

Mining 2019

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Mining

2019

Contributing editors**Michael J Bourassa and Alison Lacy****Fasken**

Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Michael J Bourassa and Alison Lacy of Fasken, for their continued assistance with this volume.



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MINING INDUSTRY

Standing

1 | What is the nature and importance of the mining industry in your country?

Angola is one of the richest countries in the world in natural resources, with significant reserves of diamonds, iron ore, phosphates, copper, gold and manganese, among other valuable natural resources. However, its true mineral potential is yet to be unlocked, despite the significant exploration and mining projects already implemented, in particular within the diamond subsector.

Once a major iron ore, gold and copper producer, Angola's mineral development was greatly impaired after independence in 1975 (except diamond mining) by almost 30 years of civil war, which ended in 2002. Angola has since resumed mineral mining. As a result of the National Geology Plan (PLANAGEO) and the 2013–17 National Development Plan, launched by the Angolan government, one may now observe the effective boost and diversification of the national mining industry that now covers a broader variety of mineral projects. Despite all efforts at diversification, Angola's second-largest export continues to be gems and precious metals; particularly diamonds. This strategic focus on the mining sector is well reflected in the 2018–22 National Development Plan approved by the government in April 2018, which projects a substantial increase in diamond production, from 9 million carats in 2017 to 13.8 million carats in 2022, mostly driven by the recent commencement of several mining operations. The 2018–22 National Development Plan, also foresees a boost in the production of other minerals such as gold, construction mineral resources and ornamental stones. This focus appears to be the way forward and the mining sector's role in the future of the country is expected to increase in the short term.

Target minerals

2 | What are the target minerals?

A very significant portion of Angola's rich and varied natural resources remains unexplored. In recent years, target minerals continue to be diamonds, gold, iron ore, manganese and copper; however, recently, investment has diversified into industrial and construction mineral resources (eg, marble, granite and quartz)

Regions

3 | Which regions are most active?

The most active and promising regions for mining potential are Lunda North, Lunda South, Uíge, Huíla, Cuanza-North and Malange. With new investment in industrial and construction minerals resources' exploitation, new regions are taking the lead, such as Bengo and Namibe.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

4 | Is the legal system civil or common law-based?

Angola's legal system is civil law-based.

Regulation

5 | How is the mining industry regulated?

The mining industry is regulated at state level by the Angolan Constitution, Law No. 31/11, of 23 September 2011 (Mining Code), and some additional statutory and regulatory acts.

The Angolan mineral regime may be described as a 'contractual system'. Laws and regulations take second place to contracts in the definition of the material terms and conditions, which are often found in the relevant mineral investment contracts granting the mineral rights along with the detailed operational and economic terms and conditions for the exercise of the mineral rights.

6 | What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The Mining Code is the cornerstone of the Angolan mineral regime, and governs the exploration and mining of all minerals. This law regulates exploration, evaluation, reconnaissance, mining and marketing of mineral resources in general. Besides the Mining Code, the following are also relevant for the mining sector:

- Presidential Decree 85/19, of 21 March 2019, which approves the regulations for semi-industrial mining of diamonds;
- Presidential Decree 35/19, of 31 January 2019, which approves the technical regulations for marketing of rough diamonds;
- Presidential Decree 175/18, of 27 July 2018, which approves the new rough diamonds marketing policy;
- Law No. 10/2018, of 26 June 2018, which approves the private investment law (PIL);
- Presidential Decree 250/18, of 30 October 2018, which approves the regulations for the PIL;
- Executive Decree 346/17, of 14 July 2017, which sets forth the criteria for delimitation of concession areas for exploitation of construction materials;
- Joint Executive Decree 316/17, of 27 June 2017, which approves the list of equipment (for use in exploration and mining activities) exempted from customs duties and fees;
- Presidential Decree 231/16, of 8 December 2016, which classifies rare metals and rare earth elements as strategic minerals;
- Presidential Decree 158/16, of 10 August 2016, which sets forth administrative offences and relevant penalties;

- Order 255/14, of 28 January 2014, of the Ministry of Geology and Mines, on monitoring of posting of bonds and payments of surface fee and royalties under the Mining Code; and
- Order 2/03, of 28 February 2003, of the Central Bank of Angola, which establishes the foreign exchange regime applicable to holders of mineral rights.

The Ministry of Mineral Resources and Petroleum (MMRP), the Ministry of Finance and the Angolan Central Bank (BNA) are the main regulatory entities.

The national concessionaire for diamonds, rare metals and rare earth elements (Endiama EP), and the national concessionaire for noble materials, ferrous and non-ferrous metals (Ferrangol EP) are vested with certain regulatory and supervisory powers in respect of the minerals falling within their authority as concessionaires. Also noteworthy is Empresa Nacional de Comercialização de Diamantes de Angola, EP (SODIAM) (recently converted from a joint stock company into a state-owned company), which acts as the single channel for marketing of all diamond productions extracted from Angola.

