

International **Comparative** Legal Guides



Mining Law **2020**

A practical cross-border insight into mining law
Seventh Edition

Featuring contributions from:

Al Busaidy Mansoor Jamal & Co.
ALRUD Law Firm
Anderson, Môri & Tomotsune
Boden Law
Claro & Cia.
Cruz Marcelo & Tenefrancia
Dempsey Law Firm
Eric Silwamba, Jalasi and Linyama
Legal Practitioners

Georgi Dimitrov Attorneys
Herbert Smith Freehills
Holland & Hart LLP
Jincheng Tongda & Neal Law Firm
Lawson Lundell LLP
Marval O'Farrell & Mairal
Project Lawyers
RBMexico-Law-Abogados

Rebaza, Alcázar & De Las Casas
Reindorf Chambers
VdA
WILLIAM FREIRE Advogados
Wintertons
Wolf Theiss
Women in Mining UK
World Association of Mining Lawyers
(WAOML)



ISBN 978-1-83918-001-9
ISSN 2052-5427

Published by

glg global legal group

59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
www.iclg.com

Group Publisher
Rory Smith

Publisher
Bianca Carter

Sales Director
Florjan Osmani

Senior Editors
Caroline Oakley
Rachel Williams

Sub-Editor
Jane Simmons

Creative Director
Fraser Allan

Chairman
Alan Falach

Printed by
Stephens and George
Print Group

Cover Image
www.istockphoto.com

Strategic Partners



Mining Law 2020

Seventh Edition

Contributing Editor:

Andrew Emrich
Holland & Hart LLP

©2019 Global Legal Group Limited.

All rights reserved. Unauthorised reproduction by any means, digital or analogue, in whole or in part, is strictly forbidden.

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.

This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

Expert Chapters

- 1** **New Trade Agreements & Changing Environmental Regulation: Impacts to the Mining Industry**
Andrew Emrich, Holland & Hart LLP
- 4** **Current Global Trends and Developments in Mining**
Greg Mulley & Jay Leary, Herbert Smith Freehills
- 8** **World Association of Mining Lawyers (WAOML): An Overview**
Poupak Bahamin, World Association of Mining Lawyers (WAOML)
- 10** **Advocating for the Employment, Retention and Promotion of Women in the Mining Industry**
Alex Buck, Women in Mining UK

Country Q&A Chapters

- 13** **Angola**
VdA: João Afonso Fialho & Ângela Viana
- 20** **Argentina**
Marval O'Farrell & Mairal: Luis E. Lucero
- 28** **Australia**
Herbert Smith Freehills: Jay Leary & Geoff Kerrigan
- 36** **Brazil**
WILLIAM FREIRE Advogados: William Freire
- 43** **Canada**
Lawson Lundell LLP: Khaled Abdel-Barr & Karen MacMillan
- 55** **Chile**
Claro & Cia.: Nicolás Eyzaguirre
- 62** **China**
Jincheng Tongda & Neal Law Firm: Guohua Wu & Yingnan Li
- 68** **Congo – D.R.**
VdA: Matthieu Le Roux & Olivier Bustin
- 74** **Ethiopia**
Dempsey Law Firm: Christopher Dempsey
- 80** **Gabon**
Project Lawyers: Jean-Pierre Bozec
- 86** **Ghana**
Reindorf Chambers: Fui S. Tsikata & Dominic Dziejornu Quashigah
- 92** **Japan**
Anderson, Mōri & Tomotsune: Hiroaki Takahashi
- 99** **Mauritania**
Dempsey Law Firm: Christopher Dempsey
- 106** **Mexico**
RBMexico-Law-Abogados: Enrique Rodríguez del Bosque
- 114** **North Macedonia**
Georgi Dimitrov Attorneys: Katarina Ginoska & Marija Jankuloska
- 120** **Oman**
Al Busaidy Mansoor Jamal & Co.: Mansoor Jamal Malik & Henry Mitchell
- 127** **Peru**
Rebaza, Alcázar & De Las Casas: Luis Miguel Elias
- 134** **Philippines**
Cruz Marcelo & Tenefrancia: Patricia A. O. Bunye & Alpheus D. Macalalad
- 141** **Poland**
Wolf Theiss: Jacek Michalski & Izabela Podleśna
- 148** **Portugal**
VdA: Manuel Protásio & Catarina Coimbra
- 155** **Russia**
ALRUD Law Firm: Andrey Zharskiy & Timur Akhundov
- 162** **Senegal**
Dempsey Law Firm: Christopher Dempsey
- 169** **South Africa**
Herbert Smith Freehills: Peter Leon, Patrick Leyden & Matthew Burnell
- 177** **Turkey**
Boden Law: Değer Boden & Ceren Akkur
- 183** **United Kingdom**
Herbert Smith Freehills LLP: Greg Mulley, Julie Vaughan & Yulia Zaytseva
- 193** **USA**
Holland & Hart LLP: Karol L. Kahalley
- 201** **Zambia**
Eric Silwamba, Jalasi and Linyama Legal Practitioners: Joseph Alexander Jalasi, Jr. & Eric Suwilanji Silwamba, S.C.
- 208** **Zimbabwe**
Wintertons: Nikita Madya

