

THE MINING LAW
REVIEW

NINTH EDITION

Editor
Erik Richer La Flèche

THE LAWREVIEWS

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REVIEW

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PREFACE

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

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

The first part of the book is divided into 19 chapters, each dealing with mining in a particular jurisdiction. These countries were selected because of the importance of mining to their economies and to ensure a broad geographical representation. Mining is global but the business of financing mining exploration, development and – to a lesser extent – production is concentrated in a few countries, Canada and the United Kingdom being dominant. As a result, the second part of the book has three chapters that focus on financing.

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

At the time of writing, the covid-19 pandemic is continuing. It has greatly reduced economic activity throughout the world and the road to recovery will be long and uncertain.

Governments are trying their best to mitigate the effects of the pandemic, but consumer demand is down and certain sectors of the economy (e.g., transportation, hospitality) have been flattened. We are very far from the Goldilocks scenario of 2019 with steady world growth.

The impact of the pandemic on mining has been uneven. Taken as a whole, mining has done better than many sectors but it is undeniable that the pandemic has materially affected the demand for most minerals. This having been said, cuts in production because of the pandemic have helped maintain the price of some minerals (e.g., iron ore).

The story for gold and other precious metals continues to be a favourable one. Extraordinary increases in the monetary supply of the US, the uncertainty brought about by the pandemic and US–China trade frictions have contributed to the surge in gold, silver and other precious metals.

It is unclear what the next 12 months will bring and we can only hope that new vaccines and therapeutics will be developed and distributed in the not-too-distant future.

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

Erik Richer La Flèche

Stikeman Elliott LLP

Montreal

September 2020

Part I

MINING

ANGOLA

João Afonso Fialho, Ângela Viana and João Cortez Vaz¹

I OVERVIEW

Angola is one of the world's greatest diamond producers with vast known reserves of other valuable natural resources, notably gold, iron ore, phosphates, copper and manganese, among others. According to the Geological Institute of Angola, the geological mapping and surveying of Angolan mineral resources has already been completed and the national geology work plan is expected to be finalised in 2020.

The government has been particularly focused on the reorganisation of the mining sector with a new governance model for the mining sector and a new foreign exchange regime for the diamond sector enacted earlier this year. In essence, these changes aim to (1) increase the sector's efficiency through the reduction of the state's direct participation in mineral activities and (2) promote transparency in the industry.

Key major mining companies have operations in Angola. Even those that ceased mining operations during the civil war are now resuming their investments and are strongly motivated to pursue the projects that were inadvertently put on hold. All seems to indicate that after some years of scarce investment in the Angolan mining industry, new investments are flourishing, not only in diamonds (no doubt inspired by the remarkable results announced by some of the most profitable diamond projects in the country, e.g., the Catoca and Lulo projects) but in other mineral resources such as rare earth minerals, which have been attracting huge investments from Australian and Chinese investors.

There has also been a significant increase of investment in the national diamond cutting and polishing industry, with three new plants already in operation and another four plants expected to initiate operations later in 2020.

With the purpose of attracting new players to invest in the country, in December 2019 the government launched the first international public tender for the award of mineral rights for five mineral concessions – two diamond concessions, two phosphate concessions and one iron concession.

Associated with this investment-friendly regime is the political stability achieved in the aftermath of the 2017 presidential elections and the transition of power from an executive who was in office for more than 30 years. Despite the covid-19 outbreak, Angola is on the right path and keen to work towards becoming a key player on the international scene and one of the most promising African countries to which investments, in particular for mining projects, should be directed.

¹ João Afonso Fialho is a partner and Ângela Viana and João Cortez Vaz are senior associates at Vieira de Almeida.

II LEGAL FRAMEWORK

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

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

- a* Presidential Decree 161/20, of 5 June 2020, which approves the establishment of the National Mineral Resources Agency and its Foundation Act;
- b* Order 13/20, of 29 May 2020, of the National Bank of Angola, which establishes the new foreign exchange regime for the Diamond Sector;
- c* Presidential Decree 143/20, of 26 May 2020, which approves the new Governance Model for the Mining Sector;
- d* Presidential Decree 85/19, of 21 March 2019, which approves the regulations for semi-industrial mining of diamonds;
- e* Presidential Decree 35/19, of 31 January 2019, which approves the technical regulations for marketing of rough diamonds;
- f* Presidential Decree 175/18, of 27 July 2018, which approves the new rough diamonds sale and marketing policy;
- g* 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;
- h* Presidential Decree 158/16, of 10 August 2016, which approves the mineral administrative offences and relevant penalties regime.