The Market Regulation Agency for Gold – the state entity with the purpose of organising, regulating and supervising the gold market (set up by Presidential Decree 2/14, of 2 January 2014) – was recently extinguished by means of Presidential Decree 291/18, of 3 December 2018, with all power and authority now vested in the MMRP. This amendment falls within the reform of Angola's mining sector that the government has undertaken, which comprises, among other, the establishment of the National Agency of Mineral Resources, a new body of the MMRP, presumably to take up certain roles of the national concessionaires for the mining industry (the former Market Regulation Agency for Gold, Endiama EP and Ferrangol EP). The National Agency of Mineral Resources is yet to be incorporated.

Classification system

- 7 | What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The Mining Code refers to secondary legislation for the classification of reserves, although that legislation has yet to be enacted. In its absence, mineral resources and mineral reserves should be classified in accordance with internationally accepted methods and systems, to be approved by the MMRP.

MINING RIGHTS AND TITLE

State control over mining rights

- 8 | To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The state is the owner of all mineral resources, according to the Angolan Constitution and the Mining Code, and the state sets forth the terms and conditions for their concession, exploration and mining, which gives it effective control over the grant of mining rights. Under the Mining Code, state-owned, mixed-ownership or private companies may be granted and enforce mineral rights for exploration and mining.

In contrast to the former Mining Law, the state is entitled to participate in mineral production in consideration for the grant of mineral rights for mining and marketing, through a state-owned company with at least a 10 per cent shareholding in the company to be set up for the

mining stage, or a participation (or both) in kind (minerals produced) in a proportion to be defined (the proportion increases directly with the increase in the internal rate of return of the project).

Endiama EP is the national concessionaire for diamonds, rare metals and rare earth elements, and Ferrangol EP, is the national concessionaire for noble materials, ferrous and non-ferrous metals. Both concessionaires may establish unincorporated or incorporated joint ventures with other Angolan or foreign partners for the performance of their operations.

Publicly available information and data

- 9 | What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

Concession decrees granting mineral rights are published in the Angolan Official Gazette and there is also a public registry for mining companies.

The executive branch produces and compiles all data on mineral resources and mineral reserves, but may authorise other public or private entities to perform those activities in duly justified cases. Private entities wishing to invest in the mining sector may consult available mining data at the MMRP; however, no official databases are available online.

Holders of exploration licences must submit periodic reports containing all data and information acquired during the programme on production and marketing of mineral substances and mineral activities carried out in order for the MMRP to be able to monitor and inspect mineral activities. Holders must also submit an updated work programme and a forecast of the minimum expenditures to be made in the following year.

Given the statutory requirement of a public tender to grant mineral rights over strategic minerals (ie, diamonds, gold, radioactive minerals, rare metals and rare earth elements), or in areas of high geological potential, MMRP is required to publish a list of the areas up for award and the relevant terms of reference in the Angolan Official Gazette or in a widely read newspaper, at least once a year and within question 1.

Acquisition of rights by private parties

- 10 | What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?

The Mining Code adopts a single-contract model for the entire mineral process. The former legal framework foresaw two separate contracts for mineral projects – one for exploration, evaluation and reconnaissance, and another for mining and marketing. The Mining Code divides mineral activities into three stages – reconnaissance and exploration, appraisal and mining – explicitly stating that the rules, rights and obligations for the three stages will be set forth in the relevant mineral investment contract.

Under the former legal regime, in addition to spontaneous applications, the state could organise public tenders or issue invitations to tender for the award of exploration licences for one or more previously designated areas. Conversely, the Mining Code clearly prefers public tenders, which can be either optional or compulsory, depending on the geological potential of the relevant area or the 'strategic' classification of the mineral in question.

Minerals are classified as 'strategic' if warranted by their economic importance, use for strategic purposes, or specific technical mining aspects. The mineral's rarity, relevant impact on economic growth, high demand on the international market, significant job creation, importance for state-of-the-art technology, positive influence on the balance of payments or importance to the military industry are deemed as fundamental factors to be weighted by the executive branch when classifying a mineral as strategic. Diamonds, gold and radioactive minerals are expressly defined as strategic minerals in the Mining Code and rare metals and rare earth elements were also recently defined as strategic minerals in Presidential Decree 231/16, of 8 December 2016.

If no public tender is required, mineral reconnaissance, exploration, evaluation, appraisal and mining rights will be granted on a first-come, first-served basis. The applicant is merely required to demonstrate that it possesses the technical and financial capacities required to carry out the mineral activities for which it has applied.

