Senegal has officially introduced its new mining code, which has been a work in progress since 2012 when proposals were first made to revise the former mining code introduced in 2003.

In recognising the potential that the mining industry holds for Senegal, President Macky Sall made reform of the mining industry a key priority following his election in early 2012. In this update, “New Mining Code” means the new mining code which entered into force on 8 November 2016 and “Former Code” means the Mining Code 2003 which has now been replaced.

OVERVIEW

Whilst the framework of the Former Code remains substantially the same, the New Mining Code implements many important changes that follow those introduced elsewhere in Africa during recent years. These changes include the introduction of a production sharing agreement, local development provisions, increased transparency obligations and changes to royalties and taxes calculations.

The Former Code will continue to govern existing mining titles, while the New Code only applies to those acquired after 8 November 2016 (once the implementation decree has been published).

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

1. Mining rights available

The type of mining titles available for mining activities has been simplified to either a “small mine permit” or a “mining permit”. Under the Former Code, the distinction between a “mining permit” and a “mining concession” had caused confusion and this simplification is a welcome change.

A small mine permit is limited to an area of 500 hectares while a mining permit has no limitations on the scale of its operations.

Investors may also apply for a “semi-mechanised mining authorisation” for operations carried out on an area of less than 50 hectares.

2. Duration and mining agreements

A small mine permit has an initial term of five years, increased from three years under the Former Code. This term is renewable for five years at a time without limit on the number of renewals.

A mining permit is issued for an initial term of between 5-20 years (depending on the mineral and the investment required). This initial term is renewable as many times as necessary until the resource is exhausted.

Mining companies must still enter into a mining agreement with the State, detailing the terms and conditions of their activities and guaranteeing the stability of the legal conditions. The mining agreement must:

- be published on the Official Gazette; and
- not derogate from the New Mining Code (but may supplement its provisions).

3. Restrictions on mining titles

Under the Former Code, foreign investors were not permitted to own 100% of the shares in a Senegalese company. Whilst this restriction is now removed, a mining title must still be held by a locally registered Senegalese company.

4. Deadlines to commence work

Small mine permit holders must commence mining within three months of the permit grant.

On the other hand, mining permit holders must commence operations “as soon as possible” and, if operations have not commenced within one year from the date of the grant, the permit holder will be liable to penalties of:

- XOF 50,000,000 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.

The State may revoke the permit if the holder has not commenced work within 24 months.
5. Changes to fees, royalties and taxes

**Fees:** The fee for the grant of a:
- small mine permit is XOF 2,500,000 (up from XOF 1,500,000); and
- mining permit is XOF 10,000,000 (up from XOF 7,500,000).

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

**Royalties:**
The New Mining Code introduces an annual surface royalty payable by all title holders. Such royalty for a:
- small mine permit is XOF 50,000 per hectare; and
- mining permit is XOF 250,000 per square kilometre.

**Taxes:** Most of the tax provisions under the Former Code were transferred to the General Tax Code in 2012 (by virtue of Law No. 2012-31 and Law No. 2012-32 of 31 December 2012).

This remains the case under the New Mining Code except for surface royalties, mining royalties and some fees. The “mining tax” has also been retained, however, its application has been revised so that it is payable quarterly, levied on the market value of the commercialised product as follows:

<table>
<thead>
<tr>
<th>Substances</th>
<th>Concentrate</th>
<th>Locally Processed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iron Ore – concentrate</td>
<td>5.0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.0%</td>
<td></td>
</tr>
<tr>
<td>Phosphate – calcium-aluminate and lime phosphate</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.5%</td>
<td></td>
</tr>
<tr>
<td>Gold – concentrate</td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.5%</td>
<td></td>
</tr>
<tr>
<td>Other assigned substances</td>
<td>3%</td>
<td></td>
</tr>
</tbody>
</table>

**Tax relief:** During the period commencing on the grant of the mining title and ending on the date of first commercial production (Investment Period), a mining company is still exempt from all taxes and fees, including value-added tax and the COSEC port charge. However, several taxes have now been carved out from this exemption which include:
- the statistical royalty;
- the community levy; and
- other applicable community taxes.

Furthermore, the exemption from export tax has been removed.

6. Production sharing agreements

Mining companies and the State may now enter into a production sharing agreement giving the mining company the exclusive right to research and mine a particular area and then recover the costs from the sale of any product. Profits from the sale of the product are split with the State as specified in the agreement but, as an incentive, such sales are not subject to the quarterly mining tax.

7. Local development funds

As seen in other African jurisdictions, mining title holders must now contribute annually to a local development fund, levied at 0.5% of turnover less annual taxes. The fund will promote the economic and social development of local communities residing near mining areas and must include women’s empowerment projects.

8. More stringent obligations

All mining permit holders must now establish and fund a trust account to rehabilitate the mine site.

In addition to rehabilitation obligations, all mining title holders must respect:
- the Forestry Code when mining rights are granted in a “classified forest zone”;
- human rights of communities in areas affected by mining operations; and
- the principles and obligations of the Extractive Industries Transparency Initiative (EITI).

9. New sanctions

The New Mining Code is far more prescriptive in relation to infractions, sanctions and penalties than the Former Code, including for:
- fraud and non-payment of taxes;
- failure to commence work within the required timeframes;
- failure to provide documentation;
- illegal mining activity or storage; and
- health and safety violations.
10. Audit and transparency
Both the State and mining companies are subject to more thorough audits and transparency measures. In addition to having to abide by the principles of the EITI, the State may 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 publicly.

CONCLUSION
Many of the changes introduced by the New Mining Code bring Senegal in line with other West African countries who have recently reformed their mining sector legislation.

Despite some resistance to the New Mining Code, it still promotes an investor-friendly mining regime. Given Senegal’s political stability, infrastructure and mineral prospects, it should continue to be an attractive environment for mining investors.

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