

THE MINING LAW
REVIEW

SEVENTH EDITION

Editor
Erik Richer La Flèche

THE LAWREVIEWS

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REVIEW

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PREFACE

I am pleased to have participated in the preparation of the seventh edition of *The Mining Law Review*. The *Review* is designed to be a practical, business-focused ‘year in review’ analysis of recent changes, developments and their effects, and a look forward at expected trends.

This book gathers the views of leading mining practitioners from around the world and I warmly thank all the authors for their work and insights.

The first part of the book is divided into 18 chapters, each dealing with mining in a particular jurisdiction. These countries were selected because of the importance of mining to their economies and to ensure a broad geographical representation. Mining is global but the business of financing mining exploration, development and – to a lesser extent – production is concentrated in a few countries, Canada and the United Kingdom being dominant. As a result, the second part of the book has five chapters that focus on financing.

The advantage of a comparative work is that knowledge of the law and developments and trends in one jurisdiction may assist those in other jurisdictions. Although the chapters are laid out uniformly for ease of comparison, each author had complete discretion as to content and emphasis.

Much of the mining sector continues to emerge from a lengthy down-cycle. The world economy continues to expand, albeit at a deliberate pace. Demand for minerals is generally sustained and exploration in many parts of the world – in Canada in particular – has rebounded.

But new risks beyond the control of miners are gathering on the horizon. The threat of trade wars, economic nationalism and increased sanctions risks derailing the mining industry just as it is reaping the fruits of its hard work.

As you consult this book, you will find more on topics apposite to jurisdictions of specific interest to you, and I hope you will find the book useful and responsive.

Erik Richer La Flèche

Stikeman Elliott LLP

Montreal

September 2018

Part I

MINING LAW

ANGOLA

João Afonso Fialho and Ângela Viana¹

I OVERVIEW

Angola is one of the greatest diamond producers in the world and has extensive reserves of valuable natural resources, notably diamonds, gold, iron ore, phosphates, copper, manganese, and many other mineral resources. Unfortunately, the civil war (1975–2002) had a tremendous impact on the mining industry, which was basically put to sleep during the conflict. Major investors ceased or suspended their operations in the country for almost 30 years, which explains why most of the country's reserves are yet to be discovered and explored.

The government has recently embarked on a campaign to attract foreign and national investment. This strategic focus is one response to the economic crisis caused by the severe drop in oil prices that has been weakening the national economy since 2008.

Despite all the diversification efforts, Angolan continues to be strongly dependent on oil revenues. Particularly in regard to the mining industry, there has been substantial investment in artisanal and semi-artisanal mining of diamonds and other minerals, notably gold, copper and construction materials, with hundreds of new concessions being awarded to foreign and national entrepreneurs (associated or not with foreign investors). Nevertheless, Angola's second-largest export continues to be gems and precious metals, diamonds in particular.

Foreign direct investment is one of the cornerstones of the Angolan economy and a constant concern of the government. In fact, the government actively encourages foreign investment, seeking to attract mining companies to Angola and aiming to increase the contribution of the mining industry to the country's gross domestic product. Most of the major mining companies have operations in Angola. Even those that ceased mining operations during the civil war are now resuming their investments and are strongly motivated to pursue the projects that were inadvertently put on hold. This all suggests that after some years of scarce investment in the Angolan mining industry, new investments are flourishing, no doubt inspired by the remarkable results announced by some of the most profitable mining projects in the country (e.g., the Catoca and Lulo projects).

Associated with this investment-friendly regime is the political stability achieved in recent years and unquestionably accomplished during the 2017 presidential election period, which resulted in the steady transition of power from an executive who was in office for more than 30 years. After many years of disbelief in the country's political stability, all now seems to indicate that Angola is on the right path towards becoming a key player on the international scene and one of the most promising African countries to which to direct investments.

¹ João Afonso Fialho is a partner and Ângela Viana is a senior associate at Vieira de Almeida.

II LEGAL FRAMEWORK

The mining sector is primarily governed by the Mining Code, approved by means of Law 31/11, of 23 September 2011 (the Mining Code), which covers most of the rules applicable to the mining industry and mineral operations, from exploration to beneficiation, and the marketing of all sorts of minerals.

