DLA PIPER

SENEGAL'S NEW MINING CODE

WHAT MINING COMPANIES NEED TO KNOW

Undeterred by the recent drops in commodity prices, Senegal is on the verge of introducing its new mining code, which has been a work in progress since 2012 when proposals were first made to revise the current mining code which was introduced in 2003.

In recognising the great significance that the mining industry holds for Senegal, President Macky Sall, who is a geological engineer by trade and who previously served as the Senegalese Minister for Mines and Energy, made mining industry reform one of his priority areas following his election in early 2012. One of the President's goals is to increase foreign investment in the mining sector and, in doing so, increase its contribution to Senegalese GDP which currently remains below 5%.

For the purposes of this update, "New Mining Code" means the draft Mining Code 2015 as recently presented to the Senegalese Parliament and "Current Code" means the Mining Code 2003 which is currently in force but is expected to be replaced by the New Mining Code.

OVERVIEW

Unlike the mining code adopted in the Republic of Guinea in 2011, the New Mining Code does not involve a total restructuring of Senegal's mining regime, nor does it establish any review of existing mining titles or contracts. Nevertheless, whilst the framework of the mining regime remains substantially the same, the New Mining Code does implement a number of important changes which include the introduction of local development provisions, deadlines on commencing operations and increased transparency obligations.

In retaining the investor-friendly incentives introduced under the Current Code, one of the key objectives of the New Mining Code is to increase revenues to the government from the mining sector. This means that investors can expect to pay increased fees, royalties and taxes under the New Mining Code.

It is important to note that mining companies who already hold a mining title in Senegal will be bound by the mining code in force at the time their title was awarded and, if applicable, at the time their mining contract was signed with the government.

STATUS OF NEW MINING CODE

A public meeting was convened in early February 2015 to discuss the comments and suggestions provided by mining sector stakeholders. The Government made various amendments to the New Mining Code to take this feedback into account before circulating the revised draft amongst the different ministries for final comment.

It has recently been sent to the Senegalese Parliament for consideration and, subject to a favourable vote, adoption as a law. The new law will be enacted once it is signed by the President and published in the Official Journal. This lengthy process is a reflection of the importance placed on the mining sector by the President and his new economic strategy.

The following is a summary of some important amendments introduced by the New Mining Code:

1. Mining companies can apply for a 'small mine permit' or a 'mining permit'

The New Mining Code will simplify the types of mining titles available: a company can either apply for a "small mine permit" or a "mining permit". Under the Current Code, the distinction between a "mine permit" and a "mining concession" has caused confusion for investors and a simplification of these titles will be a welcome change. There will be no changes to the application process for either permit.

Under the New Mining Code, a "small mine permit" will be limited to a daily treatment capacity of 500 tonnes of minerals and a mining area of 500 hectares. As is the case under the Current Code, there will be no limitations on the scale of operations under a mining permit.

In addition to these two mining permits, the New Mining Code will also allow investors to consider an application for a "semi-mechanised mining authorisation", designed to cover mining operations on a maximum of 50 hectares.

2. The terms and contracts for mining titles have changed

A small mine permit will be issued for an initial term of five years, increased from the three year term provided under the Current Code. The term may be renewed for three years at a time without limit on the number of renewals.

A mining permit will be issued for an initial term of between 5-20 years (depending on the mineral reserves identified and the investment required). This is a change from the Current Code, where a "mining concession" could be granted for up to 25 years. Mining permits will be renewable as many times as necessary until the resource is exhausted.

Mining companies will still have to enter into a mining agreement, referred to as a "mining convention", at the same time as the associated mining permit is granted.

Under the New Mining Code, the mining convention must:

- be published on the website for the Ministry of Mines after execution;
- not derogate from the provisions of the New Mining Code but may supplement them; and
- detail the rights and obligations of the parties, which includes the stability of the legal conditions under which the mining title was granted.

3. Ownership restrictions on mining titles have been lifted

Under the Current Code, foreign investors are not permitted to own 100% of the shares in a Senegalese company.

Whilst this restriction will be removed under the New Mining Code, a mining title will still have to be held by a locally registered Senegalese company.

4. There are new deadlines to commence work

Under the New Mining Code, a small mine permit holder must commence mining operations within three months of the small mine permit being granted.

On the other hand, holders of mining permits must commence operations "*as soon as possible*". Whilst no specific time period is included, the New Mining Code provides that if operations have not commenced within one year of the date of entry into force of the mining permit, the permit holder will be liable to penalties of:

- US $100,000 per month for the first three months; and
- an amount increasing by 15% on the previous month's penalty for each month from the fourth month until the twelfth month of delay (i.e. 24 months after the date of entry into force of the mining permit).

If the permit holder has not commenced work within 24 months of the date of entry into force of the mining permit, the State may revoke the mining permit.

5. There are changes to fees, royalties and taxes

Fees

Under the New Mining Code, entry fees will be increased for the grant of a:

- small mine permit to 2,500,000 FCFA (up from 1,500,000 FCFA under the Current Code); and
- mining permit to 10,000,000 FCFA (up from 7,500,000 FCFA under the Current Code).

Entry fees for research permits, semi-mechanised mining authorisations and quarry permits will also be increased, but will remain relatively low.