Angola

VdA



João Afonso Fialho



Ângela Viana

1 Relevant Authorities and Legislation

1.1 What regulates mining law?

The Mining Code, approved by Law 31/11, of 23 September 2011 (“**Mining Code**”), is the cornerstone of the Angolan legal framework for the mining industry. This statute regulates the activities of exploration, evaluation, reconnaissance, mining and the marketing of mineral resources in general.

In addition to the Mining Code, other statutory and regulatory acts must be considered, including, *inter alia*:

- 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.
- 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 approves the mineral administrative offences and relevant penalties regime.
- 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.
- Order 2/03, of 28 February 2003 of the National Bank of Angola, which establishes the foreign exchange regime for diamond and other minerals producers.

1.2 Which Government body/ies administer the mining industry?

The main regulatory bodies within the mining industry are the Head of the Government (“**HOG**”), the Ministry of Mineral Resources and Petroleum (“**MMRP**”), the Ministry of Finance and the Angolan Central Bank (“**BNA**”).

Brief reference should also be made to: (a) *Empresa Nacional de Diamantes de Angola* – Endiama E.P. (“**Endiama**” – the national concessionaire for diamonds, rare metals and rare earth elements); (b) *Empresa Nacional de Ferro de Angola* – Ferrangol E.P. (“**Ferrangol**” – the national concessionaire for noble materials,

ferrous and non-ferrous metals); and (c) *SODIAM – Sociedade de Comercialização de Diamantes de Angola, E.P.* (“**SODIAM**” – single channel for marketing of all diamond productions extracted from Angola).

The Market Regulatory Agency for Gold (*Agência Reguladora do Mercado do Ouro*), established in 2014 as the State entity entrusted with the organisation, regulation and supervision of the gold market was recently extinguished, with all its powers and authority now vested in the MMRP. This amendment falls within the ongoing reform of Angola’s mining sector launched by the Government in 2018, which includes, among others, the setting-up of the National Agency of Mineral Resources, a new body of the MMRP expected to take up certain roles of the national concessionaires for the mining industry (the former Market Regulation Agency for Gold, Endiama and Ferrangol). The National Agency of Mineral Resources is yet to be incorporated.

1.3 Describe any other sources of law affecting the mining industry.

There are many other miscellaneous statutes applicable to the mining industry, notably the Private Investment Law (Law 10/18, of 26 June 2018) and the regulations thereof (Presidential Decree 250/18, of 30 October 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), among others.

2 Recent Political Developments

2.1 Are there any recent political developments affecting the mining industry?

Aside from the ongoing reform in the petroleum sector which caught much of the public’s attention in 2018, the Angolan mining sector has also been subject to significant changes, most of them aimed at enhancing the performance, transparency and potential for growth within the mining sector.

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 has clearly resulted from the recently enacted 2018–2022 National Development Plan that forecasts a substantial increase in diamond production. The Government is also keen to promote and attract more investments in local cutting and polishing facilities.