The following titles are issued for mineral rights:

- exploration title – for the reconnaissance, exploration, evaluation and appraisal of mineral resources;
- mining title – for the mining of mineral resources;
- mineral permit – for the exploration or mining of mineral resources used in civil construction; and
- mineral ticket – for artisanal mining.

Among several other obligations, holders of mineral rights must:

- ensure the hiring of Angolan technicians and workers and provide training and technical and vocational instruction to the employees;
- apply the methods most suited to obtain maximum yield consistent with market economic conditions, environmental protection and sound exploitation of the mineral resources, without carrying out rapacious mining;
- relinquish the initial area covered by the mineral rights for exploration step-wise;
- ensure and enforce compliance with the rules on health and safety at work and the requirements of the environmental impact assessment study;
- report on the impact of the mineral activities on land occupancy and environmental characteristics; and
- repair the damage caused to third parties by the performance of geological and mineral activities.

Under the single-contract model, all mineral rights (from exploration to marketing, including evaluation, reconnaissance and mining) are formally granted from the outset pursuant to the mineral investment contract. However, the holder of the relevant mineral rights is required to obtain an exploration title – issued at the same time with as the approval and gazetting of the mineral investment contract – and a mining title, as a condition for the exercise of the rights granted to it. The transition of a given mineral project from the exploration stage to the mining stage is subject to the preparation and approval of a 'technical, economic and financial viability study'. The mining title is then issued after the study is approved (which must include an environmental impact study), and the holder of the relevant rights can exercise its mining and marketing rights from then on.

Renewal and transfer of mineral licences

11 | What is the regime for the renewal and transfer of mineral licences?

Exploration, evaluation and reconnaissance rights may be granted for an initial period of up to five years and extended by successive one-year periods up to a maximum seven years. If the seven-year period proves insufficient to prepare or complete the feasibility study, the holder of the

mineral rights may apply for and be granted an exceptional one-year extension.

Mining rights are granted for a period of up to 35 years (which includes the exploration and appraisal stage), extendable by one or more 10-year periods. Holders applying for extension must justify their application by submitting the relevant technical, operational and other grounds. Extensions are only granted if the applicant is not in breach of its legal and contractual obligations.

Mineral rights may be transferred upon specific authorisation from the MMRP or the Head of the Executive, as applicable, which is only granted to prospective assignees that meet the same (technical and financial) requirements as the original rights holders. Although mining laws do not specifically address the issue, changes of control of the holders of mineral rights or their parent companies are typically notified to the MMRP. No consent or authorisation is legally required per se, but it is an expression of courtesy that will help maintain a sound institutional relationship with the relevant authorities and avoid charges that the change of control at stake was actually a way of circumventing the authorisation required for the transfer of the relevant mineral rights.

Duration of mining rights

12 | What is the typical duration of mining rights?

See question 11 for the duration and extension of mineral rights. Concession contracts may be terminated early and concession titles withdrawn in some of the following instances:

- termination or withdrawal is triggered under specific contractual clauses;
- the project becomes technically or economically unviable;
- breach of legal obligations, contractual obligations or obligations arising from the concession title;
- abandonment, suspension or reduction of the mineral operations, except as provided for in the Mining Code, the title or the contracts;
- suspension of mineral operations owing to force majeure events, as defined in the contract or concession title;
- the concession holder is convicted of a crime of aggravated contempt, because it failed to perform acts provided for in the Mining Code or ordered by the relevant authority;
- reconnaissance, exploration, evaluation and appraisal or mining of mineral resources not included in the contract or concession title; and
- performance of the contractual obligations is impossible.

Acquisition by domestic parties versus acquisition by foreign parties

13 | Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Angolan law does not require the participation of local partners in mineral concessions, therefore, both foreign and local mining companies (owned by Angolan nationals) may be awarded concessions and engage in the exploration and mining of minerals. The national concessionaires (Endiama EP and Ferrangol EP) may partner with local or foreign entities in connection with mineral projects, as members of unincorporated joint ventures set up for the exploration stage and as shareholders of the companies incorporated for the mining stage.

The award of mineral mining and marketing rights entitles the state to participate in mining concessions. Other than that, there are no industry-specific rules or restrictions on corporate structures, nor are there mandatory participations or ownership interests reserved for national associates. However, preference is to be given to national partners or companies when setting up a business partnership.

