

ANGOLA

FBL ADVOGADOS



FIRM INFORMATION

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RELEVANT AUTHORITIES AND LEGISLATION

What laws regulate mining?

The mining activities are regulated by the Mining Code approved by Law no. 31/11 of 23 September.

Which Government Bodies administer mining law?

The Government bodies which administer the mining industry are the Ministry of Mineral Resources and Petroleum, ENDIAMA (National Concessionaire for diamonds); SODIAM (a public company authorized to commercialize Angolan diamonds, FERRANGOL (a public company which is the national concessionaire for mining activities related to recognition, prospecting, research, evaluation, exploration, transformation and commercialization of noble metals, ferrous and non-ferrous metals and any other mineral resources which constitutes raw-materials for the production of steel) and the Regulatory Gold Market Agency.

TYPES OF AND MANNER OF ACQUISITION OF RIGHTS

What rights are granted to conduct reconnaissance, exploration and mining operations?

Mining rights can be awarded pursuant to a public tender or upon request. Articles no. 90, 91, 92 and 93 of the Mining Code describe the rights and obligations of the mining right holders which have the following legal guarantees:

- Applications for access to mining rights are recorded and decided according to order of entry, within the legally established time limits;
- Applications for the granting of mining rights shall be properly published;
- Unrestricted extraction of mineral resources during prospecting, except as expressly provided under the standards of the mining code or additional legislation;
- Titles for mineral resource extraction are allocated on an exclusive basis, and may be transferred pursuant to the provisions of the mining code;
- The necessary support from the government for the execution of mining activities and respect for the rights inherent thereto;
- The right to freely dispose of and market mining output, subject to the rules and procedures provided under the mining code and additional legislation on the matter.

Pursuant to Presidential Decree 174/15 of September 15, the granting of new mining titles is temporarily suspended until the geological mapping of the country and the National Geology Plan (PLANAGEO) are concluded¹. The PLANAGEO consists in a geological mining research currently in progress for the planning and diversification of the mining geological activities in the country.

However, projects with great impact to Angolan Economy which are technically, economically and financially viable, such as i) prospecting or exploitation projects in large scale activity; ii) long-term maturity exploitation projects; iii) projects involving large amounts of investment; and iv) projects involving state-owned companies, are not subjected to this suspension.

Mining investment projects submitted before September 15 2015 and pending for approval shall not be affected by the above mentioned suspension.

The mining holders are also entitled with the following:

- Obtain geological/mineral information from competent supervisory authorities that is available for the area subject to concession, or to consult such authorities in regard to such information;
- Obtain the cooperation of administrative authorities for the execution of field work and the establishment of rights-of-way, pursuant to law;
- Use existing surface and groundwater in proximity to the concession area that is not used or covered by any other specific extraction title, without prejudice to third-party rights and always subject to mining legislation;
- Build and deploy infrastructure and facilities necessary to the execution of geological/mining activities;
- Pursuant to pertinent legal and regulatory conditions, use land demarcated for the implementation of mining facilities, buildings and equipment;

¹ To the best of our knowledge the works related to the survey are suspended until further information, due to the financial crises that affected the Angolan mining sector. In fact the Official Gazette recently have published new Investment Contracts granting mining rights in the gold sector of activity, therefore although enforceable the provisions of this Presidential Decree aren't strictly applicable.



- Pursuant to approved work plans and schedules and to the extent necessary for execution of mining operations, modify the natural configuration of areas subject to concession;
- Conduct geological/mining activities necessary to the execution of approved work plans, without other restrictions other than those arising from legal standards, the concession contract or by order of the regulatory body;
- Extract, transport and benefit from the mineral resources subject to contract, in accordance with the law;
- Dispose of extracted mineral resources and market them, in accordance with the law;
- Through extraction proceeds, recoup expenses from investments made during the exploration, prospecting, surveying and evaluation phase;
- Receive compensation for losses that may be incurred from any action limiting the exercise of mining rights, in accordance with the law or the concession contract.

OIL AND GAS

What rights are granted to conduct oil and gas exploration and production?

Petroleum deposits existing in the available area of the Angolan national territory, inland waters, territorial waters, exclusive economic Zone and continental shelf are an integral part of public property of the Angolan State.