From an institutional standpoint, the National Agency of Mineral Resources is expected to be set up and become fully operational in 2019 and we look forward to seeing what changes the National Agency of Mineral Resources will effectively cause to the existing supervision and governance over mineral resources.

2.2 Are there any specific steps the mining industry is taking in light of these developments?

The Angolan mining sector has been benefiting from a significant re-boot under the current political environment, which has been marked by a more “investor friendly” approach from the government and the national concessionaires. As a result, leading mining companies have started increasing their activities in the country.

The recently enacted rough diamond marketing policy is expected to cause a huge impact on the sale of rough diamonds extracted from the country, and on the establishment of local diamond cutting and jewellery industries.

3 Mechanics of Acquisition of Rights

3.1 What rights are required to conduct reconnaissance?

There is no specific title to carry out isolated reconnaissance activities (please see our comments in question 3.2 below).

However, under the Mining Code, private entities may carry out geological mineral investigations and produce geological information under a public-private partnership structure and under the methodological supervision of the Public Geological-Mineral Services, provided that: (i) such public-private partnership is duly justified (since, as a rule, the Government is the entity responsible for this activity); and (ii) a proper authorisation is obtained from the MMRP.

3.2 What rights are required to conduct exploration?

As a rule, to carry out exploration activities, the investor is required to negotiate and enter into a mineral investment contract (“MIC”) with the MMRP and/or a national concessionaire. However, with regard to the exploration of mineral resources used in civil construction and public works, a mineral permit suffices. In respect of artisanal activities, only a mineral ticket is required.

Focusing now on industrial mining, the Mining Code adopted a single-contract model (the MIC) under which mineral rights are granted, from the outset, for the whole mineral process (exploration, evaluation, reconnaissance, mining and marketing). The Mining Code divides the mineral activities into three phases (reconnaissance and exploration stage, appraisal stage and mining stage), although explicitly stating that the rules, rights and obligations covering the three phases are to be set forth in the relevant MIC.

MICs may be entered into further to either (i) a spontaneous application, or (ii) a public tender. Public tenders may be optional or compulsory, depending on the geological potential of the relevant area and/or the qualification of the mineral to be exploited as strategic or non-strategic. Minerals may be classified as strategic by the Government depending on their economic relevance, use for strategic purposes or other specific technical mining aspects. Other relevant criteria to qualify a mineral as strategic are its rarity, its impact on economic development, the demand on the international market, the impact on its exploitation on job creation, its technological relevance, the impact of its exploitation on the balance of payments and/or its relevance for the military industry. Diamonds, gold and radioactive minerals are expressly qualified as

strategic minerals in the Mining Code. Presidential Decree 231/16, of 8 December 2016 classified rare metals and rare earth elements as strategic minerals.

In the absence of a mandatory public tender procedure, mineral rights may be granted on a “first-come first-served” basis to the applicant who evidences the technical and financial capability required to carry out the relevant mineral activities.

Although all mineral rights (from exploration to marketing) are formally granted from the outset by means of a MIC, the holder of the mineral rights must obtain an exploration title – to be issued upon the approval of the MIC – and, subsequently, a mining title, in order to commence the relevant mineral activities.

The transition from the exploration phase to the mining phase depends on the submission and approval of a technical, economic and financial feasibility study (which must include an environmental impact study). Upon approval of this study by the MMRP, a mining title should be issued.

3.3 What rights are required to conduct mining?

Please see question 3.2 above.

3.4 Are different procedures applicable to different minerals and on different types of land?

Depending on the geological potential of the relevant area and/or the qualification of the mineral to be exploited, the mineral rights may be granted further to either (i) spontaneous applications, or (ii) public tenders. The type of land is not a criterion to take into consideration for this purpose.

3.5 Are different procedures applicable to natural oil and gas?

Yes. The award of mineral rights for oil and gas exploitation is subject to a specific and comprehensive statutory framework. The most relevant legal statute in this respect is the Petroleum Activities Law approved by Law 10/04, of 12 November 2004 and amended by Law 5/19, of 18 April 2019.

