2021, the Guinean constitution has been suspended and replaced by a transition charter. It should be noted that this charter is a fundamental legal text, which applies to all and represents the constitution of the Republic of Guinea. It shall remain in effect until the publication in the official gazette of the Republic of the new constitution adapted by referendum. It is important to note that neither the Guinean constitution nor the Transitional Charter directly impacts exploration and exploitation rights in the Republic of Guinea. However, it should be noted that the right to property is subject to constitutional and legal protection in the Republic of Guinea.

Are there administrative recourses in the mining law?

According to our in-depth research and experience in the domain, there are indeed possibilities for administrative appeals in the mining sector, including appeals against a decree, an order or a decision to withdraw a mining title.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?
In the Republic of Guinea, impositions in terms of taxes and royalties on mining title holders vary according to the phases of the mining projects.

In the Research phase
During the research phase, research permit holders benefit from the temporary admission regime for the import of equipment, materials, machinery, raw materials and consumables necessary for the research phase. However, materials, spare parts of commercial vehicles, necessary for the operation of professional materials and equipment included in the mining list, are subject to the following duties and taxes:

- the liquidation processing fee;
- the registration tax;
- the Community levy; and
- the additional cent.

Therefore, notwithstanding the exemptions mentioned above, holders of a Research Permit are subject to the common law reporting obligations set out in Articles 108, 238, 239, 241 of the General Tax Code as well as to the common law reporting obligations set out in the Customs Code.

In the operational phase
In accordance with Article 176 of the General Tax Code (Code Général des Impots "CGI"): "During the exploitation phase, the holders of a Mining Title are subject, according to the rules of common law, to all taxes other than those for which they benefit from the exemption provided for in Article 175 of this Code, and in particular but not exclusively:

- VAT, excluding VAT on the import of capital goods included in the mining list referred to in the first category provided for in Article 167 of this Code;
- Industrial and Commercial Profit Tax and Corporate Tax at a rate of 30%;
- to income tax on securities at a rate of 10%;
- registration duties on deeds relating to the creation of the company, increase of capital by new contributions, capital contributions, incorporation of profits or reserves, or merger;
- the lump-sum payment on salaries;
- withholding tax on non-wage income;
- withholding tax on salaries;
- the single tax on vehicles, with the exception of construction vehicles and machinery, at the current rate;
- the contribution to vocational training or the apprenticeship tax, as appropriate;
- the Local Development Contribution, referred to in Article 130 of this Code;
- the fixed duties and annual fees referred to in Article 159-II of this Code;
- the surface fees referred to in Article 160;
- the tax on the extraction of mining substances other than precious metals referred to in Article 161 of this Code;
- the tax on the industrial or semi-industrial production of precious metals referred to in Article 161-1 of this Code;
- the export tax on mining substances other than precious metals referred to in Article 163 of this Code; and
- the export tax on precious stones and gems referred to in Article 163-II of this Code.

In addition, holders of a Mining Title are subject to the payment of environmental taxes and fees on classified establishments, in accordance with the provisions of the Environmental Code and its application texts'.

Are there any royalties payable to the State in addition to taxes?
In addition to the royalties provided for in the CGI, the holder of a mining title or authorization is subject, for its activities in Guinea, to the payment of duties and royalties.

Thus, in accordance with the dispositions of Article 160 of the Mining Code, any holder of a Mining Title or an authorization to exploit Quarrying Substances which gives him the right to engage in Mining or Quarrying Activities, is subject to the annual payment of a surface royalty, in accordance with the table below for Mining Substances, and a joint order of the Minister in charge of Mines and the Minister in charge of Finance for Quarrying Substances.

This surface royalty is proportional to the area described in the Mining Title or Authorization. The modalities for the declaration and payment of this surface fee are set by a joint decree of the Minister in charge of Finance. These rates are updated by joint decree of the Minister of Finance and the Minister of Mines.

NATURE OF	FEES/ SURFACE AREA USD/KM2		
	GRANT	1ST RENEWAL	2ND RENEWAL
Research permits	10	15	20
Industrial license	75	100	200
Semi-industrial	20	50	100
license	150	200	300
Mining concession	150	200	300
Dredging permit	150	200	300

SENEGAL
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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
In Senegal, mining activities are currently regulated by the following laws:

- Regulation 18/2003 / CM / UEMOA of 23 December 2003 being the Community Mining Code of the member countries of the West African Economic and Monetary Union (UEMOA);
- ECOWAS Directive C / DIR 3/05/09 of 27 May 2009 on the harmonization of guiding principles in the mining sector
- Law No. 2016-32 dated November 8, 2016 on the mining code (local law);
- Decree 2017-459 dated March 8, 2017 laying down the procedures for the application of Law N ° 2016-32 on the Mining Code;
- Law n°2023-15 of August 02, 2023 on the Environmental Code and its implementing decree;
- Law n. 2022-17 of May 23, 2022 on local content in the mining sector; and
- Order defining the definition of gold panning corridors in Kédougou and Tamba.

The above-mentioned legislation is in the process of being amended and a new one will be further enacted.

Which Government Bodies administer mining law?
There are six directorates under the Ministry of Mines and Geology who manage the mining sector in Senegal:

- Director of Mines and Geology;
- Director of Careers;
- Artisanal and Small-Scale Mining Directorate;
- Directorate of Regulations, Mining Production and Statistics;
- Directorate of Control and Monitoring of Mining Operations; and
- Directorate of Geology.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

The rights granted to conduct mining activities in Senegal are as follows:

Prospecting Authorisation
Any legal person may engage in prospecting activities in all or part of the territory, subject to the prior obtaining of a prospecting permit issued by the competent departments of the mines administration under the conditions fixed by decree. The authorisation is issued for a period not exceeding six months by the Minister of Mines. It is renewable once, in the same form, if the beneficiary has complied with its obligations. The prospecting authorisation may be withdrawn or restricted for failure to fulfil the obligations provided for in this Code.

Research License
The research permit is issued for a period not exceeding four years by order of the Minister of Mines, subject to the prior rights of third parties on the perimeter on which the permit bears. It can be owned by any legal person. For the same substance, the same legal person may not possess more than two research permits.

The research permit is renewable twice, by order of the Ministry of Mines for consecutive periods not exceeding three years each time. At each renewal, by order of the Ministry of Mines, for consecutive periods not exceeding three years each time. At each renewal of the research permit, its area is reduced by one quarter.

Mining Exploitation License
The mining title of exploitation concerns the mining license. It constitutes immovable property and must be compulsorily owned by a commercial company under Senegalese law. It is subrogated in the rights of the holder of the research license from which it derives. The operating permit is indivisible.

The mining license is issued by decree, for a minimum period of five years and not exceeding twenty years, and is renewable. The period of validity of the mining exploitation is fixed according to the importance of the proved reserves, which is highlighted in a feasibility study, and the investments necessary for the development and the exploitation.

The mining permit may be renewed by decree, for one or more periods, in the same form, until the deposit is exhausted. In case of exploitation of a mining license without renewal, the mine and its dependents are transferred in full ownership to the State, free of all charges, including its dependents.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
The Law no 2019-03 dated February 1, 2019 being the new Petroleum Code and its executive Decrees along with Law no. 2020-06 dated February 7, 2020 being the Gas Code are the core legislation governing Oil and Gas activities

The new Petroleum Code provides for four hydrocarbon mining titles that can be granted: (i) a permit for prospecting, (ii) a hydrocarbons exploration permit, (ii) an operation of hydrocarbon permit, and (iv) a transport, liquefaction and storage of hydrocarbons.

Permit for Prospecting
This title is granted under a Ministerial Order of the Minister of Hydrocarbons for a period that cannot exceed two years. It provides to its holder within the limit of its zone the non¬exclusive right to conduct preliminary works of hydrocarbons prospecting excluding drillings of more than two hundred meters deep unless otherwise specified in the permit for prospecting. The permit for prospecting cannot be granted for a zone subject to an hydrocarbons mining title. That permit can neither be transferred nor assigned to third party.

Several permits for prospecting may be granted concurrently in the same area. A hydrocarbon title may be granted at any time, on all or part of the area under exploration. This permit then lapses automatically on the surface concerned without any compensation being due.

However, where applicable, the holder of the permit shall be informed, thirty days in advance of the State's intention to grant a title and to conclude a petroleum contract on the surface concerned.

The permit for prospecting does not confer on its holder any right or privilege to contract for the extraction or disposal of hydrocarbons discovered during the course of exploration works.

Hydrocarbons Exploration Permit
A hydrocarbon exploration permit confers on the holder, within the limits of its area, the exclusive right to carry out all works, including drilling in view of exploring and discovering hydrocarbon deposits, in accordance with the terms of the petroleum contract attached to the said permit.

The permit is granted by decree for an initial period not exceeding four years but renewable upon request of its holder, with a maximum of two renewals each of which do not exceed two years.

Any renewal shall be subordinated to the compliance by the holder with its obligations, and each part of the exploration area is removed.

An extension that could not exceed one year can be exceptionally granted at the end of the initial period, or of the first renewal, and provided the work has started and the technical evidence provided. The second renewal period can be extended for the time necessary for the continuation of the evaluation work following a discovery.

Operation of Hydrocarbon Permit
Hydrocarbon deposits are operated under:
- either a provisional operation of hydrocarbon permit granted by order of the Minister in charge of Hydrocarbons; or
- an exclusive operation of hydrocarbon permit granted by decree.

Concerning the provisional operation of a hydrocarbon permit, its holder may, upon request and during the validity period of the hydrocarbon exploration permit, be authorized to exploit on a provisional basis the productive wells for a maximum period of six months, during which time the holder shall continue the delimitation and the development of the deposit.

The hydrocarbons resulting from the provisional operation of a hydrocarbon permit are subject to the fiscal provisions and rules of sharing between the State and the contractors. The provisional operation of hydrocarbon shall automatically lapse in the event of the expiration of the hydrocarbon exploration permit unless an application for an exclusive operation of hydrocarbon is filed.

Regarding the exclusive operation of hydrocarbon permit, it confers on its holder, within the limits of its area, the exclusive right to carry out all petroleum operations, according to the stipulations of the production sharing contract attached to it. The holder of the exclusive operation of a hydrocarbon permit is subject to the payment of a production bonus, non-recoverable for oil costs and corporate income tax, the terms and conditions of which are set out in the production sharing contract.

Any commercial discovery of hydrocarbons made by the holder of a hydrocarbon exploration authorisation gives him the exclusive right, in the event of an application before the expiration of such permit, to the granting of an exclusive operation of a hydrocarbon permit covering the area of the commercial discovery.

The granting of an exclusive operation of a hydrocarbon permit entails the cancellation of the hydrocarbon exploration permit within the granted area, but leaves it in force until its expiration outside this area, without modifying the rights and obligations deriving from the hydrocarbon exploration permit.

The exclusive operation of a hydrocarbon permit is granted to the holder for a maximum initial period of twenty years. At the end of this initial term, it may be renewed, once only, by decree, at the request of the contractor, for an additional period of up to ten years. Renewal is not automatic.

Upon expiration of the exclusive operation of a hydrocarbon permit, the State reserves the right to recover it for the benefit of its national oil company or to grant it according to the terms and conditions defined in the Code.

Transport, Liquefaction and Storage of Hydrocarbons
We will distinguish between the authorisation to transport hydrocarbons, on the one hand, and the liquefaction of natural gas and the storage of hydrocarbons, on the other hand.

Authorisation for the Transportation of Hydrocarbons
The contractor holds, during the period of validity of an

exclusive operation of a hydrocarbon permit, the exclusive right to transport the production resulting from its exploitation activities. The authorisation to transport hydrocarbons is issued by order of the Minister in charge of hydrocarbons.

It is issued exclusively to any legal entity under Senegalese law that can prove it has the technical and financial capacity to carry out hydrocarbon transport activities. This transport is made to the storage, processing, loading or consumption points, under the conditions defined by the Petroleum Code and the texts taken for its application and in accordance with the stipulations of the petroleum contract.

The hydrocarbon transport authorisation order entitles the holder to build and operate hydrocarbon transport infrastructures. The order of the Minister in charge of Hydrocarbons sets the duration of the authorisation for the transport of hydrocarbons. However, for transport facilities in the maritime zone, the authorisation for the transport of hydrocarbons is issued by joint order of the Minister in charge of Hydrocarbons and the Minister in charge of Maritime Affairs.

The rights to transport hydrocarbons thus referred to may be transferred to third parties, individually or jointly, by any holder of exclusive exploitation rights under the conditions defined by the oil contract. This transfer is made in compliance with the conditions set out in the Petroleum Code relating to the construction and operation of the installations and pipelines and the terms of the petroleum contract. The transfer deed is notified to the Minister in charge of hydrocarbons for approval.

The holder of a hydrocarbon transport permit must accept the passage of hydrocarbons from other fields, subject to compatibility with the conditions of use of the transport infrastructures referred to in the Petroleum Code and within the limits of the excess capacity available. The use by third parties of the transport infrastructures held by a transport permit holder gives rise to the payment of a tariff fixed by order of the Minister in charge of hydrocarbons.

In the event that several hydrocarbon discoveries are made in the same geographical area, the operators shall join together for the construction and/or joint use of facilities and pipelines for the evacuation of all or part of the production of these discoveries. In the absence of an agreement, the Minister in charge of hydrocarbons shall request the operators to associate themselves for the execution of the abovementioned activities.

Natural Gas Liquefaction and Hydrocarbon Storage

The rules applicable for transporting hydrocarbons, described above, are those that apply to natural gas liquefaction operations and to the storage of hydrocarbons.

The Gas Code provides for two types of regimes: the licensing regime and the concessions regime.

The Licensing Regime

A license is granted to any legal entity under Senegalese law that can prove it has the technical and financial capacity to carry out import, export, re-export, aggregation, processing, storage, supply of natural gas, and transport and distribution of liquefied and compressed natural gas.