Complementary to the rules of the Mining Code are key rules and regulations in other ancillary pieces of legislation, in particular the following:

- a* Presidential Decree 175/18, of 27 July 2018, which approves the policy for the marketing of rough diamonds;
- b* Joint Executive Decree 316/17, of 27 June 2017, which approves the list of equipment and machinery that may benefit from customs exemptions;
- c* Presidential Decree 231/16, of 8 December 2016, which classifies rare metals and rare earth elements as strategic minerals;
- d* Presidential Decree 158/16, of 10 August 2016, which approves the mineral administrative offences and relevant penalties regime; and
- e* Order 2/03, of 28 February 2003 of the National Bank of Angola, which establishes the foreign exchange regime for diamond producers and other holders of mineral rights.

In addition to the above industry-specific key legal statutes, there are other miscellaneous statutes applicable to the mining industry on a subsidiary basis, most notably the Private Investment Law (Law 10/18, of 26 June 2018), the General Labour Law (Law 7/15, of 15 June 2015), the Foreign Exchange Law (Law 5/97, of 27 June 1997) and the Environmental Law (Law 5/98, of 19 June 1998), to name but a few.

The political and administrative organisation of the Angolan state dictates that all laws and regulations are issued at state level and apply throughout the country (there are no relevant local or regional regulations).

At an international level, Angola has bilateral cooperation treaties for the mining sector with Democratic Republic of the Congo, South Africa and Mozambique. Angola is a party to the Kimberley Process Certification Scheme (KPCS) for rough diamonds and many international environment instruments that are expressly recognised under the Mining Code.

The main regulatory bodies with controlling and supervisory powers and authority over the mining industry are the head of the government, the Ministry of Mineral Resources and Petroleum (MMRP), the Ministry of Finance and the National Bank of Angola.

Reference must also be made to key state-owned companies and public authorities that have a particularly relevant role in the Angolan mining industry, namely:

- a* the National Diamond Company of Angola – Endiama, EP (Endiama): the national concessionaire for diamonds, rare metals and rare earth elements;
- b* the National Iron Company of Angola – Ferrangol, EP (Ferrangol): the national concessionaire for noble materials, ferrous and non-ferrous metals;
- c* the Gold Agency: the market regulatory agency for gold entrusted with the organisation, regulation and supervision of the gold market; and
- d* the Diamond Trading Company of Angola – Sodiam, EP: the single channel for the marketing of all diamond productions extracted from Angola.

III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS

i Title

The Constitution of the Republic of Angola sets forth that natural resources are the property of the state, which shall define the relevant conditions for the award of exploration and mining rights thereof, presently established under the Mining Code.

The Mining Code further emphasises that ‘mineral resources existing in the soil, subsoil, territorial sea, continental shelf, exclusive economic zone, and in other areas of the territorial or maritime domain under the jurisdiction of the Republic of Angola are originally owned by the state and are comprised within its public domain’.

Without prejudice to the above, minerals and other products mined and extracted in accordance with the rules of the Mining Code and ancillary legislation are the property of the holders of the relevant exploration and mining titles granted under the terms provided for in the respective concession contracts. Specific rules and conditions for the award of mineral rights are set forth in the Mining Code, which adopts a single-contract model under which all mineral rights are granted, from the outset, for the whole mineral process, that is to say, exploration, evaluation, reconnaissance, mining and marketing.

ii Surface and mining rights

Mineral rights are awarded by the state by means of a mineral investment contract (MIC). The award may follow a spontaneous application or a public tender procedure. Public tenders may be optional or compulsory, depending on the geological potential of the relevant area or the classification of the mineral to be exploited as strategic or non-strategic.

Minerals may be classified as strategic by the government because of their economic relevance, their use for strategic purposes or other specific technical mining aspects. Other relevant criteria for classifying a mineral as strategic are rarity, impact on economic development, demand on the international market, impact on job creation, technological relevance, impact on the balance of payments and relevance for military purposes.

The procedure for awarding mineral rights varies according to the mineral in question and the industrial or artisanal nature of the mineral operations. Strategic minerals are subject to more complex award procedures and may take some months to be negotiated and awarded (particularly when a national concessionaire is involved, such as Endiama or Ferrangol).