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

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

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

The key regulatory bodies with controlling and supervisory powers and authority over the mining industry are the head of the government, the Ministry of Mineral Resources, Petroleum and Gas (MMRPG), the Ministry of Finance, the National Agency for Mineral Resources, the Geological Institute of Angola and the National Bank of Angola.

Reference must also be made to key state-owned companies and public authorities that have a particularly relevant role in the Angolan mining industry, namely: the Diamond Trading Company of Angola – Sodiam, EP (single channel for the marketing of all rough diamond productions extracted from Angola), the National Diamond Company of Angola – Endiama, EP, which recently lost the status of national concessionaire for diamonds, rare metals and rare earth elements and the Kimberley Process National Committee.

The new Governance Model for the Mining Sector foresees the establishment of the Angolan Diamond Exchange (to be run by Sodiam, EP and Endiama, EP) in the near future.

III MINING RIGHTS AND REQUIRED LICENCES AND PERMITS

i Title

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

The Mining Code further emphasises that 'mineral resources existing in the soil, subsoil, territorial sea, continental shelf, exclusive economic zone, and in other areas of the territorial or maritime domain under the jurisdiction of the Republic of Angola are originally owned by the state and are comprised within its public domain'. Yet, minerals and other products mined and extracted in accordance with the rules of the Mining Code and ancillary legislation are the property of the holders of the relevant exploration and mining titles granted under the terms provided for in the respective concession contracts.

Specific rules and conditions for the award of mineral rights are set forth in the Mining Code, which adopts a single-contract model under which all mineral rights are granted, from the outset, for the whole mineral process; that is to say, exploration, evaluation, reconnaissance, mining and marketing.

ii Surface and mining rights

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

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

The procedure for awarding mineral rights varies according to the mineral in question and the industrial or artisanal nature of the mineral operations.

Strategic minerals are subject to more complex award procedures and may take some months to be negotiated and awarded. Diamonds, gold and radioactive minerals are expressly qualified as strategic minerals under the Mining Code. Presidential Decree 231/16, of 8 December 2016, further classifies rare metals and rare earth elements as strategic minerals.

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

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

At an industrial scale, exploration rights are awarded for an initial term of up to five years, extendable for two additional one-year terms plus one year for completion of the

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

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

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

iii Additional permits and licences

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

iv Closure and remediation of mining projects

Holders of mineral right are statutorily and contractually bound to carry out mineral activities with the least environmental and social impact. Holders of mineral rights are further statutorily obliged to restore the land and landscape upon completion of each mineral project. Before the definitive abandonment of the concession area, holders of mineral rights must request the MMRPG 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 MMRPG as provided for in the Mining Code and the EIA, where applicable).

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

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

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

IV ENVIRONMENTAL AND SOCIAL CONSIDERATIONS

i Environmental, health and safety regulations

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

Holders of mineral rights shall therefore take all reasonable steps to preserve and protect nature and the environment and comply with the specific rules on environmental preservation in mineral activities to be approved by the Minister of the Environment and the MMRPG (yet to be enacted). Pending the enactment of environmental rules specific to mineral activities, mineral resources shall be exploited in compliance with the general environmental law, the water law, the law on biological and aquatic resources, and the rules on environmental impact assessment.

Holders of mineral rights shall also take into account the specific rules on environmental preservation resulting from international instruments ratified by Angola including, without limitation, the Convention on Biodiversity, the Cartagena Protocol, Agenda 21 and the International Convention on Waste.

Angola is also a signatory to the Paris Agreement. In response to the country commitments undertaken according to this Agreement, the Angolan government has approved the National Strategy for Climate Change for 2018 to 2030 (ENAC). While measures have been outlined for the oil and gas industry (which is responsible for 49 per cent of the country's greenhouse gas emissions), the National Strategy for Climate Change has not established specific measures for the mining industry.

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

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

ii Environmental compliance

All projects that by nature, dimension or location may have an impact on the environment and social balance and harmony are subject to an EIA. In the case of the mining industry, holders of mineral rights are required to complete and obtain approval of a mandatory EIA prior to moving on to the mining phase (i.e., the approval of the EIA constitutes a condition precedent to the award of mineral rights for the mining stage). The principle of implicit approval of the EIA does not apply to the mining industry.

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

iii Third-party rights

According to the Mining Code, the MMRPG, in coordination with the local state authorities and the holders of mineral rights, shall create consultation procedures allowing the local communities affected by mineral projects to take an active part in decisions relating to protection of their rights, within the constitutional limits.

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

Local communities further benefit from the following statutory rights:

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

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

V OPERATIONS, PROCESSING AND SALE OF MINERALS

i Processing and operations

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

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

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

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

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

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

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

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

There is no restriction on the use of foreign labour (except for artisanal mining). Nevertheless, holders of mineral rights shall ensure the employment and training of Angolan technicians and workers, with preference being given to those residing in the immediate areas of the mineral concession.