The license is awarded to legal entities under Senegalese law through a call for tenders or direct consultation, by order of the Minister in charge of hydrocarbons. The modalities of implementation of the call for tenders and direct consultation as well as the conditions of admissibility of the request are fixed by decree.

The license is accompanied by specifications defining the operator's obligations.

The Minister in charge of hydrocarbons grants or rejects applications for the licenses provided for in this Code, after receiving the opinion of the Regulatory Body. Reasons shall be given for any rejection of a license application.

The license may be renewed by the Minister in charge of hydrocarbons after the opinion of the Regulatory Body.

The Concession Regime

A concession is granted to any legal entity under Senegalese law that can prove it has the technical and financial capacity to carry out natural gas transmission or distribution activities through pipelines.

The natural gas transmission or distribution concession is awarded to legal entities under Senegalese law through a call for tenders or direct consultation. The terms and conditions of the call for tenders and direct consultation as well as the conditions of admissibility of the application are set by decree. The concession contract is signed by the Minister in charge of Hydrocarbons and the applicant(s) for the concession and is approved by decree and published in the Official Bulletin.

The Minister in charge of hydrocarbons grants or rejects applications for concessions provided for in this Code, after having first received the opinion of the Regulatory Body. Reasons must be given for any decision rejecting an application for a concession. At the request of its holder, the concession contract may be renewed by decree.

The Regulatory Body may make any general amendment to the contracts and/or specifications, subject to the approval of the Minister in charge of hydrocarbons. The conditions of these modifications shall be specified in the relevant exercise titles or specifications.

Any modification made to the contracts and/or specifications, with the exception of those induced by the legislation, in particular on labour and the environment, which affect the obligations of their holders, shall be accompanied by measures tending to preserve the economic balance of the contract.

License or concession holders may assign or transfer their licenses or concessions to legal persons under Senegalese law who have the required capacity. The holder of a license or concession may, during the period of validity, relinquish said license or concession after approval by the Minister in charge of hydrocarbons. In such a case, the licensee or concession holder has the obligation to ensure the continuity of activities until the approval of the Minister in charge of hydrocarbons is obtained.

The Minister in charge of hydrocarbons requires that the obligations and commitments made in the license or concession, including those related to decommissioning and rehabilitation costs, be fulfilled until the relinquishment application is approved.

In addition, the rights conferred by the Gas Code are as follows for activities in the midstream and downstream segments of the gas sector, namely (i) aggregation, processing, storage, import, export, re-export and supply of natural gas in gaseous or liquid form; (ii) pipeline transportation and distribution of natural gas; (iii) transportation and distribution of liquefied natural gas; (iv) transportation and distribution of compressed natural gas:

Importation
Any legal entity planning to carry out natural gas import activities must first obtain a license from the Minister in charge of hydrocarbons. The import license is granted for a period of five years. It may be renewed for the same period provided that the holder has fulfilled its obligations.

Exportation
Any legal entity planning to carry out export activities must first obtain a license from the Minister in charge of hydrocarbons. The export license is granted for a period of five years. It can be renewed for the same period provided that the holder has fulfilled his obligations.

Re-export
Any legal entity intending to carry out re-export activities must first obtain a license from the Minister in charge of hydrocarbons. The re-export license is granted for a period of five years. It can be renewed for the same duration provided that the holder has fulfilled his obligations.

Aggregation
Any legal entity intending to carry out aggregation activities shall first obtain a license from the Minister in charge of hydrocarbons. The aggregation license is granted for a period of five years. It may be renewed for the same period, provided that the holder has fulfilled his obligations.

Processing
Any legal entity planning to carry out processing activities must first obtain a license from the Minister in charge of hydrocarbons. The processing license is granted for a maximum period of fifteen years. It may be renewed in the same manner for a period not exceeding five years, provided that the holder has fulfilled his obligations. The holder of a processing license may engage in any direct activity of construction and operation of natural gas liquefaction or regasification facilities.

Storage
Any legal entity planning to carry out storage activities shall first obtain a license from the Minister in charge of hydrocarbons. The storage license is granted for a maximum period of fifteen years. The license may be renewed in the same manner for a period not exceeding five years provided that the holder has fulfilled his obligations.

Transportation by Gas Pipelines
Any legal entity planning to carry out pipeline transportation activities must first obtain a concession. A decree approves the contract attached to the pipeline transport concession. The pipeline transport concession is granted for a maximum period of fifteen years. The concession may be renewed by decree in the same manner for a period not exceeding five years, provided that the holder has fulfilled its obligations. Only one concession may be granted for a clearly identified transmission system.

The holder of a pipeline transportation concession is responsible for the operation, maintenance and development of the transportation network dedicated to it.

The holder of the pipeline transmission concession concludes, with gas suppliers, aggregators, holders of pipeline distribution concessions, eligible customers connected to its network and operators of gas storage facilities, the contracts necessary for the performance of its tasks, according to competitive, non-discriminatory and transparent procedures, in compliance with the tariffs in force. These contracts are submitted to the Regulatory Body for its opinion before they are signed.

Distribution by Gas Pipelines
Any legal entity planning to carry out pipeline distribution activities must first obtain a concession. A decree approves the contract attached to the pipeline distribution concession. The pipeline distribution concession is granted for a maximum period of fifteen years. The concession may be renewed by decree in the same manner for a period not exceeding five years, provided that the holder has fulfilled its obligations. Only one concession may be granted for a clearly identified distribution network.

Supply
Any legal entity intending to carry out supply activities shall first obtain a license from the Minister in charge of hydrocarbons. The supply license is granted for a period of five years. It can be renewed for the same duration provided that the holder has fulfilled his obligations.

Transport and Distribution of Liquefied Natural Gas
Any legal entity planning to carry out liquefied natural gas transportation and distribution activities shall first obtain a

license from the Minister in charge of hydrocarbons. The license of transport and distribution of liquefied natural gas is granted for a period of five years. It can be renewed for the same duration provided that the holder has fulfilled his obligations.

Transport and Distribution of Compressed Natural Gas Any legal entity planning to carry out compressed natural gas transportation and distribution activities shall first obtain a license from the Minister in charge of hydrocarbons. The license of transport and distribution of compressed natural gas is granted for a period of five years. It can be renewed for the same duration provided that the holder has fulfilled its obligations.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
The Government is to be awarded, for free, ten percent of the equity of the resource company that will have to operate the exploitation. The Government can also negotiate for him and/or the private national sector an additional twenty-five percent equity interest.

Petroleum contract holders and companies working on their behalf must:
- Give national private investors having the technical and financial capabilities, the opportunity to participate in oil risks and operations;
- Give preference to Senegalese companies for all construction, supply or service contracts, under equivalent conditions in terms of quality, quantity, price, delivery time and payment;
- Employ, with equal qualifications, Senegalese personnel for the performance of petroleum operations on the territory of the Republic of Senegal;
- Contribute to the maximum technological transfers towards Senegalese companies with accompanying relations;
- Deposit in a first rank financial institution the amount of the guarantee for the rehabilitation and restoration of the sites in the conditions set out in the oil contract; and
- Contribute to the professional training of Senegalese managers and technicians through an annual training program defined in the applicable oil contract.

Are there any special rules or restrictions applicable to foreign applicants?
No, there are not.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The Government is to be awarded, for free, ten percent of the equity of the resource company that will have to operate the exploitation. The Government can also negotiate for the Government, and/or the private national sector, an additional twenty-five percent equity interest.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Subject to foreign exchange regulations and the provisions of the mining code, the holder of a mining permit may freely export the extracted mineral substances, their concentrates, primary derivatives and any other derivatives after having carried out all the legal and regulatory formalities for the export of these substances.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
No statutory consents are required according to regulations governing the mining operations, but the authorisation of Minister in charge of Mines and the payment of the duties and taxes normally due are needed.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
No

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
Authorisation for prospection gives to its holder a non-exclusive right of prospection available for targeted substances over the permitted area. Authorisation for prospection is considered as movable property.

Mining permits give the holder a right to occupy in the national territory to:
- Occupy the land necessary to carry out research and operations, the carrying out of the related activities and the construction of personal dwellings;
- Search and extract construction and stone materials;
- Cut wood needed for this work; and
- Conduct surveys for water supply for staff, construction, installations.

The holder of an operating permit may, both inside and outside the perimeter assigned to him, occupy the land necessary for the performance of his work, subject to the rights of third parties.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Exploration and mining sites are protected by any environmental requirement imposed either by the mining law or the Environment Code in addition to the fact that an environment impact survey should be first conducted.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Occupation of lands by the permit holder gives rights to landowners or occupants and makes provision for just and adequate reparation for any material prejudice caused.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The mining law provides that any legal person carrying out the prospecting, research or exploitation of mineral substances must respect the rules of hygiene and safety, in order to guarantee the safety of persons and goods in mines and quarries. It is in this very sense that the duly authorised sworn agents of the mining administration ensure that the holders concerned comply with the safety, health and environmental protection measures defined in the legislative and regulatory provisions in force.

ROYALTIES AND TAXES

Area Royalties
The mining title holder has to pay annual "area royalties" as following:
- Mining exploration permits and each renewal:
  - o First period of validity: 5000 FCFA/Km2/ year;
  - o First period of renewal: 6500FCFA/Km2/year; and
  - o Second period of renewal: 8000FCFA/Km2/year.
- Mining operation permits and each renewal:
  - o 250.000 FCFA/Km2/year.
- Authorisation of exploitation of little mine:
  - o 50.000 FCFA/ha/ year at the delivery and each renewal.
- Permanently quarrying permit:
  - o 50.000 FCFA/ha/year at the delivery and each renewal.
- Authorisation of exploitation of semi-mechanized mine:
  - o 50.000 FCFA/ha/year at the delivery and each renewal.

Mining Royalties
Most of the tax provisions of the old code were transferred to the tax code in 2012 (pursuant to Law No. 2012-31 and Law No. 2012-32 dated December 31, 2012). This is also the case in the new mining code with the exception of surface royalties, mining royalties and for certain taxes.

The "mining tax" must be paid quarterly and deducted from the market value of the marketed product, as follows:

Iron-ore	Concentrated	5%
	Treated	5%
Phosphate	Calcium aluminate and lime phosphate	1,5%
	Phosphate	5%
Gold	Treated abroad	5%
	Treated locally	3,5%
Other substances		3%

Exemptions
Between the date of grant of the mining title and the date of commencement of commercial production (Investment Period), the mining company is exempt from all taxes, including value-added tax and port charges.
However, several taxes are not affected by this exemption, including:
- the statistical fee;
- community levy; and
- other applicable Community taxes.

In addition, the exemption from the export tax has been abolished.

Fixed Entrance Fees
The allocation, renewal, extension or transformation, as well as the transfer or improvement of research and exploitation mining titles, are subject to the payment of fixed entry fees, paid in one instalment, as follows:

Research Licence	2500 000 F CFA
Operating licence	10 000 000 F CFA
Permanent Quarry Permit	2500 000 F CFA
Termporary Quarry Operating Authorisation	1000 000 F CFA
Authorisation to operate a small mine	2500 000 F CFA
Semi-mechanized mining authorisation	1500 000 F CFA
Authorisation for artisanal mining	50 000 F CFA





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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
South African Mining Law is regulated by the Mineral and Petroleum Resources Development Act, 28 of 2002 ("MPRDA") which is the predominant piece of legislation dealing with acquisitions or rights to conduct reconnaissance, prospecting and mining. The MPRDA became effective on 1 May 2004 and substitutes the erstwhile hybrid system of a common law system with statutory interference. There are several other pieces of legislation which deal with such ancillary issues such as royalties (the Mineral and Petroleum Resources Royalty Act, 2008), title registration (the Mining Titles Registration Act, 1967), and health and safety (the Mine Health and Safety Act, 1996).

Which Government body/ies administer mining law?
The mining industry in South Africa is administered by the Department of Mineral and Petroleum Resources ("DMPR"), the head office of which is situated in Pretoria, South Africa and each of the nine regions of South Africa have regional offices of the DMPR. There is also a mine health and safety inspectorate which falls under the auspices of the DMPR. In addition, there is a Director General and a Deputy Director General both of whom have been delegated powers down from the Minister to take various decisions as delegatee of the Minister.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Reconnaissance is defined in South African law as "any operation carried out for or in connection with the search for a mineral or petroleum by geological, geophysical and photo geological surveys that includes any remote sensing techniques but does not include any prospecting operations other than acquisition and processing of new seismic data". In order to conduct a reconnaissance an applicant needs to apply to the DMPR for a reconnaissance permission and demonstrate that the applicant has financial resources, technical ability and has lodged a reconnaissance work programme. Such rights are valid for one year and are not renewable or transferable. The holding of a reconnaissance permission does not grant any exclusivity to apply for, or be granted, a prospecting right or a mining right.

What rights are required to conduct exploration?
In South African law there is a distinction between prospecting and exploration. Prospecting relates to searching for minerals other than petroleum. In order to conduct prospecting for minerals (other than petroleum), an applicant has to apply for and be granted a prospecting right. In order to procure the grant, the applicant must apply for an environmental authorisation and consult with interested and affected parties, including land owners and lawful occupiers. The Minister is obliged to grant the prospecting right if the applicant has access to financial resources and technical ability, can conduct the prospecting in accordance with the prospecting work programme and if the prospecting will not result in unacceptable pollution, degradation or damage to the environment. Prospecting rights are granted for a maximum period of 5 years and are renewable once for period of up to 3 years. The holding of a prospecting right grants exclusivity to the holder in regard to an application for a mining right.