Mining rights in the oil & gas sector shall be granted by SONANGOL, E.P., a public company that is the National Concessionaire, under the terms of the law no. 10/04 of 12 November (Petroleum Activities Law).

The rights granted to conduct oil and gas exploration and production are for: (i) Prospecting, (ii) exploration and (iii) Production.

Petroleum and gas operations may only be carried out under a prospecting license or petroleum concession.

Prospecting licenses shall be issued by the Ministry of Mineral Resources and Petroleum, while the Government shall be responsible for granting concessions for the exercise of mining rights.

A prospecting license has a maximum duration of three years. As regards the concession the duration is determined in the concession decree. Although, whether it is a license or

concession its duration may exceptionally be extended, upon the request of the licensee or the National Concessionaire. Such extension is subject to the approval of the Ministry of Petroleum, upon verification of the reasons invoked and certification checked that the licensee or the National Concessionaire have performed their obligations.

Any company that wishes to carry out petroleum operations in Angolan territory apart from the scope of its prospecting licenses may only do so together with the National Concessionaire under the following terms:

- Subject to the prior consent of the Government, the National Concessionaire may associate with Angolan or foreign entities of recognized capacity, technical knowledge and financial capability.
- Such association may take the forms of (a) Corporation; (b) Consortium; or (c) Production Sharing Agreement.

Finally, in regards to the applicable framework to the natural oil and gas sector, such resources are mainly regulated by Petroleum Activities Law and may be conducted under the assignment of a prospecting license or petroleum concession. In addition to the above, please note that recently, on 2 March, 2015, were published the Executive Decree 80/15 which approves the Technical Regulations on the design, installation, operation, maintenance, repair and the Change of Liquefied Petroleum Gas Tanks, establishing its technical and security conditions and Executive Decree 81/15 approving the Security Technical Regulation of Liquefied Natural Gas Autonomous Units.

On the other hand, other mining activities are mainly regulated pursuant to the Mining Code which rights can only be assigned through a concession regime.

INDIGENISATION REQUIREMENTS

Are there any requirements in relation to the holding of equity in exploration and mining projects by indigenous peoples?

The Angolan Government is deeply committed in promoting



Angolan companies. Moreover, Angolan companies must comply with several local policies designed to promote the development of industrial infrastructures and the furthering of the education levels of the people in Angola. The Angola local content policies aim to protect the domestic market over the products and services for the mining industry. The local content rules broadly aim to promote the Angolan employment, the Angolan ownership of business and the Angolan industry, production and services.

The Local content policies are reflected in different levels including:

- The preferential treatment of Angolan companies in public tender processes;
- The obligation of companies to maintain a work force ratio of 30% of foreign employees to 70% of Angolan employees;
- The Mining and Oil companies are expected to source certain products and services exclusively from Angolan companies; meaning companies with majority Angolan ownership;
- The restrictions to the incorporation or acquisition of a company in Angola by foreign investors.

Are there any special rules or restrictions applicable to foreign applicants?

There are no restrictions under the Mining Code, which provides a special regime that allows foreigners to invest and carry out mining activities.

The main types of investment in the mining sector are: the general investment regime, the investment in strategic minerals regime and the artisanal investment regime. In general, holders of mining rights must enter into an investment agreement with the Angolan State. Such mining investment agreement shall be approved by the competent Minister or, if the amount of the investment is equal or higher than USD 25.000.000 (twenty-five millions United States Dollars), by the Angolan Chief of Executive.

Identify any rights that the State may have. Does the State have any rights to equity in mining projects?

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

PROCESSING AND BENEFICIATION

Are there any requirements to beneficiate minerals mined?

Holders of mining rights are entitled to dispose of the mineral mined and have the power to sell the products of mining activities, subject to the limitations set out in the Mining Code. The Chief of the Angolan Executive is bound to approve the rules related to trade in strategic minerals sector, in view of the specificities regarding each particular strategic mineral.

The Mining Code determines that, when reasons of public policy or national sovereignty are at stake, the Angolan Government

may create a particular institution to act as the sole trade public body (has it happens already with diamonds). It is also ensured that the holders of mining rights participate in the negotiation and in the draft of the trade agreements related to strategic minerals that are produced in their mines. The Mining Code also foresees that the Angolan State may create one or more trading companies, aimed at acquiring the strategic minerals directed to producers, in a free market regime, whenever this is required by law or by an objective need of State intervention.