Semi-industrial and artisanal mining of diamonds and construction minerals are the exception to the rule; only Angolan citizens are allowed to carry out diamond artisanal mining operations and only Angolan citizens or legal persons whose share capital is majority-held (two-thirds) by Angolan citizens may be awarded mineral rights for semi-industrial mining of diamonds, exploration and mining of construction minerals and mining rights of mineral-rich waters

Protection of mining rights

14 | How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

Investors are afforded broad legal guarantees:

- the unrestricted right to mine the mineral resources discovered during exploration, except as expressly provided for in the Mining Code or ancillary legislation;
- the right to freely dispose of and market the mining products;
- the right to recover investment expenses incurred during the reconnaissance, exploration, evaluation and appraisal stage from the mining proceeds; and
- the right to be compensated for any losses resulting from actions limiting the exercise of mineral rights, under the law or the mineral investment contract.

The PIL reinforces these guarantees by offering additional protection to foreign investment, namely in matters of expropriation.

In contrast to the former legal framework, which foresaw arbitration in Angola as the proper mechanism to resolve any disputes that could not be resolved amicably between the parties, the Mining Code is silent on the proper venue to resolve disputes, leaving it up to the dispute resolution clauses of mineral investment contracts. Contracting parties tend to include arbitration clauses in their agreements; however, disputes arising from termination of the concession contract or withdrawal of the concession title must be resolved by national courts, and disputes on the significance or insignificance of minerals extracted during the reconnaissance, exploration, evaluation and appraisal stage for purpose of assessment of the relevant tax should be settled by the Minister responsible for the mining sector.

Angola is a signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and so international arbitral awards are recognised and enforceable in Angola, provided they are handed down in another contracting state. The convention entered into force in Angola on 4 June 2017.

The Angolan Constitution states that courts are independent and cannot accept any form of interference from any other public body. Their decisions are final (subject only to appeal) and prevail over other entities' decisions.

Surface rights

15 | What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?

Holders of exploration licences or mining titles do not acquire surface rights in relation to the concession areas. If the land belongs to private persons or is in the private domain of the state or of public law corporate bodies, holders of mineral rights will need the consent of the relevant owners or occupants to use or exploit the land, on the terms that may be agreed between the parties. This consent is also required for any geological-mineral investigation works involving use of the land. Consent is presumed given in case of deposit of the annual rent and the provisional bond set forth in the Mining Code.

If the concessionaire fails to reach an agreement with the owners or occupants of the land within the boundaries of any demarcated area during the mining phase it is barred from starting any operations until it either purchases the land or the state expropriates the land for reasons of public interest, pursuant to the law.

Conversely, private owners of a surface right over a certain area are not entitled to carry out exploration or mining activities without first securing the relevant exploration licence or mining title.

Participation of government and state agencies

16 | Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

As mentioned in questions 8 and 13, the state is entitled to participate in the mineral production (either through a minimum 10 per cent shareholding in the company holding the mining rights, a production-sharing mechanism or a combination of the latter). Endiama EP is involved in projects in connection with diamonds, rare metals, rare earth elements and Ferrangol EP is involved in projects in connection with noble materials, ferrous and non-ferrous metals, as members of the relevant unincorporated joint ventures or as shareholders of the companies holding the relevant mineral rights.

The project company is required to establish a legal presence in the country (eg, a subsidiary organised and run under Angolan law or a local branch of a foreign company), just as any other company wishing to engage in activities that require a physical presence in Angola. The set-up of foreign special-purpose vehicles or registration of any special-purpose vehicle branches in Angola, although not legally prohibited per se, is a practical impossibility in light of state participation requirement.

Government expropriation of licences

17 | Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The Mining Code lists mineral investment contracts' termination events and the grounds for withdrawing concession titles and also foresees the possibility of redeeming the concession area for reasons of public utility in the event of discovery of strategic mineral resources or minerals subject to a special framework (whose mining is in the higher interest of the national economy), subject to a fair compensation to the holder of the relevant mineral rights.

The compensation will be calculated on the basis of:

- the amount of the investment made in the exploration, evaluation, reconnaissance and appraisal stage;
- the unrecovered amount of the investment made in the exploration, evaluation, reconnaissance and appraisal stage, in case the project has already moved on to the mining stage; and
- the value of the assets redeemed (including real estate property acquired for the exercise of the mineral rights), the average estimated profit for the next 10 years of mining and the outstanding debts.

Protected areas

18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

Under the Mining Code, mineral rights may be awarded for areas in the territorial or maritime domain under the jurisdiction of the Republic of Angola that have not been granted for the carrying out of other activities, or that are not allocated to the same. The executive branch may also declare portions of the national territory with considerable mineral

potential as 'mineral reserve areas', which will then be restricted in terms of movement of people and goods.

To date, no areas of Angolan territory have been declared as mineral reserve areas.

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

19 | What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Industrial tax (income tax on mineral activities)

The tax rate currently in force is of 25 per cent. For purposes of determining the taxable income, costs of exploration, evaluation and reconnaissance, contributions to the Mining Development Fund, among others, are considered as tax deductions additional to those provided for in the general tax law.