What rights are required to conduct mining?
A person wishing to conduct mining for minerals (other than petroleum) needs to apply for a mining right in terms of the MPRDA. In order for the application to be granted, the applicant has to lodge an application for an environmental authorisation and consult with interested and affected parties, including land owners. The Minister must grant the right if the mineral can be mined optimally, the applicant has access to financial resources and technical ability and the mining will not result in unacceptable pollution, ecological degradation or damage to the environment. Furthermore, the applicant has to lodge a mining work programme and a detailed social and labour plan. A mining right is granted for a maximum period of 30 years provided that the holder is entitled to apply for renewal for periods not exceeding 30 years.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
Exploration relates to searching for petroleum. Petroleum relates to liquid, solid hydrocarbons or combustible gas but excludes coal and bituminous shale. In regard to petroleum an applicant has to apply for exploration rights in terms of the Petroleum Chapter of the MPRDA. In regard to production an applicant has to apply for a production right in terms of the Petroleum Chapter of the MPRDA.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
There are no requirements for ownership by indigenous persons or entities in entities holding prospecting rights

or mining rights in South Africa. However, there was a requirement that at least 26% of the attributable units of production of prospecting or mining projects should be held by historically disadvantaged South Africans. A mining charter dealing with the transformation of the mining industry to assist the entrance of historically disadvantaged South Africans into the minerals and mining industry applies to all holders of prospecting rights and mining rights. A mining charter was published in 2004 when the MPRDA came into effect but has been substituted by an amended mining charter in 2010. The 2010 mining charter was substituted by the 2018 mining charter which currently applies. It requires, inter alia, that an applicant for a new mining right must be owned by Historically Disadvantaged South Africans by an amount of at least 30%.

Are there special rules for foreign applicants?
There are no special rules in South Africa in regard to foreign applicants. They have to comply with exactly same criteria for the grant of a right as an indigenous applicant. Prospecting rights and mining rights in South Africa can be held by foreign entities, whether natural or juristic. If a foreign company conducts business in South Africa it would have to register at least as an external company in terms of the Companies Act.

State Equity
The State does not have free carry rights in relation to prospecting or mining projects, nor rights to acquire shareholdings. There is a State owned mining company which itself applies for prospecting rights or mining rights in accordance with the MPRDA.
In the petroleum industry, it is common in exploration rights and prospecting rights for the parties to agree that the State shall have an entitlement of a free carry (up to 5%) and options to acquire further shareholding provided that such shareholding will be contributory. An Amendment Act of 2013 was approved by Parliament but has been sent back to Parliament for reconsideration because of several controversial aspects and it has yet to become force of law. The latest version of the Amendment Act provides for a 20% free carry in favour of the State with an option to acquire contributory interest of up to 100%.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
The MPRDA provides that before any person intends to beneficiate any mineral mined in the Republic of South Africa outside the Republic, the holder may only do so after written notice and in consultation with the Minister. The holder of a mining right is entitled to process minerals mined under the auspices of a mining right as the holder of a mining right. However, there are further statutory provisions that are applicable to processing of precious metals and diamonds and these requirements are regulated by the Precious Metals Act, 2005 and the Diamonds Act, 1986 respectively.

The Amendment Bill referred to above provides that every producer of designated minerals must offer to local beneficiators a prescribed percentage of its production of minerals or mineral products in prescribed quantities, qualities and timelines at the mine gate price or agreed price.

Are there restrictions on the export of minerals?
There are restrictions on the export of certain minerals, such as diamonds in terms of the Diamonds Act, 1986 and precious metals in terms of the Precious Metals Act, 2005. Precious metals include gold, silver and the platinum group metals. A permit is required to export and export levies are imposed.
The Amendment Bill referred to above provides that no person other than a producer that has offered local beneficiators the prescribed percentage of its production of minerals may export designated minerals or mineral products without the Minister's prior written approval.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The MPRDA contains restrictions on the ability to transfer prospecting rights, mining rights, exploration rights and production rights. The transfer of these or any interest in these through any method of disposal requires the prior written consent of the Minister of Mineral Resources ("Minister"). The Minister is obliged to grant such consent if the transferee satisfies the criteria for the grant of a right in the first place. Disposals are given effect to by cessions of rights which are capable of being registered in the Mining Titles Office.

Are there restrictions on disposals of controlling interests in the entities holding exploration or mining projects?
There are change of control restrictions applicable. A disposal of a controlling interest in a company holding a prospecting or mining right requires the prior consent of the Minister. This does not apply to listed entities. The wording in the MPRDA regarding disposals of controlling interests is wide enough also to include the changes in controlling shareholding of ultimate holding companies even offshore.

RIGHTS TO USE SURFACE OF LAND

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
The rights to use the surface of a holder of a right to conduct prospecting or mining in terms of the MPRDA are extensive.

The holder may:
- Enter the land to which such right relates, bring his or her employees onto the land and bring any plant, machinery or equipment or build or construction or lay down any surface,

underground or undersea infrastructure which may be required for purposes of prospecting or mining;
- Prospect or mine for his own account;
- Remove and dispose of such mineral; and
- Use water in relation to prospecting or mining activities and carry out any other activity incidental to prospecting or mining.

What obligations does the holder of a reconnaissance right, prospecting right or mining right have vis-à-vis the landowner or lawful occupier?
The holder of a reconnaissance right, prospecting right or mining right has duties towards the landowner or lawful occupier in terms of consultation, and the holder of a prospecting right or mining right has to compensate the landowner for loss or damage suffered as a result of the conduct of prospecting or mining activities. It is not necessary for the holder of a prospecting right or mining right to purchase land or even enter into an agreement to use the land with the surface owner. Where communities are involved the consultation obligations are more extensive as a result of recent court decisions which have held that the consent of members of the community must be obtained before mining can take place.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Currently the holder of a prospecting right or mining right is required to have an approved environmental authorisation, prior to the conducting of the relevant activities. In addition, the right to use water is governed by the National Water Act, 1998.

What provisions need to be made for the closure of mines?
The holder of a prospecting right or mining right must furnish during all stages of the project sufficient pecuniary provision for rehabilitation which is reassessed on an annual basis. This is done in terms of a deposit with the DMPR, bank guarantee or a trust deed. The principle of pecuniary provision is that there must be sufficient funds at all times in the hands of the DMPR apart from the mining company to attend to rehabilitation if there is a premature closure of the mine.

What are the closure obligations of the holder of a reconnaissance right, prospecting right or mining right?
The holder of a prospecting right or mining right must apply for a closure certificate within 180 days of ceasing the relevant operation and lodge a closure plan. Furthermore, the holder of a prospecting or mining right must comply with all aspects of the environmental authorisation approved in relation to the prospecting right or mining right in regard to closure.

Are there any zoning requirements applicable?
Zoning requirements may be applicable and required to be obtained over and above the prospecting right or mining right if there are zoning restrictions in the applicable area. There may be a town planning scheme or municipal by laws having application over the relevant area which restricts prospecting or mining without a rezoning application.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Native title or other statutory surface use rights do not have a material impact upon reconnaissance, prospecting or mining operations. Holders of such rights would be in the same position as any landowner or lawful occupier in regard to consultation by applicants and holders of prospecting rights or mining rights and the right to receive compensation in the case of damage or loss. Communities owning land do have preferent rights to apply for rights to prospect or mine. Furthermore, if any application for a mining right relates to land occupied by a community the Minister may impose such conditions as are necessary to promote the rights and interests of the community. The obligations on a mining right applicant or holder to consult with communities is more extensive than other landowners because of recent court decisions which have held that the consent of members of the community must be obtained before mining can commence.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
There is a separate piece of legislation dealing with health and safety in mining, namely the Mine Health and Safety Act, 1996. Previously, mine health and safety was dealt with in the same ambit as the relevant mining law, namely the Minerals Act, 50 of 1991 but it was removed and placed in a separate piece of legislation as the purpose of the two pieces of legislation is often in conflict. There is a chain responsibility that is set up in terms of statutory obligations under the Mine Health and Safety Act, 1996.

Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?
There are extensive obligations imposed upon owners, employers, managers and employees in relation to health and safety, including in relation to statutory appointments, liability, committees, inquest and enquiries.

ADMINISTRATIVE AND CONSTITUTIONAL ASPECTS

Is there a constitution which has an impact on the rights to prospect and mine?
There is a system of appeals against administrative decisions in terms of the relevant mining legislation. One has to exhaust the internal remedies before going to court to set aside an administrative decision on review in terms of the High Court

rules. Appeals have to be brought within 30 days of gaining knowledge of the relevant decision.

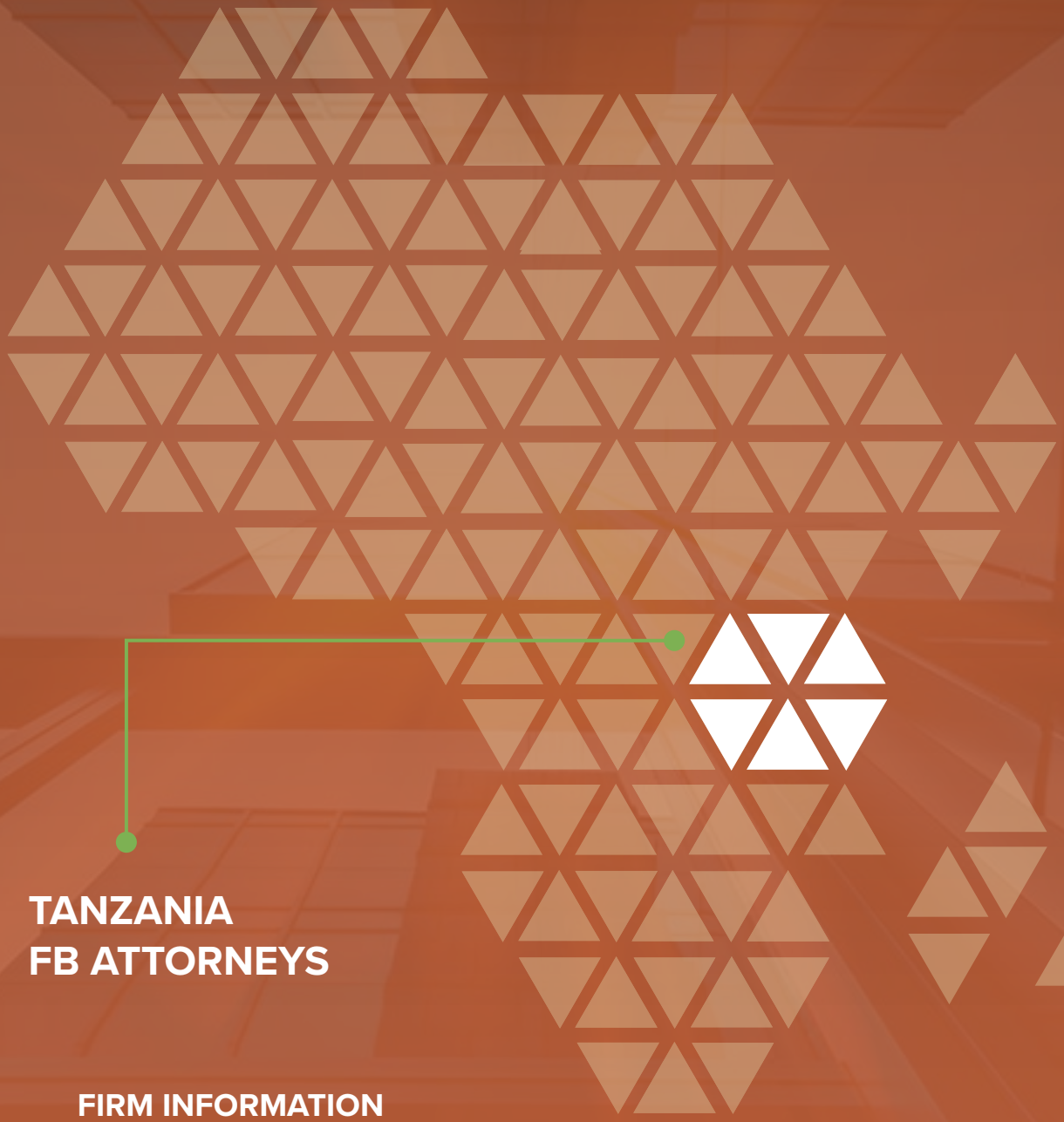
Is there a Constitution which has an impact upon rights to conduct reconnaissance, prospecting and mining?
There is a Constitution in South Africa of 1996 which has an impact upon rights to conduct prospecting and mining. Section 25 of the Constitution protects property from being expropriated without just and equitable compensation. Property would include prospecting rights or mining rights and is not limited to land. The law must be of general application and there should be no arbitratory deprivation. It must also be for a public purpose or public interest.

ROYALTIES AND TAXES

Are there special rules applicable to the taxation of exploration and mining companies?
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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The principal legislation regulating mining is the Mining Act, Cap. 123 [R.E. 2019] ("the Mining Act"), as well as regulations made under the Mining Act concerning mineral rights, environmental protection, mineral beneficiation, safety and occupational health, mineral trading and mining of radioactive materials.

Which Government Bodies administer mining law?
The mining industry is administered by the Ministry of Minerals. The chief officer relating to mining regulation is the Commissioner for Minerals, a presidential appointee whose responsibility is to advise the Minister on all matters relating to the mining sector. The Minister has a role to play as well, specifically concerning preparation of policies, strategies and legislative framework for exploration and exploitation of mineral resources as well as monitoring the implementation of the laid down government policies on minerals. There is also the Mining Commission constituted under the Mining Act, with responsibility, among others, to the granting of mining licences and related matters.

The Mining Commission is responsible for the processing of licence applications. It performs its functions through various committees and officers, such as Chief Inspector of Mines, Resident Mines Officers, Mines Resident Officers, Inspectors of Mines, and other public officers for better implementation of the Mining Act. The Mining Commission has replaced various institutions such as Mining Advisory Board, Tanzania Minerals Audit Agency, and Zonal Mines Officers that performed its current functions.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

The Mining Act does not contain provision for a right to conduct reconnaissance. A Prospecting Licence is required to conduct exploration. However, exploration activities may also be undertaken under the various mining licences in addition to mining operations. Under mining operations, there are four categories of mining licences. There are Special Mining Licences ('SML"), Mining Licences ('ML"), Gemstone Mining

Licences ('GML") and Primary Mining Licences ('PML"). SMLs are issued in respect of large scale mining operations whose capital is not less than USD 100,000,000.00 while an ML is one relating to medium-scale mining operations whose capital investment is between USD 5,000,000 and 100,000,000.00. GML are reserved for Tanzanian citizens except in the case of joint ventures where 50% of the joint venture interest is controlled by a Tanzanian and PMLs are also restricted to Tanzanian citizens only.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
The principal legislation regulating the exploration and production of the oil and gas sector in Tanzania is the Petroleum Act, 2015 ("the Petroleum Act") which repealed the Petroleum (Exploration and Production) Act, 1980. The Petroleum Act provides for regulations of upstream, midstream and downstream petroleum activities.