Diamonds, gold and radioactive minerals are expressly qualified as strategic minerals under the Mining Code. Presidential Decree 231/16, of 8 December 2016, classifies rare metals and rare earth elements as strategic minerals.

In the absence of a mandatory public tender procedure, mineral rights shall be awarded on a first come, first served basis to the applicant who provides sufficient evidence of the technical and financial capability required to carry out the relevant mineral activities.

While the single contract model allows all mineral rights to be formally awarded from the outset by means of a MIC, the holder of the mineral rights must obtain an exploration title (following approval of the MIC) and a mining title (following approval of a technical, economic and financial feasibility study (TEFS)).

At an industrial scale, exploration rights are awarded for an initial term of up to five years, extendable for two additional one-year terms and one year expressly for completion of the TEFS. Mining rights are awarded for an initial term of up to 35 years, extendable for one or more 10-year terms. Different time limits apply to semi-industrial and artisanal mining, and exploitation of civil construction minerals and mineral-medicinal waters.

As a rule, no local content requirements apply to the mining industry. Thus, mineral rights may be awarded to and exercised by foreign entities provided they meet all the statutory formalities and criteria to do business and operate in the country. However, there are some exceptions, as in the case of artisanal mining activities, which may only be carried out by Angolan citizens, and mineral rights for exploitation of civil construction and mineral-medicinal waters, which may only be granted to either Angolan citizens or legal entities having at least two-thirds of share capital owned by Angolan citizens.

As regards diamonds, Endiama – in its capacity as national concessionaire – has been consistently engaged in projects as both a member of unincorporated joint ventures for the exploration stage and shareholder of companies incorporated for the mining stage, either directly (prior to the enactment of the Mining Code) or through an Angolan subsidiary company wholly owned by Endiama. More recently, Endiama has also become the national concessionaire for rare metals and rare earth elements.

Ferrangol is a state-owned company and the national concessionaire for noble materials, ferrous and non-ferrous metals. Ferrangol associates itself with both national and foreign partners, through either unincorporated or incorporated joint ventures.

iii Additional permits and licences

In addition to exploration and mining licences, holders of mineral rights are required to apply for all standard commercial and operation permits and registrations as required by law to conduct business in Angola (e.g., company registration, tax registration, commercial operations permit, environmental licence, import and export licences). Holders of mineral rights are also required to register with the MMRP and obtain a mineral registration certificate attesting that the applicant has the capacity to carry out mining activities in the country.

iv Closure and remediation of mining projects

Holders of mineral right are statutorily and contractually bound to carry out mineral activities with the least environmental and social impact. All projects that by nature, dimension or location may have an impact on the environment and social balance and harmony are subject to an environmental impact assessment (EIA). As regards the mining industry in particular, holders of mineral rights are required to complete and obtain approval of a mandatory EIA prior to moving on to the mining phase.

Holders of mineral rights are statutorily obliged to restore the land and landscape upon completion of each mineral project. Before the definitive abandonment of the concession area, holders of mineral rights must request the MMRP to inspect the mineral operations area (this inspection must be carried out in accordance with the plan for closure and abandonment of the mineral operations approved by the MMRP as provided for in the Mining Code and the EIA, where applicable).

Mining companies are also statutory obliged to create (1) a legal reserve in an amount of 5 per cent of the capital invested in the relevant project for mine closure and environmental restoration, and (2) a provision to cover the cost of environmental restoration or reclamation, as a result of damage caused by geological and mineral activities and the useful life of mining (the relevant rates and limit of the provision will be set in accordance with the EIA).

With the exception of artisanal mining, entities carrying out mining activities shall be further subject to the payment of a contribution to the state to be used to set up an environmental fund.

In addition to the foregoing, holders of mineral rights at an industrial scale are also required to post a bond to guarantee compliance with their contractual obligations (environmental commitments included). The amount of the bond in the reconnaissance, exploration, evaluation and appraisal stages shall be up to 2 per cent of the investment amount, whereas in the mining stage, the bond shall be set for up to 4 per cent of the investment amount. The bond shall be posted prior to signing the MIC and shall be refunded as soon as the reconnaissance, exploration, evaluation and appraisal stages are concluded, or when at least 35 per cent of the investment in the mining stage is made, as applicable.

IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS

i Environmental, health and safety regulations

One of the expressed goals of the Mining Code is to ensure the protection of the environment by reducing the negative impact that geological-mineral operations may have on the environment, as well as by repairing such harmful effects as may be caused. Mineral resources shall be mined in a sustainable manner and to the benefit of the national economy, in strict compliance with the rules on safety, economic use of the soil, rights of the local communities, and the protection and defence of the environment.

Holders of mineral rights shall therefore take all reasonable steps to preserve and protect nature and the environment and comply with the specific rules on environmental preservation in mineral activities to be approved by the Minister of the Environment and the MMRP (yet to be enacted). Holders of mineral rights shall also take into account the specific rules on environmental preservation resulting from international instruments ratified by Angola including, without limitation, the Convention on Biodiversity, the Cartagena Protocol, Agenda 21 and the International Convention on Waste.

Pending the enactment of environmental rules specific to mineral activities, mineral resources shall be exploited in compliance with the general environmental law, the water law, the law on biological and aquatic resources, and the rules on environmental impact assessment.

Health and safety are also expressly regulated by the Mining Code. As an example, the MMRP may order the suspension of mineral operations in the event of serious risk to the life or health of the population, to the safety of the mines, to healthy conditions in the workplace, to the environment, wildlife and flora. Without prejudice to the provisions of the Mining Code and of other applicable legislation, holders of mineral rights shall adopt measures to ensure hygiene, health and safety at work, and to prevent occupational hazards and accidents at work, as set forth in specific regulations from the relevant bodies to be approved by the MMRP, the Ministry of Public Administration, Employment and Social Security, and the Ministry of Health.

Training is also a concern. Holders of mineral rights shall promote the required training activities in hygiene, health and safety at work, and the correct use of machinery, materials and working tools.

ii Environmental compliance

All projects that by nature, dimension or location may have an impact on the environment and social balance and harmony are subject to an EIA. In the case of the mining industry, holders of mineral rights are required to complete and obtain approval of a mandatory EIA

prior to moving on to the mining phase (i.e., the approval of the EIA constitutes a condition precedent to the award of mineral rights for the mining stage). The principle of implicit approval of the EIA does not apply to the mining industry.

An environmental licence must be obtained for all activities subject to an EIA procedure under the general environmental rules and regulations (installation licence and operation licence).

iii Third-party rights

The definition of mineral policies should always take into account the tradition of local communities and contribute to their sustainable economic and social development. According to the Mining Code, the MMRP, in coordination with the local state authorities and the holders of mineral rights, shall create consultation procedures allowing the local communities affected by mineral projects to take an active part in decisions relating to protection of their rights, within the constitutional limits.

Local communities in the area where mineral projects are implemented are guaranteed the right to be informed, whenever the EIA indicates that the relevant project may affect the environment of the area where they reside, of the measures that the holder of mineral rights will adopt to avoid or mitigate possible adverse effects deriving from the mining of mineral resources. Local communities are entitled to the following statutory rights:

- a* Relocation – Local communities that suffer housing losses requiring their relocation or the disturbance of their normal housing conditions are entitled to be relocated by the relevant concession holder. The relocation process shall respect the uses, customs, traditions and other cultural aspects inherent to the communities, provided that these are not contrary to the Constitution.
- b* Preferential workforce – Holders of mineral rights shall ensure the employment and training of Angolan technicians and workers, with preference being given to those residing in the areas of the mineral concession.
- c* Protection of national market – Holders of mineral rights shall give preference to the use of Angolan materials, services and products, provided that their quality is consistent with the economy, safety and efficiency of the mineral operations, that their prices are not more than 10 per cent higher and that the delivery time is not more than eight business days longer.

The award of mineral rights does not imply the transfer of ownership over the areas awarded for geological mineral investigation or over the land where mineral occurrences are located, but grants the holder of the relevant mineral rights the right to use and exploit the land against payment of surface fees. In the case of privately owned land and areas in the private domain of the state or a public entity, the holder of mineral rights may only use the land after obtaining the consent of the legitimate owners or possessors (consent is deemed to be granted upon deposit of the annual rent and the posting of a provisional bond). If the holder of mineral rights fails to reach an agreement with the legitimate owners or possessors during the mining phase, operations may not commence until the land is acquired by the holder of mineral rights or expropriated by the state on the grounds of public interest. Holders of mineral rights are entitled to request the creation of easements for the full exercise of their rights, rights of way included.