4 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

4.1 What types of entity can own reconnaissance, exploration and mining rights?

Mineral rights may be granted to any form of association permitted by law (i.e. incorporated or unincorporated JVs), provided that the following requirements are met: (a) the associates satisfy the conditions established in the Mining Code to access mineral rights; and (b) the associates are jointly and severally liable for compliance with the mineral obligations.

4.2 Can the entity owning the rights be a foreign entity or owned (directly or indirectly) by a foreign entity and are there special rules for foreign applicants?

As a rule, mineral rights may be owned directly or indirectly by a foreign entity. However, the latter are required to either register a branch or incorporate a company in the country to carry out their business activities.

There are no special rules for foreign applicants. All the above apply to both national and foreign applicants. However, there are certain rights that may only be granted to Angolan citizens/entities (please see our comments in question 4.4 below) and foreign applicants may be required to engage national entities in their activities. Preference shall, nevertheless, be given to national partners or companies when setting up a business partnership.

4.3 Are there any change of control restrictions applicable?

No express change of control restrictions are provided for in the law. However, the assignment, transfer, or more broadly, the disposal of mineral rights, is subject to a number of restrictions (please see our comments in question 6.1 below).

4.4 Are there requirements for ownership by indigenous persons or entities?

As a rule, no local content requirements apply to the mining industry. However, semi-industrial and artisanal mining of diamonds and construction minerals are exceptions to such 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, to be exact) by Angolan citizens may be awarded minerals rights for semi-industrial mining of diamonds, exploration and mining of construction minerals and mining rights of mineral-medicinal waters.

In respect of diamonds, Endiama has been acting as the national concessionaire and is consistently engaged in projects as both a member of unincorporated joint ventures for the exploration stage and shareholder of the 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.

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

4.5 Does the State have free carry rights or options to acquire shareholdings?

As a consideration for the granting of mineral rights for mining and marketing, the State is entitled to: (i) participate in mineral production through a State-owned company holding an equity of at least 10% in the company to be set up for the mining phase; and/or (ii) receiving a share of the production in kind, in terms to be negotiated and defined, taking into consideration the production cycles (as a rule, the State's share should increase along with the increase of the internal rate of return of the project).

5 Processing, Refining, Beneficiation and Export

5.1 Are there special regulatory provisions relating to processing, refining and further beneficiation of mined minerals?

The Mining Code adopts a specific regime to diamond cutting and beneficiation (e.g. rules for acquisition and importation of rough diamonds, restrictions to access for cutting and beneficiation activity, etc.).

5.2 Are there restrictions on the export of minerals and levies payable in respect thereof?

The exportation of minerals is subject to licensing/clearance by the relevant body of the Ministry of Commerce and the Customs National Service, as well as notification to the MMRP.

Prior to their export, strategic minerals must be valued and sorted using, whenever the circumstances or the nature of the minerals so require, an internationally renowned evaluation entity retained for such purpose. The producer has the right to use its own evaluator in all stages of the valuation process.

All minerals extracted in and exported from Angola must have a certificate of origin issued by the relevant authorities.

The exportation of minerals legally extracted and processed is not, in principle, subject to payment of duties or other customs charges, except for stamp duty and the customs officers' personal fees. However, mineral resources that are exported without being processed are subject to a 5% custom duty of their market value.

6 Transfer and Encumbrance

6.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Mineral rights may be transferred to third parties, provided such transfer is previously authorised by the MMRP or the HOG, as the case may be. Transfer of mineral rights may only be authorised if the prospective assignee meets the same technical and financial requirements of the assignor, and is subject to the payment of fees and charges.

The transfer of mineral titles (i) must be recorded in the relevant exploration and/or mining title, with an express reference to the new holder and the transfer authorisation, and (ii) is subject to the same publication requirements as the original rights award.

6.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged or otherwise secured to raise finance?

Mining rights may only be pledged to secure loans taken by the concessionaire to fund geological mineral activities covered by the concession title.

7 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

7.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

No, they are not.

7.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

No, they are not.