The Petroleum Act grants the National Oil Company ('NOC") the exclusive right over petroleum rights including licences. Such licences are not transferrable. A private sector party is able to apply for a licence through one of the following processes:

The first one is a partnership with the NOC. The NOC may, subject to the Minister's consent and on the advice of Petroleum Upstream Regulatory Authority ('PURA"), enter into partnership with a Tanzanian or foreign entity through an open tendering process or the direct award of a block. When private sector participants partner with the NOC, the licence requires the NOC to retain at least a 25% interest in any joint venture vehicle unless the NOC decides otherwise.

The second potential procurement process appears to be related to the entry into Petroleum agreements. Petroleum agreements shall not be entered unless a transparent and competitive public tendering process is completed. The Minister causes to be published in a newspaper of wide circulation, invitation of tender or the intention to initiate direct negotiations. Where all or part of the area tendered in a competitive public tender process for an award of an agreement has not become effective, and it is for the public interest, the Minister may, upon the advice of PURA and approval of the Cabinet, initiate direct negotiations with qualified and eligible company

Also, the Petroleum Act requires a person intending to carry out reconnaissance surveys to apply for a reconnaissance permit from PURA.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
In addition to restrictions of ownership of PMLs and GMLs to Tanzanians, there is a requirement that an indigenous Tanzanian company should have at least 5% equity participation in a foreign company for such foreign company to qualify for grant of a ML. The participating interest of an indigenous Tanzanian company is not transferable to a non-indigenous Tanzanian company. Further, mining–related agreements/arrangements should guarantee the State and people's participation in the mining vestures.

Are there any special rules or restrictions applicable to foreign applicants?
Except in the case of PMLs which are restricted to Tanzanians or companies and partnerships exclusively owned by Tanzanians, and GMLs that are also restricted to Tanzanians in the case of an individual and if in a partnership or joint venture where a Tanzanian must have a fifty percent interest, there are no special rules applicable to foreigners.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The Mining Act provides that in any mining operations under an ML or SML, the Government of Tanzania is entitled to not less than 16% non-dilutable free carried interest shares in the capital of a mining company depending on the type of minerals and the level of investment. In addition to such free carried interest shares, in case of any tax expenditures/ incentives enjoyed by the mining company, the Government has a right to acquire, in total, up to 50% of the shares of the mining company commensurate with the total tax expenditures incurred by the Government in favour of the mining company. However, without distorting the intention of minimum mandatory state participation, the Government and ML or SML holders may establish a special arrangement in view of ensuring the Government's effective participation in the mining operations as contemplated by the Mining Act.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Mineral rights holders are obliged under the Mining Act to set aside not less than 20% of gold for local processing, refining, smelting and trading in Tanzania unless there is an agreement with the government providing otherwise. The Mining (Mineral Beneficiation) Regulations, 2018 provide for further procedures regulating beneficiation of mined minerals. Besides, there should be commitments in mining-related agreements/arrangements to establish beneficiation facilities in Tanzania.

Are there any restrictions on the export of minerals? There is a general restriction for exportation of raw minerals and mineral concentrates and thus a mining company needs to obtain special authorisation from the Government for the exportation of raw minerals. The Mining Act also prohibits the selling, disposing or export of any raw gold or gemstones except by holders of a Dealer's Licence. The export or import of any radioactive minerals must be in accordance with the Atomic Energy Act. Holders of mineral rights are not required to have a Dealer's Licence in order to export their minerals.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The holder(s) of a mineral right, with respect to SML; ML or any undivided proportionate part thereof is not allowed to assign mineral rights to another person without a written consent of the licensing authority. Please note the consent of the licensing authority is not required for an assignment to an affiliate, where the obligations of the affiliate are guaranteed by the assignor or by a parent company approved by the licensing authority or a bank or other financial institution by way of mortgage or charge given as security for any loan or guarantee in respect of mining operations

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
A company holding a mineral right needs the prior consent of the Licensing Authority before it can transfer its shares if the effect of the transfer would be to give the transferee control of the company. The law provides that the licensing Authority's consent shall not be unreasonably withheld.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
A mineral right holder may enter the mining area and take all the necessary action to facilitate exploration or mining, may erect buildings, and any facility on the licence area and stack or dump mineral waste in the manner provided for in the Environmental Management Plan subject to the consent of various government agencies where the land is used for any public purposes and purposes and the consent of the private lawful occupiers. Surface rights users must be compensated for damage to property or crops and if they have to relocate the cost for relocation and that of properties or crop. Besides, prior consent from various institutions such as Tanzania National Parks Authority (TANAPA) is required before the mining companies commences its operations in reserved lands.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Application for SMLs, MLs or GMLs must be accompanied by an environmental impact statement and an environmental management plan as provided for under the Environmental Management Act, 2004 and the Environmental Impact Assessment and Audit Regulations, 2005. The Minister for Minerals may reject an application if the application for a licence is submitted without an environmental impact statement or an environmental management plan while the applicant is not exempted. Within seven days of the date of submitting the application, applicants are obliged to publish their environmental impact statement in the prescribed manner. The licensing authority shall not issue a licence until the expiry of at least 60 days from the date of application. An application for a SML must be accompanied by the applicant's environmental certificate issued in terms of the Environmental Management Act.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
A mineral right holder cannot enter any occupied land without approval of the surface rights holder including any land that is for public or various government uses such as; national parks, forest reserves, game reserves, conservation areas, municipalities, townships, villagers or private lawful occupiers, and after they have reached agreement for compensation through consultation with the local Government and village council, where applicable.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The principal regulation governing health and safety is the Environmental Management Act No. 20 of 2004 and its Subsidiary Legislation administered by the National Environmental Management Council. These include, in addition the Occupation Health and Safety Act No. 5 of 2003. Other relevant safety and health regulations include:

- The Environmental (Registration of Environmental Experts) Regulation, 2005
- The Environmental Impact Assessment and Audit Regulation, 2005
- The Environmental Management (Air Quality Standards) Regulations, 2007
- The Environmental Management (Soil Quality Standards) Regulations, 2007
- The Environmental Management (Water Quality Standards) Regulations, 2007
- The Environmental (Solid Waste Management) Regulations, 2009
- The Environmental (Hazardous Waste Control and Management) Regulations, 2009
- Environmental regulations- Strategic Assessment; and
- Environmental Management (Fees and Charges)

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
The Constitution of the United Republic of Tanzania guarantees the right to private ownership of property and state protection of that property and forbids nationalisation of private property without due process of the law which entails provision of a fair and speedy compensation.
Are there administrative appeals in the mining law?
The Mining Commission has powers for the adjudication of disputes between rights holders in relation to themselves of

third parties other than the Government. Person aggrieved by the decision of the Mining Commission exercising quasi-judicial powers under the Mining Act may appeal to the High Court. However, the Mining Commission's decisions resulting in cancellation or suspension of a mineral right can be challenged by way of judicial review. In relation to the Mining (Local Content) Regulations, a person aggrieved by the decision of the Mining Commission can lodge a complaint to the Minister for Minerals.

ROYALTIES AND TAXES

Are there special rules applicable to the taxation of exploration and mining companies?
There is a special fiscal regime for mining companies as detailed below:

- **US$ accounting -** mining companies may opt to maintain their accounts in the US$ currency and their tax liability will be assessed and calculated in US$.
- **Corporate income tax -** corporate tax is payable under the Income Tax Act, 2004, Cap. 332 [R.E. 2019] at rate not exceeding 30 per cent. Income is computed in the manner set out in the Income Tax Act, as may be amended from time to time.
- **Depreciation allowance for capital expenditure -** depreciation shall be deducted at a rate of 20 per cent on capital expenditure for exploration and development.
- **Loss carry forwards -** Losses may be carried forward indefinitely until recovered against income. However, income of a person having chargeable income and unrelieved losses for the four previous consecutive years of income may only be reduced by reason of use of the unrelieved losses, but not below 30% of that income before any reduction for losses.
- **Expenditure on another licence area -** expenditure on prospecting and mining operations in respect of another licence area may, for the purposes of ascertaining taxable

income, be treated as though it was expenditure incurred in respect of each mining licence. The law provides clearly that each mineral right constitutes a separate mining operation as part of ring-fencing rules under the Income Tax Act.

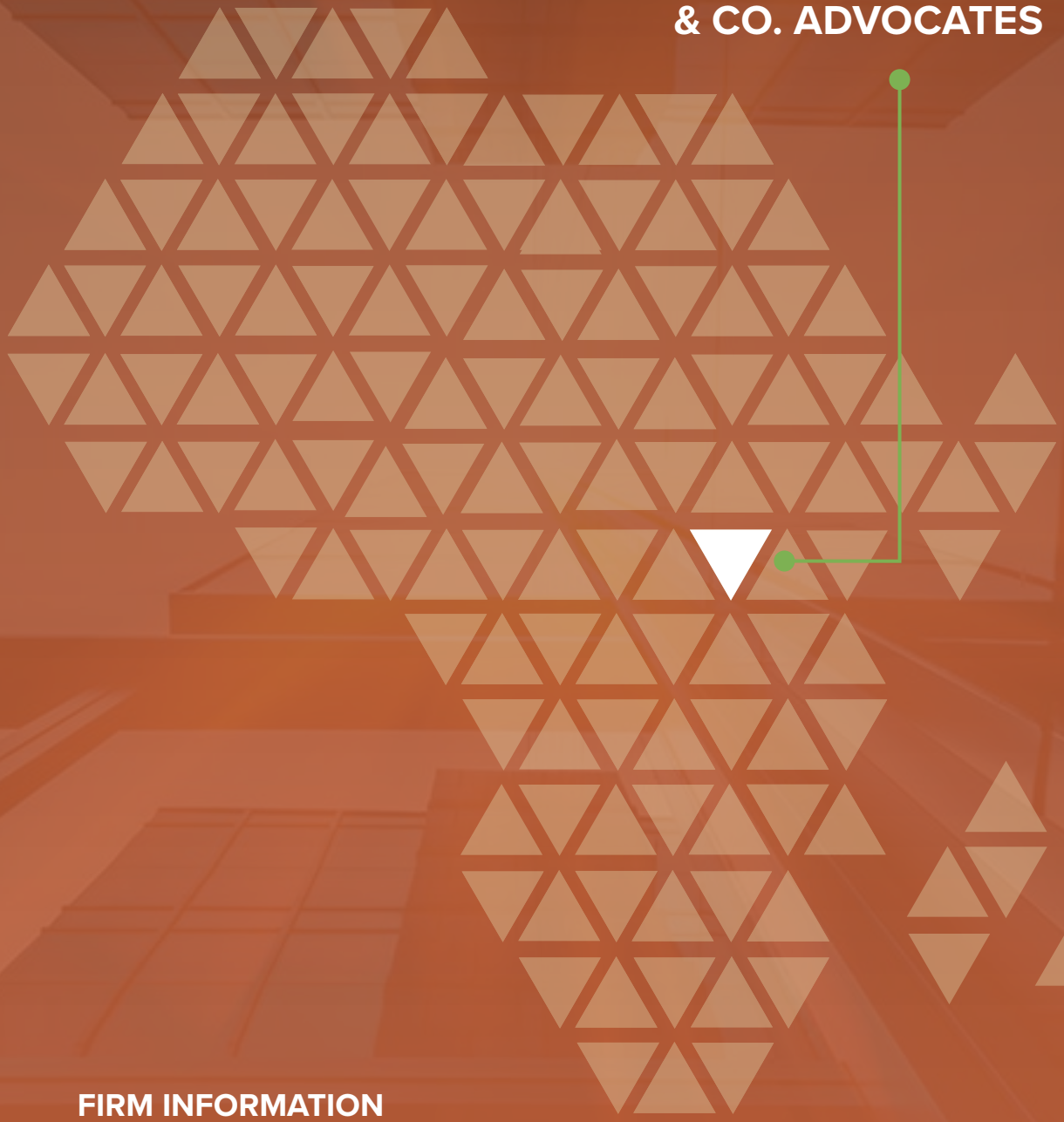
- Withholding tax on dividends - withholding tax on dividends is at a rate of 10 per cent
- **Withholding tax on interest -** withholding tax on the interest on foreign loan is at the rate of 10 per cent and accrued interest is deemed a payment, therefore, withholding tax thereon is payable.
- Withholding tax on payment for technical services and on management fees - withholding tax on the above is capped at the rate of 5 per cent, where the technical service fee, or the management fee is paid to a resident person or 15 per cent on a non-resident person.
- **Custom duty and on imports of mining equipment and supplies -** import duties under the terms of the Customs Traffic Act by a mining company or its subcontractors are at a zero per cent rate during exploration and in the first year of operation, thereafter, will not exceed 5 per cent.
- **Value Added Tax -** VAT special relief has recently been limited to cover only exploration and prospecting activities, while excise duty exemption were abolished in 2009. Holders of SMLs may enter into a Development Agreement with the Government which may provide fiscal stability such that the tax regime existing on the date of the Development agreement is frozen creating a stable and predictable fiscal regime over the life of the mine.

Are there any royalties payable to the State over and above any taxes?