As regards resettlement of the population residing in restricted or protected areas, the holder of the respective mineral rights shall build (1) suitable accommodation, in no event

of lesser quality than that previously possessed by the relocated persons, and (2) social and community infrastructures, including without limitation, schools, health centres, community centres, temples, water supply and other systems, offering conditions at least equivalent to those that existed in the previous settlements.

Specific commitments in this particular matter are typically governed and undertaken under the MIC.

V OPERATIONS, PROCESSING AND SALE OF MINERALS

i Processing and operations

Holders of mineral rights are subject to an industry-specific customs regime provided for in the Mining Code. Thus, imports of equipment or machinery intended for exclusive and direct use for mineral exploration, evaluation, reconnaissance, mining and processing operations shall be exempt from duties and the service charge relating to general customs fees, except for stamp duty, the statistical 1/1000 fee and other associated charges for services rendered.

Equipment and machinery may be imported on a temporary basis, with no bond being required, and their subsequent export will be exempt from customs charges, except stamp duty on customs clearance documents and the charges normally payable for the provision of services.

The list of equipment and machinery that may benefit from the industry-specific customs exemption is detailed in a list approved and updated by a joint executive decree of the Ministry of Finance and the minister responsible for the mining sector (Joint Executive Decree 316/17, of 27 June 2017).

This industry-specific customs exemption shall not apply when the equipment or machinery is produced in Angola to the same or a similar quality and is available for sale and delivery in due time, provided that the price is not more than 10 per cent higher than the cost of the imported item, prior to customs charges being applied but after transport and insurance costs are included using the valuation method of the World Trade Organization.

When equipment or machinery is imported, the customs authorities shall be presented with a solemn statement from the importer stating that the equipment or machinery is to be used exclusively for mining operations. Any deviation from the rule of exclusive use in mining operations and the disposal of any equipment or machinery imported under the industry-specific customs regime, must be previously sanctioned by the Minister of Finance. In case of clearance, the charges due on such goods shall be payable. The use of equipment or machinery imported under this industry-specific customs regime for any purposes other than those envisaged and authorised shall qualify as customs duty evasion, provided for and punishable under the terms of the customs legislation in force.

Equipment or machinery imported under this exemption regime cannot be sold in the Angolan territory without the prior authorisation of the Customs National Service. If authorised, the relevant duties and other customs charges shall become payable.

Exports of mineral resources by a mineral right-holder shall not be subject to payment of duties or other customs charges, including service fees, except for stamp duty and the customs officers' personal fees. This exemption shall not apply to mineral resources exported without processing, which shall be subject to a tax on the export of unprocessed minerals at a rate of 5 per cent on the market value of the mineral in question.

Enhancement of local processing and beneficiation is one of the expressed medium-term goals of the government for developing the mining industry. One of the prerogatives expressly

set forth under the Mining Code to that effect is the state's right to purchase local productions at market prices in order to direct it to local industry. Whenever the relevant minerals have a strategic interest for national security, the state's right of requisition shall apply regardless of whether the production is used in the local mineral industry or not. Additionally, the government may authorise special tax and customs exemptions to Angolan companies exclusively engaged in the processing, dressing and cutting of minerals extracted in Angola.

There is no restriction on the use of foreign labour (except for artisanal mining). Nevertheless, holders of mineral rights shall ensure the employment and training of Angolan technicians and workers, with preference being given to those residing in the immediate areas of the mineral concession. Under the Angolan Labour Law, at least 70 per cent of the workforce of any entity employing more than five workers must be Angolan citizens.

Preference should also be given to the use of Angolan materials, services and products, provided that their quality is consistent with the economy, safety and efficiency of the mining operations, and that their prices are not more than 10 per cent higher and the delivery time does not exceed eight business days.

ii Sale, import and export of extracted or processed minerals

Holders of mineral rights have the right to market, process and export their productions, in accordance with the conditions set forth in the Mining Code for the marketing of minerals and the provisions of the relevant MIC and sale and purchase contracts.