Royalties

The New Mining Code will introduce an annual surface royalty payable by all title holders, including holders of research permits and quarry permits. The annual surface royalty for a:

- small mine permit will be 50,000 FCFA per hectare; and
- mining permit will be 250,000 FCFA per square kilometre.

Taxes

Most of the tax provisions included in the Current Code will be transferred to the General Tax Code, meaning investors will no longer be able to rely on the mining code as the key source of information on the fiscal and customs regime which is applicable to their project.

The 'mining tax' included in the Current Code will be retained, however, its application has been revised so that all authorised mining activities will be subject to a "quarterly mining tax" levied on the market value of the commercialised product.

The rate of the quarterly mining tax will vary according to the mineral substance being mined.

By way of example, the rates for some of the most commonly mined mineral substances will include:

Iron Ore	- concentrate	5.0%
	- locally processed	2.0%
Phosphate	- calcium-aluminate and lime phosphate	5%
	- phosphoric acid	1.5%
Gold		1.5%
Other assigned substances		3%

Tax relief

Various tax benefits contained in the Current Code will be revised in the New Mining Code.

During the period commencing on the date of entry into force of the mining permit (or small mine permit) and ending on the first date of commercial production (**Investment Period**), the mining title holder will be exempt from all taxes and fees, including value-added tax (VAT) and the COSEC port charge.

Whilst this was also the case under the Current Code, several taxes have been carved out from this exemption and will be payable during the Investment Period, which include:

- the statistical royalty;
- the community solidarity levy;
- the community levy; and
- other applicable community taxes.

The applicable rates for these taxes have not been specified in the New Mining Code.

The provisions of the Current Code which exempted mining title holders from export tax will also be removed, meaning that they will be liable to pay export tax in respect of products mined within the area of their mining permit from the date of entry into force of the mining title.

It is important to note that these provisions will operate in conjunction with any applicable taxes and tax exemptions contained in the General Tax Code.

6. Production sharing agreements have been introduced

Under the New Mining Code, the State may enter into a production sharing agreement with a mining company under which the mining company is given the exclusive right to research and mine a particular area and recover the cost of doing so from sale of the product. The profits from the sale of the product will then be split between the State and the mining company. The amount of State participation in a production sharing agreement will be specified in each individual agreement.

An advantage to entering into a production sharing agreement is that any product recovered under such an arrangement will not be subject to the trimestral mining tax outlined above.

7. Contributions to local development funds have been introduced

Under the New Mining Code, a mining title holder must contribute annually to a local development fund. The amount of the contribution will be 0.5% of sales, minus "annual fees".

The purpose of the fund is to promote the economic and social development of local communities residing around mining areas, and must include women's empowerment projects. The introduction of a local development component has been a common theme throughout African countries in recent years - Guinea and Mali being two examples of countries that have introduced compulsory local development contributions in recent years.

8. More stringent obligations are imposed on mining title holders

Small mine permit holders, who have no obligations regarding rehabilitation costs under the Current Code, will be required to provide a guarantee as security for the cost of rehabilitating their mine site under the New Mining Code. The details of the guarantee will be determined by a joint order of the Minister for Mines and the Minister for Environment, and the amount of the guarantee will be exempt from corporate tax.

Under the Current Code, a mining permit holder must establish a trust account with a Senegalese bank and deposit funds which will be used to rehabilitate the mine site. This will still be the case under the New Mining Code.

In addition to rehabilitation obligations, all mining title holders will specifically be required to:

- respect, protect and implement human rights in areas affected by mining operations;
- respect the provisions of the Forestry Code where the mining title has been granted over a "classified forest zone"; and
- respect the principles and obligations under the Extractive Industries Transparency Initiative (**EITI**), such as declaring all payments made to the State to the EITI authorities.

9. There are new sanctions for mining title holders

The New Mining Code will be far more prescriptive in relation to infractions, sanctions and penalties than the Current Code, and also lists various potential infractions which may be penalised, including:

- non-payment of taxes;
- failure to commence work programs within the agreed timeframes;
- irregularities in documentation or failure to provide requested documentation;
- illegal mining activity or storage, transport or sale of mineral substances;
- fraud; and
- health and safety violations.

The New Mining Code sets out across twenty provisions the fines or other sanctions that will apply in the case of each particular infraction.

10. There are additional audit and transparency requirements

Under the New Mining Code, both the State and mining companies will be subject to more thorough audits and transparency measures. In addition to having to abide by the principles of the EITI, the State will now be free to appoint independent firms to audit the accounts, facilities, infrastructure and systems of any mining company.

All mining revenues due to the State will now also be published in publicly available statements.

CONCLUSION

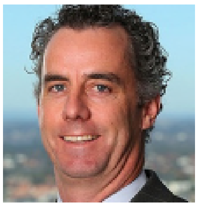
Many of the changes to be introduced by the New Mining Code will bring Senegal in line with other West African countries who have recently reformed, or are in the process of reforming, their mining sector legislation.

The applicable tax rates, royalties and fees are in line with other countries in the region and the introduction of social and environmental safeguards should lead to benefits for local communities and a welcome boost to the national GDP.

This is the first change to Senegal's mining law in over a decade and, despite the changes, it still promotes an investor-friendly mining regime. Given Senegal's political stability and mineral prospectivity, it should continue to be a very attractive environment for investors.

MORE INFORMATION

For more information, please contact:



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