Royalty (tax on the value of mineral resources)

The tax rates currently in force are as follows:

- strategic minerals (including industrial diamonds) and precious metals and stones – 5 per cent;
- semi-precious stones – 4 per cent;
- metallic minerals, semi-industrial and artisanal diamonds – 3 per cent; and
- construction materials of mining origin and other minerals – 2 per cent.

Surface fee (fee levied on the concession area awarded payable during the exploration phase)

The surface fee value varies according to the size of the concession area, the type of mineral explored and the exploration year in question, and can range from US\$2 to US\$40 per km². These amounts are doubled in the event of extension of the exploration period.

Contributions to the Mining Development Fund and Environmental Fund

The Mining Code imposes holders of mineral rights the duty to make annual contributions to the Mining Development Fund and to the Environmental Fund (contributions ranging from roughly US\$1,250 and US\$3,000).

Tax advantages and incentives

20 | What tax advantages and incentives are available to private parties carrying on mining activities?

Investments in the mining sector are covered by the Mining Code and, on a subsidiary basis, the PIL. Tax advantages and incentives are negotiated and set out in the relevant mineral investment contract.

Holders of mineral rights subject to industrial tax may obtain tax incentives by way of deductible costs. Tax incentives must be applied for with the Minister of Finance and are subject to an MMRP opinion. The application for tax exemptions is discussed and negotiated during the contractual stage of the investment procedure and is attached to the contract, after approval by the negotiations committee and issue of a favourable opinion by the MMRP. The negotiations committee is comprised of representatives of:

- the MMRP;
- the national concessionaire (if applicable);
- the Ministry of Finance (in the event fiscal and customs benefits and exemptions are to be negotiated); and
- a regulatory authority (should it be created).

Incentives may be granted for the following acts with relevance to the Angolan economy:

- acquisition of supplemental goods and services on the local market;
- carrying out mineral activities in remote areas;
- a contribution to the training and development of local human resources;
- carrying out of research and development activities in cooperation with Angolan academic and scientific institutions;
- local processing and dressing of minerals; and
- a significant contribution to increase exports.

Holders of mineral rights may also apply for and be granted investment premiums (uplift), grace periods for the payment of income tax (whenever they are covered by any of the above-mentioned situations) and any other type of tax incentive provided for by law.

The executive branch may also authorise tax and customs exemptions to Angolan companies exclusively engaged in the processing, dressing and cutting of minerals extracted in the country.

Tax stabilisation

21 | Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There is no specific legislation on this matter in Angola, nor are there any tax stabilisation agreements in place. In turn, most (if not all) mineral investment contracts contain specific provisions on stability and supervening circumstances, which may, to a certain extent, protect the investors' rights and interests in this regard.

Carried interest

22 | Is the government entitled to a carried interest, or a free carried interest in mining projects?

Financial commitments on the part of the state are not to be expected even in the absence of any specific provision on the matter, as state participation in the mining and marketing projects (as opposed to exploration projects) is a legal requirement (notably by means of a shareholding interest in the relevant mining companies).

Transfer taxes and capital gains

23 | Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

No. Gains resulting from the transfer of mineral rights will be taken into consideration when assessing the transferor's liability in terms of industrial tax (corporate income tax). However, a 2 per cent conveyance tax may apply in certain cases.

Distinction between domestic parties and foreign parties

24 | Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

There is no distinction between duties, royalties and taxes payable by domestic parties and foreign parties.

BUSINESS STRUCTURES

Principal business structures

25 | What are the principal business structures used by private parties carrying on mining activities?

Mineral activities are primarily carried out through locally incorporated companies and branches of foreign corporations. Mining concessions (under which the mining or production phase is developed), however, are usually reserved to companies incorporated under the laws of Angola – although the companies may be entirely foreign-owned. The concept of ‘trust’ does not exist in and is not recognised by Angolan law.

In general, there is little operating difference between a branch and a subsidiary in Angola, the main differences being:

- a subsidiary is a separate legal entity, while a branch has no autonomy from the foreign company that sets it up – namely, its head office;
- the liability of the shareholders of a company is in principle limited to the amount of the company’s share capital, while a foreign company is fully responsible for the liabilities arising from the branch activities;
- as the branch and head office are the same legal entity, the company would be governed on corporate matters by one law only – the personal law of the company, typically the one where the company has its registered offices; and
- conversely, corporate documents issued by the foreign company at the head-office level (minutes of shareholders’ meetings, board resolutions, powers of attorney, etc) will always be subject to a more cumbersome and expensive procedure, involving translation and several tiers of legalisation.

The costs of registering a branch are broadly similar to those of incorporating a local company, although the latter are slightly higher.

Local entity requirement

26 | Is there a requirement that a local entity be a party to the transaction?