Royalties are chargeable on the gross value of minerals produced under licence at the rate of 5% for uranium; 6% for gemstone and diamonds; and 6% for metallic minerals including gold, silver, copper and platinum group minerals; and 3% in the case of other minerals, including building materials, salt, all minerals within the industrial minerals group. However, in the case of gold sold at refinery centres, royalty is charged at the rate of 4%; and in the case of coal used as industrial raw material, at the rate of 1%. Gross value is defined under the Mining Act as the market value of minerals at the point of refining or sale or in the case of consumption within Tanzania, at the point of delivery within Tanzania, provided that for the purposes of calculating the amount of royalties payable, the Government is entitled to reject the valuation if such value is steeply low on account of deep negative volatility, unless the raw minerals are disposed of for beneficiation within the United Republic; and where the Government rejects the valuation, it has the option to buy the minerals at the low value ascertained.



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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
There are various laws that govern the mining sector in Uganda.
Below is a summary of the key laws:

The 1995 Constitution of Uganda
The Constitution vests the powers to make laws regulating the exploitation of minerals, sharing of royalties arising from mineral exploitation, conditions of payment of indemnities arising out of exploitation of minerals and conditions regarding the restoration of derelict lands in the Parliament of Uganda. The Constitution further provides that all minerals are held by the Government of Uganda on behalf of the people of Uganda.

The Mining and Minerals Act Cap 159
The Mining and Minerals Act, Cap 159 (the "Mining Act") repealed and replaced the Mining and Mineral Act, 2022 (as amended) on 1st July 2024.

The Mining Act applies to:
- All activities, operations and transactions related to the prospecting, exploration, mining, development, exploration, research and benefaction of minerals including the processing, smelting, refining of minerals and trading of mineral substances;
- Substances excluded from the definition of minerals and exploited for commercial purposes including clay, marram, sand, aggregate or any stone commonly used for building or similar purposes; and
- The extraction of geothermal resources for direct use.

The purpose of the Mining Act is among other things, to ensure the rational, integrated safe exploitation and use of mineral resources and to strengthen the legal and regulatory framework for the regulation and conduct of mining operations.

Notably, all existing mineral rights, licenses and permits shall remain in force, subject to the Mining Act. Similarly, an agreement or similar arrangement made under the Mining Act, 2022 shall continue in force until terminated in accordance with the terms and conditions of the agreement or arrangement.

The Mining (Licensing) Regulations, No. 72 of 2023
The Mining (Licensing) Regulations, 2023 (the "Regulations") came into force on 7 August 2023, repealing the Mining (Licensing) Regulations, No. 49 of 2019. The Regulations established the Online Mining Cadastre ("Portal") for the management of all mineral rights and mineral dealer operations in Uganda including licensing, communication, reporting and payments. All existing and prospective mineral rights holders and applicants for mineral rights and other licenses are required to register as Portal users by submitting accreditation documents to the Director for verification before being granted access to use the Portal.

The National Environment Act, Cap 181 ("NEA")
A holder of a mineral right, licence or permit is required to preserve in as far as is possible, the natural environment in accordance with the NEA. The NEA prescribes rules that regulate the mining sector activities with regard to the principles and safeguards of environmental management.

Other Laws Include:
- The Companies Act, Cap 106 ("Companies Act");
- The Contracts Act, Cap 284;
- The Employment Act, Cap 226;
- The Land Act, Cap. 236;
- The Income Tax Act, Cap. 338 ("Tax Act");
- The National Forestry and Tree Planting Act, Cap 160;
- The Occupational Safety and Health Act, Cap 231;
- The Partnership Act, Cap 110 ("Partnership Act");
- The Public Finance Management Act, Cap 171;
- The Public Private Partnership Act, Cap 111;
- The Registration of Titles Act, Cap. 240;
- The Trustees Incorporation Act, Cap 271; and
- The Uganda Wildlife Act, Cap 315.

There is also a Mining and Mineral Policy of 2018.

Which Government Bodies administer mining law?

The Ministry of Energy and Mineral Development
The ministry's mandate is to create, advance, strategically manage, and protect the rational and sustainable exploitation and use of energy and mineral resources for societal and economic advancement. It is responsible for policy direction and accountable for the sector's performance.

The Directorate of Geological Survey and Mines ("DGSM")
The DGSM is the technical branch of the Ministry of Energy and Mineral Development and oversees the regulation and management of mineral and mining activities in Uganda through the departments of geological surveys, mines, and geothermal resource. The Director DGSM is in charge of granting the mining rights, licences, permits, and other authorisations.

There are also other departments within the DGSM namely:
- The Mining Cadastre Department The department administers mineral rights and maintains the cadastral registers. It also receives, evaluates and processes applications for mineral rights, licences and permits including applications for renewal, extension, reduction, transfer and abandonment of such rights, licences and permits. It then makes recommendations to the Director who decides whether to grant the mineral rights or not to;

- The Mineral Exploration Unit Its purpose is to undertake detailed exploration and evaluation of mineral occurrences in order to de-risk mineral projects and attract competent developers through competitive bidding; and
- The Mineral Protection Force The force is established by the Mining Act. Its purpose is to protect minerals against malpractices, and generally to enforce the laws governing mining in Uganda.

The Uganda National Mining Company
The Mining Act provides that a Uganda National Mining Company will be incorporated under the Companies Act and shall be wholly owned by the State. The company shall manage the State's commercial holding and participating interests in mineral agreements, manage marketing of the State's share of minerals received, optimize value and investigate and propose new mining ventures initially locally but later internationally.

Local Governments
A local Government, among other roles, has the mandate to integrate publicly available mineral deposit information provided by the DGSM into its development plan and participate in the implementation of mineral policies, laws and mineral related activities.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Although the Government owns the rights to all minerals in Uganda, a person can gain the right to prospect, explore for, mine, process, refine, smelt, manufacture, or dispose of any mineral in Uganda by doing so in conformity with the Mining Act. Any right of ownership that a person may have over the property on which the mineral right is granted is extrinsic to the ability to grant a mineral right. A person seeking to acquire a mineral right, other than one associated with a prospecting, exploration, or retention licence, must demonstrate that they have already acquired the surface rights to the property where such mineral is located.

The mineral rights provided for in the Mining Act are a right to prospect, explore or mine for minerals under a Prospecting Licence, an Exploration Licence, a Retention Licence, a Large Scale Mining Licence, Medium Scale Mining Licence or an Artisanal Licence.

Prospecting Licence
The right to prospect for minerals in Uganda is given to the holder of a prospecting license and authorises participation in mineral prospecting. The holder of a prospecting license enjoys a non-exclusive right to carry on prospecting operations for any mineral. The right is not transferable. The licence is not area specific and gives authority to the holder to look for mineral occurrences of interest in Uganda. The Prospecting Licence is not renewable and lasts only one year from date of issue however an applicant is not prohibited from applying for another Prospecting License following expiry of the first one. An application for a Prospecting Licence is made by a company, duly incorporated in Uganda, to the Director DGSM in the prescribed form upon payment of the prescribed fee.

Exploration License
The license is exclusive and is granted for a duration of up to three years and the maximum area of exploration is two hundred and fifty square kilometers, except that a person may hold more than one exploration licence, in which case there shall be no amalgamation of the exploration areas for purposed of discharging obligations under the Mining Act.
It is valid for a maximum period of four years from the date of it being granted and may be renewed for a single period not exceeding three years and the holder of the licence may, three months before the expiration of the licence, apply for renewal of the licence in respect of the exploration area.

It should be noted however that the Director of the DGSM is obligated to receive applications for an exploration licence on a first come, first serve basis. This means that applications are considered, approved, or granted in the order of receipt, where the application received first in time shall have priority over other competing applications, and the first person to apply shall have priority over other competing persons.

Retention License
A Retention License is granted to an applicant who is an exploration license holder and has identified a mineral deposit within the exploration area of potential commercial significance but is unable to develop the resource immediately by reason of adverse market conditions and other factors beyond the applicant's reasonable control which are temporary in nature. The license is only granted in respect of the exploration area granted in the Exploration License and is granted for a maximum of three years, renewable for a single period of two years.

Large Scale Mining Licence
Large Scale Mining is the intentional mining of minerals in mechanised operations, involving the excavation of large surface pits, sinking of shafts, driving of audits or other underground openings with limitations to extents of the mining operation dictated by the extents of the ore body and annual ore production volumes or throughput exceeding one million tons.

An application for a licence is made to the Director of the DGSM and is, among other things, accompanied by:
- a plan of the area over which the licence is sought;
- a statement giving details of the mineral deposits in the area of land over which a Large Scale Mining Licence is sought; and
- a report on the results of the exploration.

A Large Scale Mining Licence can only be granted to the holder of an Exploration Licence, a Retention Licence, an Artisanal Mining Licence, a Small Scale Mining Licence and a Medium Scale Mining Licence in respect of an Exploration or Retention Licence area and the maximum mining area is fifty square kilometers.

A licence specifies the period of its validity which does not exceed twenty-one years, or the estimated life of the mineral body proposed to be mined, whichever is shorter, and can be renewed fifteen months before its expiry for a maximum period of fifteen years, or the life of the mineral ore body for which renewal is sought, whichever is shorter.

Medium Scale Mining Licence
This licence can only be granted by the Director of the DGSM to a joint-venture or partnership registered in accordance with the Partnership Act comprising of Ugandan citizens and foreigners, or a solvent company registered and incorporated under the Companies Act and is not subject to winding up. It cannot be granted to an individual, cooperative or association.

A Medium Scale Mining Licence cannot be granted over an area of land which is the subject of a Large Scale Mining Licence and a Retention Licence unless the applicant is the holder of the Retention Licence, a Small Scale Mining Licence or an Artisanal Mining Licence and where an area of land is subject to a Medium Scale Mining Licence. No other medium scale mining licence shall be granted in respect of that area and the maximum surface area covered by the license should not exceed fifty square kilometers.

A Medium Scale Mining Licence is valid for a maximum period of ten years, and is renewable on application made to the Director DGSM for such further periods not exceeding seven years at a time.

Small Scale Mining Licence
A Small Scale Mining Licence can be granted on application to the Director of the DGSM to an individual who is a citizen of Uganda, a cooperative society or association registered under laws of Uganda comprising Uganda citizens exclusively, a partnership registered in accordance with the Partnership Act, Cap 110 comprising of Uganda citizens holding one hundred percent of the shares or solvent company registered and incorporated under the Companies Act and having one hundred percent of its shares held by Uganda citizens and is not subject to winding up.

The licence cannot be granted over an area of land which is the subject of a Large Scale Mining Licence or a Retention Licence unless the applicant is the holder of the Retention Licence, a Medium Scale Mining Licence or an Artisanal Mining Licence and where an area of land is subject to a Small Scale Mining Licence. No other such licence shall be granted in respect of that area.

The licence is valid for a maximum period of five years, and is renewable on application for a further period not exceeding three years at a time.

Artisanal Mining Licence.
This licence is required in respect of an artisanal mining area established by the Minister. An artisanal mining area is one within the limits of a set geographic area where, due to the features of certain deposits of gold, diamonds or any other mineral substance, technical and economic factors do not allow large-scale, medium-scale or small-scale mining operations, but do allow artisanal operations. The mining operations however should not exceed ten meters of the specific artisanal mining area.

The licence once granted is valid for a maximum period of three years, renewable for a period not exceeding two years at a time.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
The Petroleum (Exploration, Development and Production) Act Cap. 161 provides for the following rights to conduct oil and gas exploration and production:

Reconnaissance Permit
This permit is granted to persons who intend to carry out reconnaissance surveys, and such persons are required to apply to the Minister for this license upon payment of a prescribed fee. The license shall be for a geographically delineated area and is non-exclusive which means that it may be granted to more than two persons in respect of the same area. The duration of this license is eighteen months.

Petroleum Exploration Licence
The licence is granted to authorise exploration of hydrocarbons in a specified area. The license can only be applied for upon the Minister of Energy announcing in the gazette the availability of areas for bidding. In exceptional cases enumerated in the Act, the Minister may receive direct applications for exploration licenses. The duration for this license is two years and it may not be renewed more than twice.

Petroleum Production Licence
The holder of a Petroleum Exploration Licence shall have exclusive right to apply for the grant of a Petroleum Production License over any block following the discovery of petroleum in their exploration area. The license is granted for a period of twenty years and may be renewed.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Yes

Exploration
The Petroleum (Exploration, Development and Production) Act provides that where goods and services required by the contractor or licensee are not available in Uganda, they shall be provided by a company which has entered into a joint venture with a Ugandan company provided that the Ugandan company has a share capital of at least forty-eight percent in the joint venture.

The Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016 (the "Petroleum National Content Regulations") require a Ugandan Company to obtain approval from the Petroleum Authority of Uganda before entering into a joint venture.

The Petroleum National Content Regulations also require a Ugandan citizen, Ugandan company or registered entity to obtain approval from the authority to use any other company where he/she/it lacks technical capacity or financial competence.

Mining
The Mining Act is silent on the equity requirements for indigenous peoples. However, the Mining Act mandates the shareholders of a company holding a Large Scale or Medium Scale Mining Licence to sign a shareholders' agreement that sets out the decisions which are to be made without the prior agreement of the State.

The Mining Act also provides for a right of pre-emption exercisable by the shareholders of a company in the event the Government opts to sell its stake in the company.

Are there any special rules or restrictions applicable to foreign applicants?
Yes. A foreign individual applicant cannot be granted a mineral right in Uganda. However, a foreign company which is duly registered under the Companies Act may be granted a mineral right. The Mining Act also stipulates several local content restrictions.

The Mining Act requires holders of mineral rights, permits or licenses to:

- Have recruitment, training and promotion plans to maximize knowledge transfer to Ugandan citizens;
- Hire Ugandan citizens and implement succession plans for the replacement of expatriates;
- Prioritise goods produced in Uganda and services offered by Ugandan citizens and/or companies owned by Ugandan citizens. Where such goods and services are not available in Uganda, such goods and services should be sourced from the East African Community or member states of the African Union;
- Commit to maximising technology transfer to Ugandans; and
- Organise research and training.

The Petroleum (Exploration, Development and Production) Act and the Petroleum National Content Regulations also have similar local content provisions in relation to petroleum activities.