7.3 Is the holder of rights to explore for or mine a primary mineral entitled to explore or mine for secondary minerals?

Rights over accessory minerals must be expressly included in the MIC and relevant titles. Otherwise, the holder of the mineral rights does not have the right to exploit them. An exception applies to strategic minerals or minerals subject to a special framework, which are always subject to a new award procedure.

It is also worth noting that primary and secondary diamond deposits are deemed, from a legal standpoint, as different minerals and therefore, mineral rights over each one of these types of deposits must be expressly granted under the relevant MICs and mineral licences.

7.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

Mineral rights cover a specific mineral or minerals (main and/or accessory) discovered within a specific area. If the residue deposits, cumulatively, are related to one of the minerals covered by the title and are located within the relevant area, the holder is allowed to exploit them.

7.5 Are there any special rules relating to offshore exploration and mining?

Yes. The Mining Code contains specific rules for mineral activities in the sea.

8 Rights to Use Surface of Land

8.1 Does the holder of a right to conduct reconnaissance, exploration or mining automatically own the right to use the surface of land?

The granting 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 such 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 upon obtaining the consent of the owners and/or possessors, in terms to be agreed between the holder of mineral rights and the owners and/or possessors (consent is deemed to be granted upon deposit of the annual rent and the posting of a provisional bond).

In case the concessionaire fails to reach an agreement with the owners and/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 grounds of public interest.

Holders of mineral rights are entitled to request the creation of easements required for the full exercise of their rights, rights of way included.

8.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

Please see our comments in question 8.1 above.

8.3 What rights of expropriation exist?

Please see our comments in question 8.1 above.

9 Environmental

9.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

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”), made on a case-by-case basis. In the case of the mining industry, holders of mineral rights are required to complete and obtain approval of a mandatory EIA prior to transitioning into the mining phase.

9.2 What provisions need to be made for storage of tailings and other waste products and for the closure of mines?

The mandatory EIA must contain, among other information, a waste management plan and an abandonment plan. Mining companies are also required to create a legal reserve in an amount of 5% of the capital invested in the relevant project for mine closure and environmental restoration.

Mining companies are also subject to the requirements provided for in the general environmental statutes applicable to all industries, such as, without limitation, the waste management regulations, approved by Presidential Decree 190/12, of 24 August 2012.

9.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

Upon completion of the works, the holders of mineral rights must restore the land and landscape in the terms approved under the EIA. Prior to 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.

9.4 Are there any zoning or planning requirements applicable to the exercise of a reconnaissance, exploration or mining right?

Areas subject to reconnaissance and exploration operations are subject to demarcation by the MMRP. Holders of mining rights are required to demarcate the area with easily identifiable concrete markers, no later than 90 days as from the mineral title being issued or any change to the area being made. Mineral production areas are divided into (i) restricted areas, (ii) protection areas, and (iii) reserve areas, as follows:

- (i) Restricted areas comprise mining areas, including deposits or beds and the respective dressing facilities in a radius of up to 1,000 metres.
- (ii) Protection areas comprise: (a) the areas corresponding to the strips of land around restricted areas in a radius of up to 5

kilometres, to be established at the prudent discretion of the relevant body, as from the outer limits of the deposits protected by mineral demarcation; and (b) the areas corresponding to mineral occurrences discovered under an exploration title, plus a surrounding strip of up to 5 kilometres, to be established at the prudent discretion of the relevant body, as from the outer limits of the protected beds or deposits, during the period from the discovery of the occurrences to the granting of mining rights.

- (iii) Mineral reserve areas are areas within the national territory in relation to which no mineral rights have been previously awarded, but are already allocated to future mining development.

Each type of area is subject to different rules concerning the movement of persons or goods, allowed business activities and residency rules.

10 Native Title and Land Rights

10.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

No. The impact of land rights is as mentioned in question 8.1 above.

11 Health and Safety

11.1 What legislation governs health and safety in mining?

Although specially regulated in the Mining Code, health and safety requirements for mineral activities are also subject to the general statutes applicable to other activities, such as the General Labour Law (approved by Law 7/15, of 15 June 2015).