Are there any restrictions on the export of minerals?

Export of mineral is subject to a previous licence issued by the Ministry of Trade and an authorization issued by the Customs authority.

All minerals exported from Angola are subject to a certificate of origin granted by the competent authorities.

Also internal rules adopted by the framework of the Kimberley Process Certification Scheme (KPCS) apply to other strategic minerals.

Additionally, a local certification process was implemented, in accordance with the KPCS.

DISPOSALS OF RIGHTS AND CONTROLLING INTERESTS

Are there any statutory consents required to dispose of rights to explore and mine

The Mining rights can be transferred, granted as collateral and can be subjected to judicial execution measures, subject to the limitations set out in the Mining Code, which include previous authorisation from the competent authority. 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 transfer of mining rights is subject to the payment of taxes. Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?

There are no particular rules regarding restrictions or disposals of controlling interests in entities holding exploration or mining rights.

USE OF SURFACE OF LAND INVOLVED IN PROSPECTING AND MINING ACTIVITIES

What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?

The holders of mining rights have the right to use the surface necessary or incidental to the exploration or mining operation.



ENVIRONMENTAL

What legislation governs environmental protection of exploration and mining sites?

Pursuant to the Mining Code, holders of mining rights must ensure the conservation and protection of nature and the environment, complying with the respective legal standards.

Without prejudice to the provisions of specific environmental standards for mining activity, the exploitation of minerals must be carried out in accordance with basic laws on the environment, biological and aquatic resources and water as well as with Environmental Impact Assessment standards. Holders of mining rights are specifically required to observe the following precepts:

- Fulfil the obligations arising from the Environmental Impact Assessment and environmental management plan, pursuant to the terms established therein;
- Take measures necessary to reduce the formation and propagation of dust, debris and radiation in areas of extraction and surrounding areas;
- Prevent or eliminate water and soil pollution, using appropriate means for such purposes;
- Neither reduce nor in any other way impair the normal supply of water to the populations;
- Execute mining operations in order to minimise soil damage;
- When using explosives in proximity to human settlements, reduce impact from noise and vibration to acceptable levels, as determined by competent authorities;
- Refrain from discarding waste harmful to human health, flora and fauna into the sea, water currents and lakes;
- Notify authorities of any occurrence that causes or may be capable of causing environmental damage.

In general, the mining operators must adopt internal rules of conduct on environmental matters that are compliant with legislation in force creating conditions to ensure that workers at all levels recognise their responsibility in regard to environmental management, as well as that resources, personnel and training adequate to implementing environmental plans are provided.

In collaboration with competent State bodies, they are responsible for strengthening infrastructure, training and qualifications of workers in regard to environmental management in mining operations.

Moreover, the environmental obligations are set forth jointly with the payment of an environmental guarantee.

NATIVE TITLE AND LAND RIGHTS

Is there any native title which has any implication for the exploration and mining industry?

No, but holders or owners of land have the right to an income for the duration of activities corresponding to prospecting and surveying, and such parties shall be compensated for the losses incurred, but they must properly consider the relative interest of mining production for the national economy, refraining from creating unjustified barriers to geological/mining research.

HEALTH AND SAFETY

What legislation governs health and safety in mining?

There is specific legislation governing health and safety in general.

Pursuant to the Mining Code, the holders of mining rights must adopt measures to ensure hygiene, health and safety at work, as well as to prevent professional risks and accidents at work, pursuant to regulations issued by competent bodies and necessary training programs in the realm of hygiene, health and safety in the workplace must be promoted, as well as the observance of proper use of machinery, materials and working equipment.

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Is there a constitution which has an impact upon rights to prospect and mine?

No.

Are there administrative appeals in the mining law?

The conflicts arising between state bodies and mining holders are subject to the general administrative law.

ROYALTIES AND TAXES

Are there special rules applicable to taxation of exploration and mining companies?

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. They may be subject to the following taxes: income tax (actually at the rate of 25%), royalties; surface tax; artisanal mining tax; and taxes applicable to other activities conducted by the relevant entities.

The provisions related to custom duties provide for certain exemptions, in particular with equipment used in connection with the mining activities, and the conditions that apply to such exemptions. Mining products can be exported directly or indirectly by the mining right-holder without any additional custom duties.

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

Yes, the mining operators must pay for the tax over the value of the mineral resources.