See question 13.

Bilateral investment and tax treaties

27 | Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Angola adheres to double taxation treaties with the China, Portugal and the United Arab Emirates. Portugal ratified its treaty on 14 February 2019.

In addition, the Angolan National Assembly has approved bilateral investment treaties between Angola and the following countries – Brazil, Cape Vert, Cuba, France, Germany, Italy, Mozambique, Namibia, Portugal, Russia, South Africa, Spain, Switzerland, the United States and the United Kingdom.

FINANCING

Principal sources of financing

28 | What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Private parties generally fund their mining activities in Angola with loans granted by national and foreign banks. Angola has a stock market but remains in its infancy.

Direct financing from government or major pension funds

29 | Does the government, its agencies or major pension funds provide direct financing to mining projects?

Typically, the government does not finance mineral projects; private parties take out loans with banks or funds to fund their operations.

Security regime

30 | Please describe the regime for taking security over mining interests.

The Mining Code expressly provides that mineral rights may be pledged by way of credit security, but only to secure credits contracted by the holder of the relevant mineral rights to finance the activities covered by the concession title. The pledge is created by delivering an authentic copy of the title and the concession contract for the relevant mineral rights to the pledgee.

The holder of the mineral rights does not forfeit possession or the exercise of the mineral rights pledged and must still comply with all its legal and contractual obligations. Mineral rights pledged may not be transferred by the relevant holder, nor encumbered again, without the express prior authorisation of the pledgee.

RESTRICTIONS

Importation restrictions

31 | What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

The Mining Code does not impose specific restrictions on the importation of machinery and equipment or services required in connection with exploration and mining.

In addition, holders of mineral rights benefit from a customs duty exemption on the importation of goods for exclusive and direct use in carrying out mineral exploration, evaluation, reconnaissance, mining and processing operations. The exemption does not cover stamp tax, statistical tax and miscellaneous service fees.

In the interest of protecting local industries, the exemption does not apply if goods of the same or a similar quality (available for delivery within a reasonable delay) and at a price not exceeding by more than 10 per cent the cost of the imported item, are available in Angola.

Standard conditions and agreements

32 | Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

No standards apply, although there is nothing preventing the parties from applying any standards they may deem appropriate.

Mineral restrictions

33 What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Holders of mineral rights are allowed to market the products of mining, in accordance with the conditions set forth in the Mining Code and the provisions of the relevant sale and purchase contracts.

Export of minerals extracted in Angola is subject to licensing by the relevant body of the Ministry of Commerce and to customs clearance by the Customs National Service. The MMRP needs to be notified. The relevant entity must issue a certificate of origin for all minerals extracted in and exported from Angola. The importation of any mineral in the national territory is subject to the prior favourable opinion of the MMRP. When allowed, the operation is always subject to standard customs clearance under the general terms of the law and to licensing by the Ministry of Commerce. The body responsible for the mining sector is notified of the technical and quantitative data of importations of mineral resources as soon as the relevant operations are carried out, for statistical and monitoring purposes.

Regarding strategic minerals, the executive branch may set up one or more marketing companies, with a view to purchasing minerals directly from the producers, in an open market regime. The executive branch may promote the acquisition of certain types of strategic minerals by the above-mentioned companies if it is required to do so to create a public reserve, guarantee strategic stocks, prevent the fall of market prices or for any other reason of public interest.

The marketing of diamonds is subject to specific export and marketing rules and must be made through the single channel institutionalised by SODIAM. Under the new technical regulations for marketing rough diamonds, a producer's right to sell their product in the Angolan domestic or international market is subject to the following marketing quotas:

- up to 60 per cent to buyers elected by producers;
- from 15–20 per cent to SODIAM; and
- up to 20 per cent to the local cutting and polishing industry.

Angola is party to the Kimberley Process Certification Scheme (KPCS) and has adopted the international system of certification of diamonds for export. Under the Mining Code, and for the same reasons that led to the adoption of the KPCS for diamonds, including those stated in United Nations General Assembly Resolution 55/56, a similar certificate of origin should be issued for other strategic minerals that are to be exported.

Import of funds restrictions

34 What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

The foreign exchange regime applicable to mining activities in Angola is set forth in the Mining Code, the BNA Order 2/03, Presidential Decree 175/18 and in certain provisions of the PIL. General foreign exchange law, notably Law 5/97, of 27 June 1997, applies to all matters on which the above statutes are silent, as well as its ancillary regulations and instructions and orders from the BNA.

Subject BNA control, approval of mineral investment contracts entitles foreign investors to repatriate dividends, pro rata to their investment. Capital operations and the import of funds are equally subject to foreign exchange restrictions, even though applicable regimes vary. For example, the governor of the BNA is entitled to make an assessment of whether, in a given period, the requested transfer

of funds would result in difficulties in the balance of payments, in which case he or she may impose conditions or suspend the transfer altogether.