The Petroleum National Content Regulations, 2016 mandate every licensee, operator, contractor, subcontractor and any other entity involved in petroleum activities in Uganda to incorporate and implement national content as an important element of their overall petroleum activities.

The Petroleum National Content Regulations require every licensee, contractor and subcontractor to give preference to goods and services which are rendered by Ugandan citizens and companies and where such goods and services are not available in Uganda, the goods and services shall be provided by a Company which has entered into a joint venture with a Ugandan Company which holds at least forty-eight percent in equity.

Furthermore, the Petroleum National Content Regulations also list certain contracts for goods and services to be exclusively provided by Ugandan citizens and companies as follows:
- Transportation;
- Security;
- Food and beverages;
- Hotel accommodation and catering;
- Human resource management;
- Office supplies;
- Fuel supplies;
- Land surveying;
- Clearing and forwarding;
- Crane hire;
- Locally available construction materials;
- Civil works;
- Supply of locally available drilling and production materials;
- Environment Studies and Impact Assessments;
- Communication and Information Technology services; and
- Waste management where possible.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
Yes. The Uganda National Mining Company manages the commercial and participating interests of the State in mineral agreements.

The grant by the Director of the DGSM of a Large Scale or Medium Scale Mining License may give the state an ownership interest at no cost of up to a maximum of a fifteen percent non-dilutable stake in a Large Scale Mining License or a Medium Scale Mining License. The state may also acquire a supplementary participation in cash according to

the terms agreed with each relevant mineral rights holder within the scope of a mineral agreement provided that the total participation held by the state shall not exceed thirty-five percent.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects
No.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
There are generally no mandatory legal requirements under the mining law or regulations to beneficiate minerals mined. However, the President of Uganda issued a directive specifically barring the exportation of unprocessed copper and iron ore to which there has been no value added or beneficiation. There is also a presidential directive that prohibits the export of unprocessed gold. The directive requires gold to be refined up to 99.9% before export.

Are there any restrictions on the export of minerals?
Yes. A person who is interested in exporting minerals must obtain a permit from the DGSM on conditions determined by or under the Mining Act. Any person who exports any mineral from Uganda without complying with the requirements of the Mining Act commits an offence and may be liable, on conviction, to a fine not exceeding UGX 200,000,000 (approximately US$ 53,400) or imprisonment or both.

Every holder of a mineral dealer's licence is bound to pay to the Government all royalties due on any minerals bought, received or exported by them. In addition, the Mining Act, imposes a levy of US$ 100 for each kilogram of refined gold exported from the country.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
Yes. Except for a prospecting licence that cannot be transferred, the Mining Act prohibits the transfer of any type of mineral right or a share of a right without the approval of the Director of the DGSM and any purported transfer without consent is illegal.

Similarly, the Petroleum (Exploration, Development and Production) Act prohibits a transfer of a licence without the written consent of the Minister of Energy and Mineral Development in consultation with the Petroleum Authority of Uganda.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
Yes. According to the Act, any person seeking to dispose of any mineral right or share of the mineral right should seek the approval of the Director DGSM before disposing of the interest. Similarly, the Petroleum (Exploration, Development and Production) Act prohibits a transfer of a licence without the written consent of the Minister of Energy and Mineral Development in consultation with the Petroleum Authority of Uganda. The Petroleum (Exploration, Development and Production) Act defines "transfer of licence" to include the acquisition of control by the person to whom a licence under this Act is transferred and "control" means the possession directly or indirectly of the power to direct or cause the direction of management by that person, whether through ownership of shares, voting, securities, partnership or other ownership or participation interests, agreements or otherwise.

Therefore, the restriction to transfer a licence under the Petroleum (Exploration, Development and Production) Act applies to any direct or indirect transfer of interest or participation in the licence including assignment of shareholdings and other ownership shares which may provide decisive control of a licensee possessing a participating interest in a licence.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
A holder of a mining licence has the exclusive right to carry on exploration and mining operations in their mining area and take all reasonable measures on and under the surface of their mining area to mine and process the minerals to which their mining licences relate.

Where the holder of a mining licence discovers any other mineral to which their mineral right does not relate in the course of exercising their rights, they are required to immediately notify the Director of the DGSM in writing giving particulars of the deposits or minerals discovered, the site and the circumstances of the discovery.

The holder of the licence may apply to the Director of the DGSM to have the mining of the discovered mineral included in their mineral right, giving in their application a proposed programme of mining operations in respect of the discovery. The registered owner, customary owner, lawful occupant or bonafide occupant of any land subject to a mineral right is entitled to compensation under the Mining Act or to a share of royalties in accordance with the Mining Act.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
According to the Mining Act, every mineral right is granted with a condition that the holder of such a right takes all necessary steps to ensure the prevention and minimization of pollution of the environment in accordance with the standards and guidelines prescribed in the NEA.

Every holder of a mineral must carry out an Environmental and Social Impact Assessment ("ESIA") of his/ her proposed operations in accordance with the NEA and procure a certificate of approval of his or her proposed operations from the National Environmental Management Authority ("NEMA"). The holder is required to carry out an annual environmental audit and keep a record of operations describing how far the operations conform to the approved ESIA.

The holder of a mineral right is required to submit to NEMA an Environmental Management Plan indicating the type and quality of wastes to be generated from any exploration or mining operations they are currently undertaking and the method of final disposal.

Every mineral right licence must have a condition that the holder submits an Environmental Restoration Plan of the exploration or mining area that may be damaged or adversely affected by his/her exploration or mining operations.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
Article 244(2) of the Constitution of the Republic of Uganda provides that minerals shall be exploited considering the rights of:
- Land owners and Tenants by Occupancy;
- Subcounty or Town Council;
- Local Governments; and
- The Government.

Landowners, Tenants by Occupancy, the Local Government, the Subcounty or Town Council and the Government are entitled to a share in the royalties that accrue from exploitation of mineral rights. The landowners and tenants by occupancy of the land subject to mineral rights are entitled to a five percent share, Subcounty or Town Council ten percent, the Local Government fifteen percent and the Government seventy percent.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The Occupational Health and Safety Act, Cap 231 governs health and safety in mining. The Act generally sets out the standard regarding health and safety. It sets out the rights and duties of employees, and duties of the employer regarding the health and welfare of employees, the standard at which workplaces must be maintained and sets out general safety requirements that every employer must adhere to. It also sets out the duties of the occupier.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact on the rights to prospect and mine?
Yes. The Constitution of the Republic of Uganda, 1995 provides that minerals and mineral ores shall be exploited taking into account the interests of the individual landowners, local governments and the Government. The Constitution vests powers in the Parliament of Uganda to make laws regulating the exploitation of minerals, sharing the royalties arising from mineral exploitation, the conditions of payment of indemnities arising out of exploitation of minerals and conditions regarding the restoration of derelict lands.

The Constitution further provides that all minerals are held by the government on behalf of the people of Uganda.

Are there administrative appeals in the mining law?
Yes. The Mining Act provides that a person aggrieved by the decision of the Director of the DGSM is allowed to appeal within thirty days after being notified of the decision to the Minister of Energy and Mineral Development. The Minister is granted powers to either confirm, set aside or vary the decision complained of.

Judicial review of the Minister's decision
Any person aggrieved by a decision, order, act or omission of the Minister is allowed to apply to the High Court for judicial review.

ROYALTIES AND TAXES

Are there special rules applicable to the taxation of exploration and mining companies?
Yes. The Income Tax Act Cap. 338 provides for a detailed taxation regime for mining companies and operations. The tax rate for mining companies is thirty percent. Mining operations are taxed per license area.

Non-resident mining contractors are taxed at a rate of ten percent of the gross amount of the service fee.

Mining companies are allowed up to one hundred percent exploration expenditure as a deduction within the year it is incurred but it is ring-fenced according to the licence area. Where expenditure is incurred from more than one licensing area, it must be apportioned accordingly. The expenditure must be of a capital nature and must be incurred in searching for, discovering, and testing or winning access to deposits of minerals in Uganda.

Where expenditure incurred exceeds income, mining companies are allowed to carry forward the loss to the next year.

Royalties payable by a holder of a mineral right.
The Mining Act provides that all minerals obtained or mined in the course of prospecting, exploration, mining or mineral beneficiation operations shall be subject to the payment of royalties on the gross value of the minerals based on the prevailing market price of the minerals at such rates as shall be prescribed.

The Individual Landowner, Local Government and the Government are all entitled to a share in the royalties that accrue from exploitation of mineral rights. Notably, the Mining Act increased the rates of royalties payable. The owners or lawful occupiers of the land are entitled to a five percent share, Subcounty or Town Council to a ten percent share, the Local Government to a fifteen percent share and the Government to a seventy percent share.

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ZAMBIA | CORPUS LEGAL PRACTITIONERS

RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?

In Zambia, the mining industry is principally regulated by the Mines and Minerals Development Act No. 11 of 2015 (the "Mines Act") as amended in 2022 and by the regulations issued thereunder, as well as the Environmental Management Act No, 12 of 2012 (the "Environmental Management Act") and the regulations issued thereunder. The Mines Act provides the law relating to the exploration, mining and processing of minerals. It also provides for safety, health and environmental protection in mining operations and establishes the Mining Appeals Tribunal (the "Tribunal") to deal with any grievances incidental to the Mines Act.

The Environmental Management Act on the other hand is the principal statute that governs environmental matters, prevention and control of pollution and environmental degradation in Zambia. The Environmental Management Act provides for the protection and conservation of the environment and sustainable management and use of natural resources. It also governs the conduct of Environmental Impact Assessment's ("EIA") for proposed projects likely to have an impact on the environment such as, mining operations, hydro power schemes, electrification projects and any other project likely to have an impact on the environment.

Which Government Bodies administer mining law?

The primary regulatory body in terms of processing applications is the Ministry of Mines and Minerals Development (the "Ministry of Mines"). The Ministry of Mines has several departments that supervise the activities within the sector. The Mines Act establishes, for instance, the office of the Director of Mines, who is the chief administrator and is responsible for supervising and regulating the proper and effectual development of mines and the conduct of mining operations in accordance with the provisions of the Mines Act. The office of the Director of Geological Survey undertakes, among others, the geological mapping of Zambia, as well as exploration operations on behalf of the Republic, advising the Minister of Mines on geological matters, provides data concerning the geology and mineral resources of Zambia and assists members of the public on information concerning geological matters. The office of the Director of Geological Survey also maintains such laboratory and library and record facilities as may be necessary for the performance of the functions under the Mines Act.

Matters relating to the environment, public health and safety arising from exploration, mineral processing and mining operations are generally supervised by the Director of Mine Safety. The Mines Act also establishes the office of the Director of Mining Cadastre and the Mining Licensing Committee (the "Committee"), which, together, are responsible for considering applications for mining rights and non-mining rights, including the grant, renewal or refusal to grant or renew mining rights and non- mining rights. The Committee also concerns itself with the termination, suspension or cancellation of mining and non-mining rights, as well as the amendment of the terms and conditions of mining rights and non-mining rights.

The Environmental Management Act is administered by the Zambia Environmental Management Agency ("ZEMA"). ZEMA is mandated among others, to monitor and enforce measures for the protection of the environment and the prevention of pollution under the Environmental Management Act, to issue and renew environmental licences and to provide environmental regulatory approval of any project which is likely to have an impact on the environment. One of the critical environmental approvals which a developer is expected to obtain from ZEMA, is that relating to an EIA, following which ZEMA issues a decision letter (the "Decision Letter"), confirming whether a developer's proposed project has been approved or rejected.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

All mining rights are acquired in accordance with the provisions of the Mines Act. A person may only prospect for minerals or carry on mining operations under the authority of a mining right granted under the Mines Act. All mining rights are acquired pursuant to the provisions of the Mines Act, by making an application in the prescribed manner, following the payment of the prescribed fee by either an individual or a company. The Mines Act makes provision for the acquisition of both mining and non-mining rights. In this regard, the mining rights which may be acquired under the Mines Act include an exploration licence and a mining licence. Non-mining rights, on the other hand, include a mineral processing licence, a mineral trading permit, a mineral import permit, a mineral export permit and a gold panning certificate.

Large Scale Exploration Licence ("Exploration Licence") An application for an Exploration Licence is made to the Director of Mining Cadastre in the prescribed form upon payment of a prescribed fee. In the case of an Exploration Licence, the area over which an application is made must be represented by a minimum of three hundred and one (301) cadastre units (approximately 1005.34 hectares), and not exceeding fifty-nine thousand eight hundred and eighty (59, 880) cadastre units (approximately 199999.2 hectares). Further, under the Mines Act, an Exploration licence shall be valid for an

initial period of four (4) years and renewable for two further periods, each not exceeding three (3) years. An application for renewal shall be made six (6) months prior to the expiry of the license and the holder of the license shall relinquish fifty percent of the exploration area at each renewal. The holder of the licence will not be permitted to hold a licence for more than ten (10) years from the time of the initial grant of the licence, unless a cooling-off period of at least one (1) year has elapsed.

It is worthy to note that a company and its subsidiaries are prohibited from holding a number of licences whose accumulated total area is more than 299,400 cadastre units (approximately 9,999 km2). Further, a company that accumulates an exploration area in excess of 149,700 cadastre units (approximately 4,999 km2) must pay prescribed additional fees.

Large-Scale Mining Licence
A Large-Scale Mining Licence confers on the holder thereof, exclusive rights to carry out mining operations in respect of the mining area and to do all such other acts and things as are necessary for or incidental to thee carrying on the operations for an initial period of 25 years. In the case of a Large-Scale Mining Licence, the area over which an application is made must be represented by a minimum of one hundred and twenty-one cadastre (121) cadastre units (approximately 404.14 hectares), and not exceeding seven thousand four hundred and eighty-five (7485) cadastre units (approximately 24999.9 hectares).