The marketing of strategic minerals may be promoted by an institution created by the Executive to serve specifically as public marketing body. The public marketing body shall promote the sale of the producers' strategic minerals, and shall have the following duties:

- a* To organise the sales system by creating rules for the implementation of the marketing system in force, as well as to guarantee physical conditions for the efficient involvement of purchasers and sellers in the marketing process.
- b* To ensure the producers' commercial interests, by means of an efficient sales advertisement and promotion system.
- c* To ensure the security of transactions, by means of the application of rules of conduct, business ethics and fraud prevention.;
- d* To preserve, by means of appropriate commercial measures, the stability of prices on the international market.
- e* To issue the certificate of origin of the minerals intended for export.
- f* To prepare, store and disclose statistical data on the marketing of strategic minerals.

The marketing of diamonds is subject to specific rules established under the Mining Code and Presidential Decree 175/18 of 27 July 2018 (which approves the policy for the marketing of rough diamonds). According to Presidential Decree 175/18, all rough diamonds extracted from the Angolan territory must be sold through the Single Marketing Channel, which is overseen by Sodiam, EP.

Exports of minerals extracted in Angola are subject to licensing by the relevant body of the Ministry of Commerce and to customs clearance by the Customs National Service, with the MMRP being duly notified. Prior to export, strategic minerals shall be valued and sorted using, whenever the circumstances or the nature of the mineral so require, an internationally reputed appraiser retained for that purpose. All minerals extracted in and exported from Angola shall have a certificate of origin issued by the relevant entity. As a party to the KPCS, Angola has adopted the international system of certification of rough diamonds for export.

The introduction of any mineral in the national territory shall be subject to the prior opinion of the MMRP. When permitted, the operation shall be subject to standard customs clearance under the general terms of the law and to licensing by the Ministry of Commerce.

iii Foreign investment

Foreign investment in domestic mining companies and projects is deemed a special private investment operation subject to the investment rules of the Mining Code. The Private Investment Law shall only apply to mining projects on a subsidiary basis.

Whenever the investment entails the import of external capital or the granting of benefits and exemptions, the MMRP shall send a copy of the MIC and relevant title to the Ministry of Finance and to the national authority entrusted with the supervision of private investments in the country (currently AIPEX), so that the latter issues the relevant private investment registration certificate (CRIP).

In addition to all the statutory rights recognised to investors under the Mining Code, which include, *inter alia*, the right to mine the mineral resources discovered during exploration without any restrictions, the right to freely dispose of and market the mining products, etc., foreign investors and holders of mineral rights may also benefit from the statutory rights and privileges of the Private Investment Law or bilateral treaties (where applicable).

Angola has a stringent foreign exchange regime pursuant to which most cross-border transactions are subject to some level of scrutiny and control by Angolan authorities.

The Mining Code does not establish an industry-specific foreign exchange regime. However, reference must be made to the foreign exchange rules and regulations for diamond producers and other holders of mineral rights approved by Order 2/03 of 28 February 2003 of the National Bank of Angola (not repealed by the Mining Code). According to this special foreign exchange regime, diamond producers and other holders of mineral rights are entitled to apply for a special foreign exchange regime under the relevant MIC and request the National Bank of Angola's clearance for the opening and operation of offshore bank accounts for the purpose of reimbursement of finance agreements.

VI CHARGES

The Mining Code establishes a special tax regime applicable to all entities that carry out mineral reconnaissance, evaluation, exploration and mining activities in the national territory (the General Taxation Code and other sundry legislation relating to taxation and administrative matters shall apply on a subsidiary basis).

The industry-specific tax regime does not exclude other taxes or charges payable by law in respect of activities that are supplemental or incidental to mineral activities, except when they are expressly exempted.

The ring-fencing principle mandates that the tax obligations relating to a given mineral concession shall be independent from any other concession for the same mineral right-holder. In other words, the taxable income shall be calculated, and the respective tax charges assessed, separately for each mineral concession.