ENVIRONMENT

Principal applicable environmental laws

35 What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Specific environmental requirements may be found in the Mining Code and in a contractual annex to exploration licences and mining titles dealing with environmental impact and recovery. The annex, in particular, covers such areas as environmental impact, preservation, recovery and rehabilitation (the precise regime in each case depending on the scope of the mineral rights awarded). The general framework within which such provisions operate is derived from environmental statutes, most significantly the following:

- the General Environmental Law;
- the Decree on Environmental Impact Assessment;
- the Decree on Environmental Licensing; and
- the Decree on Environmental Audits.

The national and regional sector strategy and programmes in the fields of environment and sustainable development, as well as the international instruments to which Angola has subscribed, including:

- the Rio Convention on Biodiversity 1992;
- the Montreal Cartagena Protocol on Biosafety to the Convention on Biological Diversity 2003;
- Agenda 21; and
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989.

The relevant regulatory body is the Ministry of Environment.

Environmental review and permitting process

36 What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

Projects that by their nature, dimension or location bear upon the environmental and social balance and harmony shall be subject to environmental impact assessment (EIA), which shall be made an integral part of the mineral investment contract. Operations in the mining phase are subject to such requirement.

As regards exploration, evaluation and research activities, much will depend on the activities in each case. Where such research work includes, for instance, the execution of trenches, pits, holes, drilling or perforations, and any work associated with it, the impact upon the environment may be such that an EIA may become legally necessary before the mining phase is reached.

The granting of environmental licences is subject to a fee.

Closure and remediation process

37 What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

The holder of the exploration licence or mining title is liable for any damages caused by geological and mining activities. Penalties may be assessed and the holder is further subject to the obligation to pay damages, regardless of contractual provisions.

Generally, in the mandatory EIA, it is already set forth how the closure of the project will be handled from an environmental standpoint as well as the environmental financial charges and the relevant financial guarantee.

Mining titles frequently focus on the actions necessary for recovery and rehabilitation purposes (eg, dismantling and removing facilities and infrastructure, reforestation, social rehabilitation and watercourse restoration).

Holders of mineral rights for exploration or mining of mineral resources at an industrial scale are required to post a bond to guarantee compliance with the contractual obligations (including closure and remediation commitments). The bond for the reconnaissance, exploration, evaluation and appraisal stage shall be of up to 2 per cent of the investment amount, and at the mining stage of up to 4 per cent.

Holders of mineral rights are further required to set up a legal reserve for purposes of mine closing and environmental restoration, of an amount corresponding to 5 per cent of the investment.

Restrictions on building tailings or waste dams

38 | What are the restrictions for building tailings or waste dams?

The EIA must take contain numerous information concerning:

- a waste management plan (along with the assessment of the effects of the project on the environment);
- the social impact of the projects;
- the environmental management plan;
- the environmental monitoring programme;
- the environmental audits, as well as the respective environmental reports;
- the environmental restoration programmes;
- the site abandonment plan;
- the environmental financial charges;
- the financial guarantee for the environmental charges;
- the plans for water usage;
- the waste management plans; and
- the control of hazardous substances.

Moreover, holders of mineral rights are especially required:

- to comply with the obligations deriving from the environmental impact study and the environmental management plan, on the terms established therein;
- to take the measures necessary to reduce the formation and propagation of dust, waste and radiation in mining areas and surrounding areas;
- to prevent or eliminate the contamination of waters and soil, using appropriate means to that end;
- not to reduce or in any other way prejudice the normal water supply to populations;
- to carry out mineral operations so as to minimise damage to the soil;
- to reduce the impact of noise and vibrations to acceptable levels as determined by the relevant authorities, when using explosives in the vicinity of settlements;
- not to discharge in the sea, water currents and lagoons contaminant waste which is harmful to human health, wildlife and flora; and
- to inform the authorities of any occurrence which has caused or may cause environmental damage.

The Mining Code contains special rules for the protection of water resources (ie, in the mining process) mineral operators must adopt the following measures for protection of water resources:

- build decanting basins for sediments extracted during the ore processing stage to avoid polluting and silting rivers and lagoons;

- create water recycling circuits to allow the reuse of water during the various mineral production stages;
- perform periodic water analysis at numerous river locations within the concession allowing for quality control; and
- keep updated records of information relating to the first three points above.

Finally, a technical manager must exist in each mining concession, who is entrusted with the technical responsibility for the safety of the mine under his or her supervision, for the technical conditions of mining and for the proper execution of the mining plan.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

- 39 | What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Further to the specific provisions in the Mining Code, Angolan General Labour Law (Law No. 7/15, of 15 June 2015) contains the key principles, rules, requirements and procedures applicable to employment in the mining industry. There is also a fairly extensive number of ancillary statutes and regulations to consider. The principal regulatory body is the Ministry of Public Administration, Employment and Social Security.