Small-Scale Mining Licence
A Small-Scale Mining Licence confers on the holder thereof, exclusive rights to carry out mining operations in a mining area for minerals and perform all such acts necessary to carrying out mining operations for a period not exceeding 10 years and may not be granted in respect of radioactive minerals. In the case of a Small-Scale Mining Licence, the area over which an application is made must be represented by a minimum of three (3) cadastre units (approximately 10.02 hectares), and not exceeding one hundred and twenty (120) cadastre units (approximately 400.8 hectares).

Artisan's Mining Right
An artisan's mining right confers on a person on whom it is granted or the community concerned, exclusive rights to mine the mineral specified in the permit for the initial period of two years. An Artisan's Mining Right like a Small-Scale Mining Licence may not be granted in respect to radioactive materials.

Further, artisanal mining can only be undertaken by Zambian citizens or cooperatives wholly composed of Zambian citizens.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
All rights relating to natural gas and oil are acquired in accordance with the provisions of the Petroleum (Exploration and Production) Act No. 10 of 2008 (the "Petroleum Act") as amended in 2021. A person may only conduct oil and gas exploration and production under the authority of a licence granted by the Minister of Mines under the Petroleum Act. The rights that are granted to conduct oil and gas exploration and production under the Petroleum Act are the Petroleum Exploration Licence ("Petroleum Exploration Licence") and the Petroleum Development and Production Licence ("Production Licence"). The Petroleum Exploration Licence is acquired by application in the prescribed manner and following the payment of the prescribed fee by either an individual or a company, whose bid for the grant of a Petroleum Exploration Licence in respect of any block or blocks specified in the notice circulated by the Minister of Mines in two general newspapers of general circulation in Zambia inviting bids for the grant of the Exploration Licence was successful.

The Production Licence is acquired by application in the prescribed manner and following the payment of the prescribed fee by a holder of a Petroleum Exploration Licence whose licence is in force in respect of a block in the exploration area in which a discovery of petroleum is located ("Discovery Block") or part thereof. The application must be made, within two years immediately following the date on which a commercial discovery was made, or such further period as the Minister of Mines may allow. Further, a holder of a Petroleum Exploration Licence may during the term of the licence apply for the grant of a Production Licence in respect of any block which is not part of a Discovery Block within the exploration area if they satisfy the Minister of Mines that the block contains a petroleum reservoir or part of a petroleum reservoir.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Under the Mines Act, a small-scale mining licence can only be granted to citizen owned, citizen influenced or citizen-empowered companies. A citizen owned company means a company where at least fifty-point one percent of its equity is owned by citizens and in which citizens have significant control of the management of the company. A citizen influenced company, on the other hand, is one where five to twenty-five percent of its equity is owned by citizens and in which citizens have significant control of the management of the company, while a citizen empowered company is a company where twenty- five to fifty percent of its equity is owned by the citizens. Further, Artisan's mining right can also

only be granted to a Zambian citizen or co-operative wholly composed of citizens.

However, there are generally no requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples, where the project company holds the following mining rights: a large-scale exploration licence, a large-scale mining licence and mineral processing licence. The Mines Act, in this regard, requires that such licences be granted to companies registered in accordance with the Companies Act (the "Companies Act") No.10 of 2017 and under the aforementioned Companies Act, at least 50% of the company's directors, including the executive director are required to be resident in Zambia.

Are there any special rules or restrictions applicable to foreign applicants?
Save for the restrictions highlighted in the first paragraph in 4.1 with respect to the acquisition of certain mining rights, there are generally no other restrictions in relation to foreign ownership of mining rights. However, the following persons are disqualified from holding mining rights:

- Individuals under the age of eighteen;
- Bankrupt individuals;
- Individuals who have been convicted, within the previous five (5) years of an offence involving fraud or dishonesty;
- A company in liquidation;
- A company that is not incorporated under the Zambian Companies Act;
- A company which has not established an office in Zambia; and
- A company which has, among its directors or shareholders, any person who would be disqualified under (b) and (c) above.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?
The mining industry is private sector driven since the privatization of the mining sector and liberalization of the Zambian economy, and therefore the government is not entitled to any carried interest or a free carried interest in mining projects. The government plays more of a regulatory role but has little direct participation in terms of the direction of mining operations or shareholding in mining right holders. The Mines Act, however, permits the government to identify an area which is not subject to existing mining rights for Government investment. The mining rights will, however, be granted to the Government investment company in accordance with the Mines Act or any other relevant law.

The states contributory interest in exploration and mining projects is usually undertaken by an investment company known as Zambia Consolidated Copper Mines Investment Holdings Limited ("ZCCM"), which retains minority interests in mining projects. ZCCM contributory interest in mining projects is on a private partnership basis and not as a matter of legal requirement. Further, another government investment company, the Industrial Development Corporation, seeks to invest in companies and industries that can leverage Zambia's natural resources and other endowments to develop a strong home base.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
There are no requirements placed on the holder of a licence to beneficiate minerals mined. However, a licence holder that intends to beneficiate the minerals mined must make an application for a mineral processing licence to the Director of Mining Cadastre in the prescribed manner and form upon the payment of prescribed fees.
The holder of a mineral processing licence is granted exclusive rights to carry on mineral processing in the mineral processing area of the minerals specified in the licence and is obliged by statute to:

- Commence mineral processing operations if the holder of the mineral processing licence submits to the Mining Cadastre Office a decision letter in respect of the environmental project brief or environmental impact assessment approved by ZEMA;
- Carry on mineral processing in accordance with the approved programme of mineral processing operations; and
- Submit reports to the Directors on:
  - sources of ore, concentrates, tailings, slimes or any other mineral substances fed to the plant;
  - quantities and grade of feed to the plant;
  - compliance with safety and environmental standards;
  - labour and production returns; and
  - any other records, reports and other information as the Director of Mines, Director of Mining Cadastre, Director of Geological Survey or Director of Mines Safety may require concerning the operations of the mineral processing operations.

Once granted, a mineral processing licence is valid for a period of 25 years, and it may be renewed for a similar period.

Are there any restrictions on the export of minerals?
Generally, a person or company cannot import into or export out of the republic any mineral ore or mineral product without a permit issued by the Director of Mines.
There is, however, a government policy in place that restricts the export of copper concentrate unless it can be demonstrated that there is limited smelting or processing capacity in Zambia.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine?
The Mines Act provides, generally, that before a person

can transfer, assign, encumber or otherwise deal with a mining right, they should obtain the approval of the Minister responsible for mines, and produce a tax clearance certificate in that regard. A holder of a mining right or mineral processing licence intending to transfer, assign, encumber or otherwise deal with the mining right or mineral processing licence or any interest in it shall apply to the Minister for approval in the prescribed manner and form upon payment of the prescribed fee. The Mines Act requires a holder of a mining right or processing licence referred who wishes to transfer any interest to provide the Minister with any details of the transferee that would be required in an application for a mining right or mineral processing licence.

The Minister is required, within thirty (30) days of the application, to approve the transfer of the mining right or mineral processing license or interest therein unless the person to whom the transfer is being made is disqualified from holding a mineral right or non-mining right under the provision of the Mines Act.

Upon the transfer of a mining right or mineral processing licence, the transferee assumes and becomes responsible for all the rights, liabilities and duties of the transferor under the mining right or mineral processing licence for the unexpired period of the mining right or mineral processing licence, as the case may be.

Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
A holder of a mining right or mineral processing licence cannot register the transfer of any shares or share in the company to any person or enter into an agreement with any person if the effect of doing so would be to give that person control of the company without the prior written approval of the Minister. An application has to be made to the Minister in the prescribed form and the Minister may call for and obtain any information which is necessary for purposes of the application. The Minister may approve or reject the application within sixty (60) days of receipt of the application. However, such approval will not be unreasonably withheld.

USE OF SURFACE OF LAND INVOLVED IN EXPLORATION AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
In Zambia, surface rights and mining rights are clearly distinct concepts, administered under separate and distinct legal frameworks. Surface rights are granted under the Lands Act, Chapter 184 of the Laws of Zambia (the "Lands Act"), while mining rights are granted under the Mines Act. There are two types of land tenure systems in Zambia: customary or native tenure and state tenure, which must be taken into account when exercising any surface rights for prospecting and mining activities.

A holder of a mining right is generally entitled to exercise any surface rights reasonably, where it is necessary for the reasonable and proper conduct of the exploration or mining operations. However, where another person has a right to the surface rights independent of the mining right, which predate the mining right, the Mines Act provides that the rights under such mining right may not be exercised without the written consent of the owner or legal occupier of the land or the duly authorised agent:

- Upon any land which is the site of, or which is within one hundred and eighty metres of any inhabited, occupied or temporarily uninhabited house or building;
- Upon any land within forty-five metres of any land which has been cleared or ploughed or otherwise prepared in good faith for growing of farm crops or upon which farm crops are growing;
- Upon any land which is the site of or is within ninety metres of any cattle dip, tank, dam or any private water as defined in the Water Resources Management Act No.21 of 2011; or
- Upon any land forming part of an aerodrome, other than any land forming part of a Government aerodrome;

Further, the rights under a mining right may not be exercised:

- Without the written consent of the Minister responsible for that matter or such public officer as the Minister may authorise to give the requisite consent on his behalf ("Appropriate authority"), upon:
  - o Any land dedicated as a place of burial whether in use or not;
  - o Any land containing any ancient monument or national monument, as defined in the National Heritage Conservation Commission Act, Chapter 173 of the Laws of Zambia;
  - o Any land which is the site of or within ninety metres of any building or dam owned by the Government; or
  - o Any land forming part of a Government aerodrome as defined in the Air Navigation Regulations made under the Aviation Act, Chapter 444 of the Laws of Zambia;
- Land occupied as a village, without the written consent of the chief and the local authority for the district in which the village is situated;
- Without the written consent of the railway administration, upon any land reserved for the purposes of any railway track or within in one hundred metres of any railway track;
- Without the written consent of the appropriate authority or the local authority concerned, upon any land within, or within sixty metres of the boundaries of, any city, municipality or district for which a council is established under the provisions of the Local Government Act, Chapter 281 of the Laws of Zambia;
- Without:
  - o the written consent of the Appropriate authority, upon any land used as a forest nursery or plantation or as a timber depot, sawmill or other installation for working a forest; and
  - o due compliance with the relevant provisions of the Forests Act No. 7 of 1999, upon any land declared to be

a national forest or local forest, as defined in that Act;
- Upon any street, road or highway, without the written consent of the Appropriate authority or the public body which has the control thereof;
- Upon any land comprised in a National Park or game management area without complying with the Zambia Wildlife Act No. 12 of 1998; and
- Upon any land that, under the Town and Country Planning Act, Chapter 283 of the Laws of Zambia, cannot be developed without permission, unless the requisite permission is first obtained.

In the event of the owner of such land or Appropriate authority unreasonably withholding consent to access the area, the Director of Mines may require the matter to be settled by arbitration.

The surface right holder is entitled on demand to a fair and reasonable compensation from the mining right holder for any disturbance of such surface right and failure to pay such compensation by the mining right holder has to be referred to arbitration for resolution.

The provisions of the Mines Act also make it clear that a holder of a surface right or occupier thereof which is subject to a mining right can only retain, in a case where there is no building or structure on a pre-existing surface right, the following rights unless an access agreement between the mining right holder and the surface right holder provides otherwise:
- Right to use and access water;
- Right to graze stock; and
- Right to cultivate the surface of the land.

Such rights cannot, however, be exercised in such a way by the surface right holder that interferes with the exercise of the mining right and any buildings or structures on such surface right can only be erected by the surface right holder with the consent of the mining right holder.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
Environmental protection of exploration and mining sites in Zambia is principally regulated by the Mines Act, the Mines and Minerals (Environmental Protection) Regulations, the Environmental Management Act, the Environmental Management (Licensing) Regulations, 2013 ("Environmental Regulations") and the Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations No. 28 of 1997 ("EIA Regulations").

The Environmental Act prohibits any person from undertaking any project that may have an effect on the environment without the written approval of the ZEMA except in accordance with any conditions imposed by such approval ("Decision Letter"). A Decision Letter authorising a person to conduct exploration or mining activities is granted by ZEMA after such a person undertakes an EIA. That is, a person concludes and submits to ZEMA an environmental project brief ("Project Brief") or an environmental impact statement ("EIS") in accordance with the EIA Regulations.

A Project Brief is required before commencement of exploration or mining operations. An EIS is required where an exploration or mining project is likely to have a significant impact on the environment. ZEMA considers the Project Brief or EIA and if ZEMA is satisfied that the project will have no significant impact on the environment, or that the Project Brief or EIA discloses sufficient mitigation measures to ensure the acceptability of the anticipated impact, ZEMA will issue its Decision Letter approving the Project Brief or EIA either with or without conditions.

Further, a person conducting mining operations may be required to obtain the following licences from ZEMA:

Emission Licence
This licence is required where a holder of a mining right is discharging, causing or permitting the discharge of, a substance, physical agent, energy oral combination of substances and physical agents that may contribute to, or create a condition of, pollution into the environment if that discharge causes, or is likely to cause, harmful or detrimental effect on the environment, whether actual or potential, that:
- Impairs, or may impair, human health; and
- Results in, or may result in, an impairment of the ability of people and communities to provide for their health, safety, cultural and economic wellbeing ("Adverse effect").

Waste Management Licence
This licence is required if a holder of a mining right:

- Generates, pre-treats or treats hazardous waste;
- Handles, transports or stores hazardous waste;
- Disposes of hazardous waste; and
- Transits, trades in or exports hazardous waste.

"Hazardous waste" is defined under the Environmental Management Act, 2011 as waste which is poisonous, corrosive, irritant, explosive, inflammable, toxic or other substance or thing that is harmful to human beings, animals, plants or the environment.

Hazardous waste licence
This licence is required if a holder of a mining right collects, transports, sorts, recovers, treats, stores, disposes of, or otherwise manages waste in a manner that results in an Adverse effect or creates a significant risk of an Adverse effect.

