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New Ivorian Mining Code: new legal, tax and customs duties provisions

The Ivorian Parliament adopted the new Mining Code, which was promulgated by the President of the Republic under Law No. 2014-138 of 24 March 2014, the implementing measures of which are specified in Mining Decree No. 2014-397 of 25 June 2014.

This new Mining Code is intended not only to modernize the mining sector by ensuring greater transparency, but also to provide a more conducive environment for the sector in Ivory Coast. Like other new mining codes or draft mining codes in Africa, particularly those of Mali, Burkina Faso and Guinea, the new code introduces new provisions on local capacity building and community development.

The broad outlines of the legal, tax and customs developments underpinning the new code are hereby presented below.

New legal provisions

The new developments under this code consist of more stringent rules on the issuance of mining licenses and on the State's involvement and participation in the capital of the mining companies or the signing of a mining agreement.

1. Amendment of the mining rights regime

1.1 More stringent criteria for the issuance of licenses

The new code introduces additional criteria for the issuance of licenses, such as the company's experience and its financial and technical capacity¹ (i.e., it must have at least seven years of experience, and to qualify for a mining exploration license, the company must have worked in a similar capacity by executing at least two mining projects), or better still, it must fulfill the bank guarantee requirement.

¹ Articles 19 and 29 of the new Mining Code.



1.2 A longer license period

The new code extends the initial validity period to 4 years with the option of two 3-year renewal periods – that is, 10 years altogether (versus 7 years under the previous arrangement).

Henceforth, the maximum validity period for a mining license is 20 years, although it may be renewed for 10 years.

1.3 Reduced land surface area

The exploration permits shall no longer exceed 400 square kilometers² (as compared with the previous limit of 1,000 sq km). However, what the new code seeks to accomplish is to only reduce the exploration area by one-quarter each time the license is renewed (as opposed to half of the surface area under the previous arrangement).

2. A mandatory mining agreement

The new Mining Code now makes it mandatory for the Government and the mining companies to enter into a mining agreement within a period of 60 working days after the date the operating license³ has been allocated.

The mining agreement shall inter alia determine:

- The obligations of the Government
- The stability of the tax and customs regime
- The duration of the mining agreement

3. Participation by the Government

The Government shall enjoy a free 10% participation in the capital of the mining company with an option to increase its participation depending on its ability to pay; however, its total participation shall henceforth be limited to 15% of the capital.⁴

4. Establishment of a community development fund

The mining companies shall henceforth establish a fund to undertake socioeconomic development projects in the communities.⁵

They must maintain the fund through annual contributions of 0.5% of their turnover (after deduction of expenses).⁶

5. Obligation of repatriating export earnings

The new code only restates the principle established under the UEMOA Regulation governing exchange rates. The earnings from the sale of production must be repatriated to Ivory Coast under the conditions determined by the above-mentioned regulation.

6. Recognition of subcontractor status

For the first time, the Mining Code defines the term “mining subcontractor” in Ivory Coast. According to the new code, a mining subcontractor is a natural person or legal entity carrying out a task within the framework of the key activities of a holder of mining rights.

However, the capacity of a subcontractor is obtained through a joint order issued by the Ministry of Mines and the Ministry of Budgetary Affairs. The certified subcontractors must justify their financial and technical capabilities to undertake an activity in the mining sector. The approval is granted for a period of three calendar years with the possibility of renewal.

The approved mining subcontractors shall enjoy the same customs privileges as the holders of the mining permit (see below).

² Article 23 of the new Mining Code.

³ Article 12 of the new Mining Code.

⁴ Article 7 of the new Mining Code.

⁵ Article 124 of the new Mining Code.

⁶ Article 7 of Ordinance No. 2014-148 of 26 March 2014 laying down land surface charges and taxes proportional to the activities governed by the Mining Code.

New tax and customs provisions

Contrary to the previous Mining Code, the Government shall guarantee that the tax and customs regime is stable for the benefit of the mining company.⁷

1. New tax provisions

1.1 Exploration phase

The new code henceforth fully exempts the companies from any contributions toward incorporation of their companies or increasing their capital stock.⁸ The same regime applies to the annual minimum tax (IMF) or property taxes.

1.2 Operating phase

The value-added taxes (VAT) for gold now vary depending on the price fluctuations of gold, with a minimum rate of 3% and a maximum of 6%.⁹

The rates for copper, bauxite, chrome, iron and manganese have been raised to 3.5% from 2.5%. However, the new code has introduced low rates for semi-processed and processed minerals.

The new code also contains new exemptions, such as VAT on services and goods acquired abroad or in Ivory Coast (but only up to the date of the first production), property rate on developed or undeveloped property, operating tax for water and slaughterhouse charge, business license tax and special equipment tax.

2. New customs developments

The new Mining Code maintains and grants many exemptions to a license holder, his affiliate companies and subcontractors in the form of exemptions on customs duties levied on liquid or gaseous fuels, lubricants and chemical products.

⁷ Article 164 of the new Mining Code.

⁸ Article 163 of the new Mining Code.

⁹ Article 5 of Ordinance No. 2014-148 of 26 March 2014.

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With a volatile outlook for mining and metals, the global sector is focused on cost optimization and productivity improvement, while poised for value-based growth opportunities as they arise. The sector also faces the increased challenges of changing expectations in the maintenance of its social license to operate, skills shortages, effectively executing capital projects and meeting government revenue expectations.

EY's Global Mining & Metals Center brings together a worldwide team of professionals to help you succeed – a team with deep technical experience in providing assurance, tax, transactions and advisory services to the mining and metals sector. The Center is where people and ideas come together to help mining and metals companies meet the issues of today and anticipate those of tomorrow. Ultimately it enables us to help you meet your goals and compete more effectively.

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