11.2 Are there obligations imposed upon owners, employers, managers and employees in relation to health and safety?

Yes. The Mining Code contains a broad provision requiring holders of mineral rights to adopt measures to ensure hygiene, health and safety at work, as well as to prevent occupational hazards and accidents at work, as set forth in specific regulations issued by the relevant bodies and approved by the MMRP, the Ministry of Public Administration, Employment and Social Security and the Ministry of Health.

12 Administrative Aspects

12.1 Is there a central titles registration office?

Yes. The award, modification, transfer and expiry of mineral rights must be recorded with the Public Geological-Mineral Service.

12.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

There is a system of administrative appeals provided for in the general administrative law, which also applies to mineral activities. The Mining Code also contains some specific rules on this matter (namely, without limitation, for the exercise of the rights of opposition and/or challenge to the requests for the award of mineral rights).

13 Constitutional Law

13.1 Is there a constitution which has an impact upon rights to conduct reconnaissance, exploration and mining?

Yes. The Constitution of the Republic of Angola sets forth that natural resources are exclusively owned by the State, which determines the terms under which they may be exploited.

13.2 Are there any State investment treaties which are applicable?

The Angolan National Assembly has approved bilateral investment treaties between Angola and various countries, such as Cape Verde, Cuba, France, Germany, Italy, Mozambique, Namibia, Portugal, Russia, South Africa, Spain, Switzerland, the United Kingdom and the United States.

14 Taxes and Royalties

14.1 Are there any special rules applicable to taxation of exploration and mining entities?

The Mining Code provides for special rules on the taxation of mineral activities, from which we highlight the following:

- an industry-specific industrial tax rate of 25% (lower than the general industrial tax rate of 30%);
- a number of additional costs and expenses may be deductible to determine the taxable income, such as all the authorised exploration, evaluation and reconnaissance costs;
- a surface fee (ranging from US\$2 to US\$40 per square kilometre). These figures are doubled if the exploration period is extended; and
- royalties (see below).

Special customs rules are also included in the Mining Code.

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

A royalty to be levied on the value of extracted mineral resources is due at the following rates: strategic minerals and precious metallic minerals and stones – 5%; semi-precious stones – 4%; non-precious metallic minerals – 3%; semi-industrial and artisanal diamonds – 3%; and construction materials of mining origin and other minerals – 2%.

15 Regional and Local Rules and Laws

15.1 Are there any local provincial or municipal laws that need to be taken account of by a mining company over and above National Legislation?

No, there are not.

15.2 Are there any regional rules, protocols, policies or laws relating to several countries in the particular region that need to be taken account of by an exploration or mining company?

No, there are not.

16 Cancellation, Abandonment and Relinquishment

16.1 Are there any provisions in mining laws entitling the holder of a right to abandon it either totally or partially?

Without prejudice to the terms and conditions provided for in the relevant MICs, the holder of the mining rights may abandon the mineral area, in whole or in part, at any time with a prior notice of no less than 180 days to the MMRP.

The abandonment only becomes effective on the date it is approved by the MMRP and may not take place in less than three months or after the prior notice period has expired.

In case the mineral area is abandoned entirely, the mining title expires. In case the mineral area is abandoned only in part, the holder must update the boundaries of the newly reduced area and promote the registration of such reduction and update the mining title.

The abandonment of any area pursuant to the preceding paragraphs does not release the holder from: (a) paying taxes, charges, fines or any compensation due up to the date of the abandonment formally acknowledged by the MMRP; (b) complying with all obligations relating to environmental matters; and (c) complying with any obligations imposed by law or by the MIC until the effective date of the abandonment.

16.2 Are there obligations upon the holder of an exploration right or a mining right to relinquish a part thereof after a certain period of time?

At the term of the initial five-year exploration period, the holder of the mineral rights must relinquish 50% of the concession area and, at the end of each extension, an area to be defined by the MMRP upon assessment of the results obtained during the relevant extension period. The holder of mineral rights may oppose the relinquishment rule and keep the whole area against the payment of an aggravated surface fee.

16.3 Are there any entitlements in the law for the State to cancel an exploration or mining right on the basis of failure to comply with conditions?