Pesticide and toxic substances licence
This licence is required if a holder of a mining right is manufacturing, importing, exporting, storing, distributing, transporting, blending, processing, re-processing or changing the composition of a pesticide or toxic substance; and reprocessing an existing pesticide or toxic substance for a significantly new use.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
As noted above, surface and mining rights are distinct under Zambian law, governed by separate pieces of legislation. Therefore, where any portion of the land over which the mining right exists is under customary or native land, a holder of a mining right may not conduct exploration or mining operations without the written consent of the legal owner, the chief and the local authority for the district in which the village is situated.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
The main health and safety laws applicable to the mining industry in Zambia are:

- The Mines Act and Regulations issued thereunder;
- The Mines and Minerals (Environmental Protection) Regulations;
- The Environmental Management Act and Regulations issued thereunder;
- The Factories Act, Chapter 441 of the Laws of Zambia;
- The Ionising Radiation Protection Act No. 16 of 2005;
- The Occupational Health and Safety Act No 36 of 2010; and
- The Workers Compensation Act No. 10 of 1999.

ADMINISTRATIVE AND CONSTITUTIONAL ASPECTS

Is there a constitution which has an impact on the rights to prospect and mine?
The Constitution of the Republic of Zambia protects mining rights by stipulating that property of any description can only be compulsorily acquired, under the authority of an Act of parliament that provides for payment of adequate compensation. In addition to the above, the Constitution stipulates the following principles for the management and development of Zambia's environment and mineral resources:

- Natural resources have an environmental, economic, social and cultural value and this shall be reflected in their use;
- The person responsible for polluting or degrading the environment is responsible for paying for the damage done to the environment;
- Where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;
- The conservation and protection of ecologically sensitive areas, habitats, species and other environment shall be done in a sustainable manner;
- Respect for the integrity of natural processes and ecological communities;
- Benefits accruing from the exploitation and utilisation of the environment and natural resources shall be shared equitably amongst the people of Zambia;
- Saving of energy and the sustainable use of renewable energy sources shall be promoted;
- Reclaiming and rehabilitation of degraded areas and those prone to disasters shall be promoted;
- Unfair trade practices in the production, processing, distribution and marketing of natural resources shall be eliminated;
- Origin, quality, methods of production, harvesting and processing of natural resources shall be regulated;
- Equitable access to environmental resources shall be promoted;
- Effective participation of people in the development of relevant policies, plans and programmes; and
- Access to environmental information to enable people to preserve, protect and conserve the environment.

Are there administrative appeals in the mining law?
The Mines Act creates the Mining Appeals Tribunal (the "Tribunal") in order to enhance, among others, administrative resolution of disputes before resorting to the formal courts of law. The Tribunal, comprising five (5) members appointed by the Minister, has been given the jurisdiction to, among others, inquire into and make awards and decisions in any dispute relating to exploration, gold panning and mining under the Mines Act, as well as inquire into, and make awards and decisions relating to exploration, gold panning and mining, arising under the Mines Act.

The Mines Act places an obligation on the Tribunal, within fourteen (14) days of determining an appeal, to inform the appellant and the Minister of Mines of its decision and the reasons for its decision, in writing. An appeal against a decision of the Tribunal lies to the High Court, within thirty (30) days of receipt of the decision thereof. The Tribunal is expected to be more efficient in resolving mining-related disputes when compared to the ordinary courts as it is expected to consist of a panel of experts and persons with knowledge and experience in matters relevant to mining or licensing. Additionally, the Tribunal is expected to enhance speedy determination of cases, compared to the traditional ways of resolving disputes before the national courts of law.

ROYALTIES AND TAXES

Corporate income tax
Corporate income tax rate applicable to all companies, including companies undertaking mining operations is 30%.

Value added tax
Subject to certain conditions, the export of goods from Zambia is considered to be a zero-rated supply. For the goods to be zero-rated, the commissioner general may require evidence that export of goods from Zambia is by or on behalf of a taxable supplier. Where such evidence of exportation is produced it is zero-rated.

VAT Rule 18(1) of the Value Added Tax Act (General) Rules 2020 Gazette Notice No. 310 of 2020 provides that, unless the commissioner general shall otherwise allow, a taxable supplier claiming that a supply is zero-rated in accordance with the Value Added Tax Zero-Rating Order, on the grounds that the supply is an exportation of goods, shall produce to an authorized officer:

- copies of export documents for the goods, bearing a certificate of shipment provided by the ZRA;
- copies of import documents for the goods, bearing a certificate of importation into the country of destination provided by the customs authority of the country of destination or copies of transit documents for goods bearing a certificate of transit provided by the Customs authorities of the country of transit or copy of the airway bill or road manifest or goods train manifest or bill of lading: Provided that the commissioner general may exempt an exporter from the requirements of this paragraph if it is shown, to the satisfaction of the commissioner general, that failure by the exporter to obtain the import documents or transit documents is wholly attributable to onerous procedures in the country of destination or country of transit;
- tax invoices for the goods exported;
- documentary evidence proving that payment for the goods has been made in the exporter's bank account in Zambia; and
- such other documentary evidence as the authorised officer may reasonably require, including a written order showing the name and address of exporter, name and address of the customer, the description, quantity and value of goods, the delivery address and the date of expected delivery.

Withholding tax

Tax required to be deducted from any dividend shall be deducted at the rate of zero per cent per annum for any dividend paid by a company carrying on mining operations.

Withholding tax applies at the following rates in respect of other taxes:

- Dividend pay-outs and profits distribution by branches of foreign companies at 15% for resident companies and 20% for non-residents%;
- Construction and haulage operations fees paid out to non¬residents at 20% and 0% for residents;
- Interest at 15% for resident and 20% for non-resident companies;
- Commission for residents is 15% and non-residents at 20%,
- And entertainment fees of 0% for residents and 20% for non-residents;
- Management and consultancy services paid out to resident consultants at 15% and non-residents at 20%.

Property Transfer Tax

Property Transfer Tax is payable on the transfer of any type of mining right from one party to another.

The Property Transfer Tax (Amendment) Act, 2022, as read together with the Property Transfer Tax Act, now defines property to include the following:

- A share issued by a company incorporated in Zambia or by a company incorporated outside Zambia where the company directly or indirectly owns at least ten percent of the shares in a company incorporated in Zambia. A share includes a stock, certificate, warrant or equivalent rights, and an interest in a mining right or an interest in a mineral processing licence;
- A mining right issued under the Mines and Minerals Development Act, 2015.

A mineral processing licence issued under the Mines and Minerals Development Act, 2015; As such, on the transfer of any of the mining or mineral processing right, property transfer tax is payable to the Zambia Revenue Authority at the rate of:

- ten percent of the realised value in respect of a mining right for a mining licence;
- five percent of the realised value in respect of a mining right for an exploration licence;
- ten percent of the realised value in respect of a mineral processing licence; and
- five percent of the realised value in respect of shares.

Are there any royalties payable to the State over and above any taxes?

Under the Mines Act mineral royalties payable are determined by the mineral concerned.

Where the base metal produced or recoverable is copper, the mineral royalty payable is applied at an incremental value in each price range as follows:

- 4% when the norm price is less than $4,000 per tonne;
- 6.5% applied to the next $1,000 from a norm price of $4,000 per tonne up to a norm price of $5,000 per tonne;
- 8.5% applied to the next $2,000 from a norm price of $5,000 per tonne up to a norm price of $7,000 per tonne;
- 10% when the norm price is $7,000 per tonne or more.

The following royalties are applicable to the other minerals:

- 5% of the norm value in respect of energy minerals, industrial minerals, and base metals (other than copper, cobalt and vanadium);
- 6% of the norm value in respect of precious metals and gemstones; and
- 8 per cent of the norm value in respect of cobalt and vandanium.

For purposes of the Mines Act, the norm value is defined by the Mines Act as: (a) the monthly average London Metal Exchange cash price per tonne of the metal or recoverable metal sold; or (b) the monthly average Metal Bulletin cash price per tonne of metal or recoverable metal sold to the extent that it is not quoted on the London Metal Exchange; or (c) the monthly average cash price per tonne at any exchange market approved by the Commissioner General of the Zambia Revenue Authority of metal sold or recoverable

metal sold to the extent that it is not sold on the London Metal Exchange or Metal Bulletin.

Furthermore, a person who is not the holder of a licence and who is in possession of minerals extracted from Zambia for which mineral royalty has not been paid is liable to pay mineral royalty at the rates detailed above.

It is essential to note that royalty deferment is an option that is available under the Mines Act, in that the Commissioner General of the Zambia Revenue Authority may, on application by the holder of the mining right, defer payment of royalty due from the holder if, during any period for which a payment of royalty is due the cash operating margin of the holder in respect of mining operations in the mining area falls below zero.





ZIMBABWE SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?
The basic legislation regulating mining activities in Zimbabwe is the Mines and Minerals Act, [Chapter 21:05] ("Act") and Regulations made thereunder. It is a 1961 piece of legislation which has had minor amendments over the years.

ADMINISTRATION

The administration of that legislation is the responsibility of the Minister of Mines who generally acts through Mining Commissioners for the various districts and, who in respect of major decisions, acts on the advice of the Mining Affairs Board.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Holding of Mining Rights
Mining Rights are held in various forms. The simplest form is a mining claim which is a permit to mine. A single claim will normally cover a very small area. It is common to have several contiguous claims grouped into a block of mining claims. The pegging has to be maintained, and annual reports have to be submitted to the Mining Commissioner for the relevant district.

Lease
For ease of administration, several claims forming a block can be transformed into a mining lease through an application made in terms of the Act. A mining lease generally confers longer term rights which are renewable in terms of the Act.

Rights Conferred
Basically, a holder of Mining Rights is entitled to the exclusive right of mining any ore or deposit of any mineral which occurs within the vertical limits of the area covered by his or her location. The only exclusion will be coal, oil and gas which are mined in terms of a Presidential Grant.

Title Not Impeachable
The title of a Mining Right holder is not impeachable. The law does not allow the impeachment of titles to mining claims which have been registered for a period of two years or mining claims which have been consolidated into a mining location.

Prospecting
The usual starting point in the acquisition of Mining Rights is obtaining a prospecting licence which entitles the holder to prospect, peg and register claims in terms of the Act. A registered claim is a mining location where mining activities can take place.

Ordinary Prospecting Licence
A prospecting licence can be issued as an ordinary prospecting licence which is valid for two years. The prospectors' licence itself is valid for five years. Both are renewable.

Exclusive Prospecting Licence
Additionally, it is prudent to obtain an exclusive prospecting order which confers exclusive rights to prospect for specified minerals in any identified location within Zimbabwe. Exclusive prospective orders are issued for a maximum of six years, being three years renewable for a period of three years.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?
Coal, oil and gas mining rights are conferred by a special grant, which are granted by the President of Zimbabwe. An application is made to the Mining Affairs Board which makes a recommendation to the Minister of Mines. The Minister of Mines makes a recommendation to the President of Zimbabwe. Only the President of Zimbabwe can sign a grant in respect of coal, oil and gas. After the grant has been signed, the nature of the rights granted is the same as that in respect of any other mineral.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?
Following the change in government in November 2017, the compulsory indigenisation policy was repealed, with the exception of diamond and platinum mining companies. As a result, foreign residents are now permitted to own up to 100% of shares in a Zimbabwean company.

Foreign Nationals
Transfer and allotment of shares in a Zimbabwean company to a foreign resident requires prior exchange control approval. Approval has been granted in advance in respect of securities in listed companies where a foreign resident may acquire up to 15% per counter and a group of foreign residents may acquire up to 49% per counter.

RIGHTS OF THE STATE

Dominion
Dominion in all minerals vests in the President. Miners acquire rights to mine and such rights are protected by law. Where rights are lost in terms of the law, the President's residual ownership is restored and is unfettered by any encumbrance arising from the granting of the rights.

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?
Local processing and beneficiation is required for certain minerals including, diamond, platinum, chrome and lithium. The Minister is empowered to prescribe, by notice in a statutory instrument, the terms and conditions under which minerals may be beneficiated, processed or exported.

RESTRICTIONS ON SALE AND EXPORT OF MINERALS

The sale of minerals in Zimbabwe is facilitated by the Mineral Marketing Corporation of Zimbabwe (MMCZ), a parastatal entity established under Zimbabwean law. While the MMCZ is responsible for selling all minerals, miners may obtain permits to sell minerals directly through contracts approved by the MMCZ. Notably, the sale of gold is subject to additional regulation by the Reserve Bank of Zimbabwe (RBZ). Furthermore, the MMCZ is entitled to a commission on all sales and exports of minerals.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Mining rights cannot be transferred or alienated in any manner without the approval of the Mining Commissioner. In the case of Mining Grants or Mining Leases, the approval of the President is required. The application goes to the Mining Affairs Board which make recommendations to the Minister and the Minister makes recommendations to the President.

ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?
The Constitution of Zimbabwe Amendment (No. 20) Act 2013 ("Constitution") enshrines environmental rights demanding that every person be afforded a right to an environment that is not harmful to their health or wellbeing and to have the environment protected for present and future generations through reasonable legislative and other measures. In terms of the Environmental Management Act, no mining operations may commence unless an Environmental Impact Assessment report has been prepared, measures to minimise adverse impact on the environment have been enumerated, and an environmental agency established by statute has issued a certificate allowing the miner to commence mining operations.

CUSTOMARY LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?
The Minister may reserve land held under customary land rights against prospecting and mining.

HEALTH AND SAFETY

What legislation governs health and safety in mining?
There is environmental management legislation, factories legislation, mining regulations and National Social Security regulations providing for details of health and safety requirements on mining operations.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

As pointed out above, the Constitution enshrines environmental rights. The Constitution demands transparency, honesty, cost effectiveness and competitiveness in the negotiation and performance of, inter alia, concessions of minerals and other rights.

ROYALTIES AND TAXES

All miners pay royalties to the State for exploitation of minerals because all minerals belong to the State. Royalties are based on production and are payable over and above income tax payable by the miners. For certain minerals, royalties can now be paid in actual minerals.





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