Holders of mineral rights may obtain investment premiums (uplift), grace periods for the payment of income tax and other types of tax incentives provided for by law. The specific tax exemptions or benefits are discussed and negotiated during the contractual stage of the investment procedure and incorporated in the MIC.

i Royalties

As a general rule, royalties are levied on the value of minerals extracted at the mine head or, when processing takes place, on the value of concentrates, at the applicable rate:

- a* Strategic minerals: 5 per cent
- b* Precious stones and precious metallic minerals: 5 per cent
- c* Semi-precious stones: 4 per cent
- d* Non-precious metallic minerals: 3 per cent
- e* Construction materials of mining origin and other minerals: 2 per cent

ii Taxes

Income tax

Income tax rate on mineral activities is 25 per cent (the general rate is 30 per cent). The Mining Code sets out a long list of deductible costs and losses for the purposes of determining the net taxable income of entities subject to income tax (e.g., costs of basic, incidental or supplemental activities relating to mineral production, such as those relating to materials used, manpower, energy and other manufacturing, maintenance and repair overheads; financial charges, including interest on loan capital invested in the undertaking, discounts, premiums, transfers, foreign exchange fluctuations, borrowing costs, debt collection and issue of shares and bonds, and reimbursement premiums). Special rules on tax reinstatement or depreciation also apply.

Investment income tax

Dividends distributed by companies or other business entities and resulting from revenues earned in mining operations are subject to investment income tax under the general terms of the law.

Personal income tax

Foreign workers, resident or otherwise, hired by concessionaires or by anyone who lawfully conducts evaluation, exploration or mining of mineral resources, as well as all those hired to provide technical, scientific or artistic services not subject to another tax, shall be subject to personal income tax on the terms and conditions established in the law.

iii Duties

Holders of mineral rights are required to pay an annual contribution to an environmental fund (artisanal mining excluded) and a mineral development fund.

iv Surface fees

For the initial five-year term of the reconnaissance, exploration, evaluation and appraisal title, the respective holder shall be subject to payment of a surface fee in legal currency, per square kilometre of the area corresponding to each title, as follows:

- a* Diamonds: US\$7 to US\$40
- b* Remaining strategic minerals: US\$5 to US\$35
- c* Precious stones and metals: US\$5 to US\$35
- d* Semi-precious stones: US\$4 to US\$20
- e* Non-precious metallic minerals: US\$3 to US\$18
- f* Construction materials and other minerals: US\$2 to US\$15

For each extension of the initial five-year term, the surface fee rate shall be double the value of the fifth year for each extension year or, if the mineral-right holder decides to retain the whole exploration area, three times the amount established for the fifth year, for the part of the concession area not relinquished.

v Artisanal fees

Entities carrying out artisanal mining of non-strategic minerals shall be liable to pay an artisanal fee to be set by executive decree as proposed by the Ministers of Finance and Mineral Resources and Petroleum.

VII OUTLOOK AND TRENDS

The diamond marketing policy recently enacted is now the centre of attention. Everyone – from diamond producers to traditional buyers of Angolan diamond productions – is anxious and willing to see the effects of the new policy in the process of sales of Angolan diamond productions. The new policy is expected to bring transparency to the marketing of Angolan diamonds, something that has been claimed by diamond producers for many years.

One of the short to medium-term goals of the Angolan government expressed in the new diamond marketing policy is the dynamisation and enhancement of local diamond processing, in particular by promoting the establishment of local diamond cutting and jewellery industries with special privileges in the process of acquisition of rough diamonds.

Another notable trend of the Angolan mining industry is the continuing search for diversification of the industry. While diamonds will always have a differentiated and singular role in the industry, serious efforts are being made with the aim of boosting national and foreign investment in other minerals, and artisanal and semi-industrial projects.

It is important to stress the continuing efforts by the Angolan government to attract foreign investment into the country. The recently enacted Private Investment Law promotes investment through a de-bureaucratized and streamlined process and is a clear sign of the state's commitment to developing and modernising the Angolan economy. Particularly in respect of the mining industry, one must emphasise the impact of the 2017 presidential elections that brought President João Lourenço into office, not only at the government level by bringing a new executive team into office (including the new MMRP that superseded the former Ministry of Geology and Mines) but also at the level of the national concessionaires that are now keen to take a more 'investor friendly' approach to the industry.

The current political environment associated with the vast amount of untapped natural resources shows that Angola has potential for prosperity and that there is massive potential for expansion and growth of the country's mining sector.

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