Failure to comply with all the obligations deriving from the law or the MIC allows the State or the national concessionaire company, as the case may be, to terminate the MIC and cancel the relevant title. However, (i) failure by concessionaires to comply with their obligations under the law or the MIC may only be invoked as grounds for termination in case of repeated default, and (ii) unilateral termination by the State must be preceded by notice to the concessionaire, stating the legal and factual grounds for termination and granting the holders of the mineral rights a minimum 60-day period to exercise their right of defence and oppose the termination.



João Afonso Fialho joined VdA in 2015 and is the head of VdA's Oil & Gas and Mining practice. In the last 20 years, João has been involved in all sorts of oil & gas and mining projects and transactions in various jurisdictions, such as Timor-Leste, Angola, Portugal, Mozambique, Republic of Congo, DRC, Guinea Bissau and São Tomé and Príncipe. He is mainly focused on the energy (oil & gas upstream/downstream and power projects) and mining industries.

He assisted the negotiation, structuring and implementation of several mining projects in Angola, Mozambique, Timor-Leste, Republic of Congo and DRC.

A frequent guest speaker in international mining and oil & gas upstream and downstream events, João has a detailed and comprehensive understanding of all typical projects and transactions of both industries.

VdA

Rua Dom Luís I, 28
1200-151 Lisbon
Portugal

Tel: +351 21 311 3400

Fax: +351 21 311 3406

Email: jaf@vda.pt

URL: www.vda.pt/en



Ângela Viana joined VdA in 2015. She is Senior Associate of the Oil & Gas and Mining practice where she has been involved in several global transactions with a particular focus on energy, mining, investment, corporate and commercial law. She has been particularly active in providing assistance to several mining projects in Angola, Portugal and Timor-Leste, notably in the negotiation/renegotiation of mining investment contracts, structuring/restructuring of joint ventures, farm-ins and farm-outs, assisting some of the world leaders of the mining sector.

VdA

Rua Dom Luís I, 28
1200-151 Lisbon
Portugal

Tel: +351 21 311 3400

Fax: +351 21 311 3406

Email: axv@vda.pt

URL: www.vda.pt/en

Over 40 years in the making, Vieira de Almeida (**VdA**) is an international leading law firm, notable for cutting-edge innovation and top-quality legal advice. A profound business know-how coupled with a highly specialised cross-sector legal practice enable the firm to effectively meet the increasingly complex challenges faced by clients, notably in the aerospace, distribution, economy of the sea, green economy, energy, finance, real estate, industry, infrastructure, healthcare, public, professional services, information technology, emerging technologies, telecoms, the third, transport and tourism sectors.

VdA offer robust solutions based on consistent standards of excellence, ethics and professionalism. The recognition of **VdA** as a leading provider of legal services is shared with our team and clients and is frequently acknowledged by the major law publications, professional organisations and research institutions. VdA has consistently and consecutively received the industry's most prestigious awards and nominations.

Through **VdA** Legal Partners clients have access to a team of lawyers across 13 jurisdictions, ensuring wide sectoral coverage, including all African members of the Community of Portuguese-Speaking Countries (CPLP), and several francophone African countries, as well as Timor-Leste.

Angola – Cabo Verde – Cameroon – Chad – Congo – Democratic Republic of the Congo – Equatorial Guinea – Gabon – Guinea-Bissau – Mozambique – Portugal – Sao Tome and Principe – Timor-Leste.

www.vda.pt/en

VdA VIEIRA DE ALMEIDA

ICLG.com

Current titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Law
Business Crime
Cartels & Leniency
Class and Group Actions
Competition Litigation
Construction & Engineering Law
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Recovery & Insolvency
Corporate Tax
Cybersecurity
Data Protection
Employment & Labour Law

Enforcement of Foreign Judgments
Environment & Climate Change Law
Family Law
Financial Services Disputes
Fintech
Foreign Direct Investments
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation

Outsourcing
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Product Liability
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Sanctions
Securitisation
Shipping Law
Telecoms, Media and Internet Laws
Trade Marks
Vertical Agreements and Dominant Firms