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Mining

Mining Administrative Offences and Penalties New Rough Diamond Marketing Policies

Mining Administrative Offences and Penalties

As expressly foreseen in Article 213 of the Mining Code, the Angolan Government has established – by means of the recently enacted Presidential Decree 158/16, of 10 August 2016 “**PD 158/16**” – a set of mineral administrative offences and respective penalties for breach of the provisions of the Mining Code and ancillary regulations.

Mineral administrative offences are broadly defined by PD 158/16 as all acts and omissions in breach of the provisions of the Mining Code and the Public International Law on access and use of mineral resources. The following acts and omissions are expressly defined as mineral administrative offences:

- a) Installation, commencing or extension of any mineral activity without authorization or title
- b) Mining or sale of mineral resources outside the scope of the relevant mineral title
- c) Failure to apply for the renewal of the mineral title or registration of such extension
- d) Failure to submit the mandatory periodic geological-mineral activity reports
- e) Failure to provide evidence of the legal standing of the holder of the mineral rights
- f) Inappropriate storing or transportation of flammable or hazardous substances, equipment subject to security restrictions or the transportation of minerals without license or in breach of the safety regulations
- g) Breach of any other statutory provision applicable to the exercise of mineral activities

Abandonment of a mining area without implementation of the mandatory environmental restoration or reinstatement measures also qualifies as a mineral administrative offence for the purposes of PD 158/16.

The applicable fines are based on a number of criterion, such as the seriousness of the offense, the infringer's fault, economic benefit for the offender, amongst others, and may range from Kz. 157,528 to 6,751,200 (roughly USD 1,000 to 40,000, at Angola National Bank's official exchange rate www.bna.ao). In addition to the fines and other penalties set forth in the Mining Code, any of the infringements outlined in paragraphs (a) to (f) above may result in the suspension of the geological and mineral operations for a period up to 90 days.

PD 158/16 shall enter into force 60 days after its date of publication (10 August 2016).

New Rough Diamond Marketing Policies

By means of Presidential Decree 163/16, of 29 August 2016 – “**PD 163/16**” – the Angolan Government established a new set of rules applicable to the marketing of rough diamonds. Although maintaining Sodiam as the single marketing channel, this statutes contains a number of new rules, which may be summarized as follows:

I – Industrial Market

- i. Under Endiama, E.P.’s supervision, Sodiam is allowed to enter into diamond sale agreement with Preferential Clients, which are subject to Ministry of Geology and Mines’ (“**MGM**”) homologation
- ii. The proceeds from the sale of diamonds in hard currency must be mandatorily sold to the Angola National Bank (“**BNA**”) and BNA transfers the Kwanza (local currency) equivalent amount to a bank account domiciled in the country
- iii. BNA is required to make hard currency available to foreign companies for repatriation of dividends and acquisition of equipment

All entities with good reputation and financial capability may qualify as Preferential Clients, provided they accept to comply with the following obligations:

- a) Buy diamonds at all times, even in the event of an economic crises, and in this latter case, pay for the diamonds the reference price applicable immediately before the beginning of such crises
- b) Finance diamond mining operations or otherwise invest in the mining industry
- c) Promote social responsibility projects through Endiama, E.P.’s Fundação Brilhante (“Brilliant Foundation”)

All mining companies engaged in exploration activities are entitled to qualify as Preferential Clients for the diamonds recovered in their concessions, provided they meet the all requirement outlined above.

II – Artisanal Market

- i. Under Endiama, E.P.’s supervision, Sodiam is allowed to subcontract specialized companies to buy artisanal diamond production under contracts subject to MGM’s homologation
- ii. The companies wishing to qualify as buyers of artisanal diamonds are required to obtain a license, fund artisanal or semi-industrial cooperatives and individual miners, make monthly purchases in a minimum of USD 4.000.000,00 and engage in the efforts to make their marketing operations through the Angolan commercial banks.

PD 163/16 entered into force on the date of its publication (29 August 2016).

