

New Angolan Mining Code

Introduction

On 23 September 2011, the new Angolan Mining Code (*Código Mineiro*) came into force¹. The introduction of new mining legislation was already expected for some time. As the name indicates, the Mining Code is intended to compile all of the existing legislation that applies to mining activities and therefore replaces a large number of existing laws and regulations dealing with mining.

The compilation of these rules in one single set of regulations intends to provide easier access to applicable rules and it also harmonises, to the extent possible, the rules and procedures that apply to particular activities. Apart from codifying existing rules, the Mining Code also amends existing rules in various areas, giving mining activities a more modern and coordinated regulatory basis. The Angolan Government therefore holds the view that the new Mining Code will, on the one hand, facilitate mining activities in Angola but, on the other hand, also ensure that the impact of mining activities on, for example, the environment and local communities, is properly addressed.

This memorandum provides a short overview of the main elements of the new Mining Code.

Scope

The Mining Code applies to all mining activities (such as prospecting, mining and commercialisation) that take place in Angola and all maritime areas that are subject to the Angolan jurisdiction. It does not apply to hydrocarbons, whether in liquid or gas form.

Role of Angolan State

The Angolan Executive (i.e., the Angolan President) is empowered to develop a mining policy and plan that should take account of the strategic objectives set out in the Mining Code. These objectives should consider economic as well as environmental and social considerations. The Angolan State can intervene in the mining sector through the establishment of public bodies that regulate mining activities and by operating enterprises that are active in the mining industry.

The Mining Code further provides that, in consideration for granting mining rights, the Angolan State shall be entitled to compensation, in the form of a participation of not less than 10% in the company that conducts the activities and/or in-kind allocations of the minerals to be extracted.

Strategic minerals

The Mining Code contains specific (broadly speaking stricter) rules for mining activities that involve strategic minerals. Gold, diamonds and radio-active minerals are currently designated as strategic minerals, although the Angolan Executive can designate others. The rules provide that the mining rights for strategic minerals can be allocated exclusively to a specific public entity that can exercise these rights on a nation-wide basis.

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¹ Lei No. 31/11

Information

The Mining Code provides that all geological information about existing minerals is the property of the Angolan State and that third parties can only use this information for those purposes that were specially agreed. The parties that conduct geological studies are required to provide regular information about their work to the relevant authorities and provide them with all collected geological information.

Mining rights

All mineral resources that can be found in Angola and within the maritime boundary of Angola are deemed to be the property of the Angolan State. However, the minerals explored and extracted by holders of mining rights are the property of these parties in accordance with the terms of their concession.

Mining rights can be granted for the following activities:

- prospecting for specific minerals
- mining of specific minerals
- prospecting and exploitation of minerals for civil construction
- artisanal mining.

The Mining Code describes the rights and obligations of the mining right holders. The rights can be transferred, can be granted as collateral and can be subject to judicial execution measures, subject to the limitations set out in the Mining Code. In case of insolvency of the mining rights holder, the mining rights will not terminate, but can be allocated to the creditor of the holder that offers the best price (subject to a right of first refusal of the Angolan State).

The Mining Code describes the circumstances in which mining rights can be suspended and terminated. These circumstances include a termination of the underlying concession agreement as well as suspension of the mining activities for a period of six months without justification. The mining rights can further be withdrawn, subject to proper compensation, if strategic minerals are discovered or if the mining activities are considered to be of great interest to the national economy.

Granting of mining rights

The mining rights can be awarded pursuant to a public tender or upon request. The Mining Code prescribes under what circumstances a public tender should be organised and the information to be provided in connection with an application or a bid in the context of a public tender. It also sets out the various deadlines to be observed in connection with the process.

Conduct of mining right holders

The Mining Code imposes a number of obligations on the holders of mining rights regarding the exercise of their rights. These include obligations in the areas of:

- hygiene, health, security and training
- environmental protection
- use of soil
- use of explosives.

Restricted and protected zones

The Mining Code provides a basis for the establishment of zones with restricted access, both in terms of circulation of persons as well as goods. It describes the conditions that apply to these zones and the type of limitations that can be imposed. It also entitles the holder of the relevant mining rights to enforce the restrictions. Any trespassers must immediately be handed over to the local public prosecutor or police.

Investment regime

The Angolan Private Investment Law does not apply to mining activities. The Mining Code therefore provides a special regime for mining activities. Holders of mining rights must enter into an investment contract with the Angolan State which is subject to negotiation with a committee specifically established for this purpose. The contract must be approved by the competent minister or, for investments with a value of US\$25 million or more, by the Angolan Executive.

The Mining Code describes the procedure to be followed in connection with the conclusion of an investment contract. The rules make a distinction between investment contracts in respect of prospecting and those in respect of mining, and describe in detail the information to be submitted and the conditions to which the contracts are subject. The investor can, as part of the investment contract, be granted tax incentives.

Trade in minerals

The holder of the mining rights also has the power to sell the products of mining activities, subject to certain restrictions that follow from the Mining Code. The export and import of minerals require authorisation. For strategic minerals a specific, more stringent regime applies, including, for diamonds, certification in accordance with the Kimberly process.

Tax and custom duties

All local and foreign entities that are engaged in mining activities in Angola as well as abroad (to the extent that Angola has the power to tax) are subject to the special tax regime described in the Mining Code.

The entities can be subject to the following taxes:

- income tax
- royalties
- surface tax
- artisanal mining tax
- taxes that apply in connection with other activities conducted by the relevant entities.

The rules set out the basis on which these taxes are to be computed, when they are to be paid and the sanctions that can be imposed in case they are not paid on their due date. The provisions dealing with custom duties provide for certain exemptions (in particular in relation to equipment used in connection with the mining activities) and the conditions that apply to the exemptions. Mining products can be exported directly or indirectly by the mining rights holder without any additional custom duties.

Special regimes

The Mining Code contains further rules that apply to

- mining activities for the civil construction industry
- artisanal mining
- the cutting, the import and export, and the sale of cut diamonds
- the extraction and production of mineral water.

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