Management and recycling of mining waste

- 40 | What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

Apart from the applicable environmental rules, there are no specific rules on recycling mining waste products. There are also no specific titles to explore and exploit mining waste in tailings and waste piles.

Use of domestic and foreign employees

- 41 | What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Holders of mineral rights shall favour the hiring of Angolan individuals (preferably members of local communities) over expatriates.

In addition to the above, the general principle one may find under Presidential Decree 43/17, of 6 March 2017, is that at least 70 per cent of the workforce of an Angolan or foreign employer that employs more than five workers must be Angolan nationals. This principle is considered by the Angolan authorities as the minimum standard for the structuring of a company's workforce. Therefore, only 30 per cent can be foreign non-resident employees.

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

- 42 | What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

Angola has no specific legislation on the matter.

The Mining Code has a number of provisions on the rights of local communities residing in areas where mineral activities are to be carried out, including the right to be consulted during the preparation of the EIA, and prior to any decisions being made that could affect their living

conditions or rights. Such consultation is absolutely mandatory in the event that a mining project is likely to destroy or damage any assets or cultural or historical heritage belonging to the local community as a whole. Holders of mineral rights must relocate, at their expense, any local community that is displaced by reason of the mineral operations, and all traditions, customs and practices of local communities must be taken into account in the relocation process.

Rights of aboriginal, indigenous or disadvantaged peoples

- 43 | How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Angola has no specific legislation on the matter.

International law

- 44 | What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

Angola has no specific legislation on the matter.

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

- 45 | Describe any local legislation governing anti-bribery and corrupt practices.

Corruption is specifically addressed in a few statutes in Angola, such as the Law on the Criminalisation of the Infractions relating to Money Laundering (Law No. 3/14, of 10 February 2014), and the Public Probity Law (Law No. 3/10, of 29 March 2010). There are also scattered provisions in the Criminal Code, the Customs Code and Public Procurement Law.

More recently, the National Assembly resolved to ratify the African Union Convention on Preventing and Combating Corruption.

Foreign legislation

- 46 | Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Yes. Particular attention is paid to the US Foreign Corrupt Practices Act and the UK Bribery Act.

Disclosure of payments by resource companies

- 47 | Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

No.

FOREIGN INVESTMENT

Foreign ownership restrictions

- 48 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

As mentioned in question 13, the only restrictions relate to mineral rights for diamond artisanal production, which may only be granted to Angolan citizens, and those relating to minerals for diamond semi-industrial mining, civil construction or mining rights of mineral-rich waters,



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which may only be granted to companies organised under Angolan law in which Angolan citizens hold at least two-thirds of the capital.

INTERNATIONAL TREATIES

Applicable international treaties

- 49 | What international treaties apply to the mining industry or an investment in the mining industry?

Besides the bilateral investment treaties mentioned in question 26, bilateral cooperation treaties for the mining sector were entered into with Cuba (Presidential Decree 91/14, of 25 April 2014), the Democratic Republic of the Congo (Resolution 8/08, of 21 January 2008), Mozambique (Resolution 90/09, of 6 October 2009) and South Africa (Resolution 33/05, of 5 August 2005).

UPDATE AND TRENDS

Recent developments

- 50 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry?

Aside from the much-publicised ongoing reform of the petroleum sector, the Angolan mining sector has also been subject to significant innovations, most of which aimed at enhancing the sector's performance, transparency and potential for growth.

Despite the government's efforts in diversifying and promoting investment within the mining sector, the focus still lies in the diamond subsector, as evidenced by the approval of a new diamond marketing policy, technical regulations for the marketing of diamonds and the new semi-industrial mining of diamonds regulations. This focus resulted in the recently enacted 2018–22 National Development Plan that forecasts a substantial increase in diamond production. More investment in local cutting and polishing facilities are also expected as a consequence of the marketing quota regime established by the new diamond marketing policy.

The National Agency of Mineral Resources is expected to become fully operational during 2019, and we look forward to seeing what changes the Agency will make to the existing supervision and

governance of mineral resources. We also expect further legislation to be passed with regard to:

- the recently enacted diamond marketing policy;
- the approval of the National Sample Parcel Regulations;
- the Benchmark Pricing List Regulations;
- the Provisional Benchmark Pricing List;
- the Public Diamond Reserve Management Regulations;
- the Endima EP and SODIAM EP Fees and Charges Chart;
- the Guidelines for Marketing of Artisanal Production; and
- the Guidelines for Marketing of Industrial Production.

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