Without prejudice to the above, it is worth noting that under the Angolan Labour Law, at least 70 per cent of the workforce of any entity employing more than five workers must be Angolan citizens.

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

ii Sale, import and export of extracted or processed minerals

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

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

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

The marketing of diamonds is subject to specific rules established under the Mining Code, Presidential Decree 175/18 of 27 July 2018 (which approves the policy for the marketing of rough diamonds) and Presidential Decree 35/19, of 31 January 2019 (which approves the technical regulations for marketing of rough diamonds).

According to Presidential Decree 175/18 and Presidential Decree 35/19, all rough diamonds extracted from the Angolan territory must be sold through the Single Marketing Channel, which is overseen by Sodiam, EP.

Producers are statutory entitled to sell, directly or indirectly, their production in the national or international market – through the Single Marketing Channel – subject to the following marketing quotas: (1) up to 60 per cent to buyers elected pursuant to the technical regulations, (2) from 15 per cent to 20 per cent to Sodiam, EP and (3) up to 20 per cent to local cutting and polishing industry.

The new Governance Model for the Mining Sector provides for the set-up of the Angolan Diamond Exchange. The Angolan Diamond Exchange shall be responsible for ensuring diamond trading operations in the country and will operate under the supervision of Sodiam, EP.

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

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

iii Foreign investment

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

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

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

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

The National Bank of Angola has recently approved the Foreign Exchange Regime for the Diamond Sector (which repealed Order 2/03 of 28 February 2003 that established the special foreign exchange regime for diamond producers and other holders of mineral rights). Foreign investors were enthusiastic with the idea of a new foreign exchange regime for the industry but, unfortunately, the new Foreign Exchange Regime does not seem to address investor's expressed concerns and challenges and has already been subject to extensive criticism.

Foreign exchange operations involving mining sector agents outside the diamond subsector shall be subject to the general foreign exchange rules, which have been recently relaxed by the National Bank of Angola, notably the rules applicable to (1) capital operations, (2) invisible items of trade, and (3) import and export of goods.

VI CHARGES

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

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

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

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

i Royalties

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

- a* strategic minerals: 5 per cent;
- b* precious stones and precious metallic minerals: 5 per cent;
- c* semi-precious stones: 4 per cent;
- d* non-precious metallic minerals: 3 per cent;
- e* semi-industrial and artisanal diamonds: 3 per cent; and
- f* construction materials of mining origin and other minerals: 2 per cent.

ii Taxes

Income tax

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

Investment income tax

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

Personal income tax

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

iii Other fees

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

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

- a* diamonds: US\$7 to US\$40;
- b* remaining strategic minerals: US\$5 to US\$35;
- c* precious stones and metals: US\$5 to US\$35;
- d* semi-precious stones: US\$4 to US\$20;
- e* non-precious metallic minerals: US\$3 to US\$18; and
- f* construction materials and other minerals: US\$2 to US\$15.

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

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

VII OUTLOOK AND TRENDS

The Angolan mining sector is going through a deep reform aimed at enhancing the sector's performance, transparency and potential for growth. This reform is key to compensate for the sharp decline in public revenues because of low oil and gas prices and the decrease in the global demand for these commodities.

The new Governance Model for the Mining Sector, in particular the set-up of the National Agency for the Mining Sector, will hopefully ease the burden of administrative procedures and allow for a more efficient performance and supervision of mineral activities.

Angola ranks as the third largest African diamond-producing nation and the world's fourth largest diamond exporter, thus it is natural that the primary focus of the government has been on boosting the diamond subsector.

Investments in the national diamond cutting and polishing industry are expected to continue rising with the construction of the Saurimo complex (Saurimo Development Center) in Lunda Sul Province. This is a major mining-focused project financed by the state and budgeted at US\$77 million that will comprise, inter alia, four diamond cutting and polishing plants, two training centres (one specialised in diamond evaluation and cutting and another specialised in gemmology, geology, studies and projects). According to recent news on the project, the Saurimo complex will comprise a free trade zone to channel more national and international investment to the mining sector.

Diamonds apart, the recent approval of two major investments to mine rare earth deposits, both backed up by international investors, shows that the potential of the Angolan mining sector extends well beyond that of diamonds.

All in all, one may conclude that the current political environment, which is marked by a more ‘investor friendly’ approach, associated with the vast amount of untapped natural resources, shows that Angola has potential for prosperity and that there is massive potential for expansion and growth of the country’s mining sector.

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