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安哥拉新矿业法 安哥拉法律新闻——新矿业法得以通过

一、主要革新

新通过的矿业法即2011年第31/11号法律于2011年9月23日正式颁布。

新矿业法废除了之前的多部矿业法律，例如1992年1月17日第1/92号法律（即采矿和地质活动法律框架，也称作“矿业法”），1994年10月7日第16/94号法律（即钻石特别法，规定钻石是享受特别保护待遇的矿产资源）。

新矿业法的主要特点就是通过一部法典统一矿业法律制度中的所有实体、程序和监管规则和原则。但气态和液态碳氢化合物的勘测，探矿，调查研究，评估和开采除外。

本法典的另一个重要特点就是规定国家可采取以下方式参与矿产收益分成，作为授予矿产开采权和矿业产品贸易权的对价：（1）参股，由国有公司持有特许权受让人至少10%的股份；或（2）取得矿产品实物，根据生产周期确定的分享比例，实际占有矿产品。随着内部收益率的上升，国家的分享比例也将上升。另外，国家也可采用以上两种方式的混合方式参与矿产收益。

从新矿业法中可以看出安哥拉整个国家的进步，主要体现在坚持可持续发展（包括保护地方社区的利益），环境保护，以及一贯重视的国防和国家利益。

新矿业法还规定特许权受让人有义务对安哥拉员工组织培训，以及国内市场保护原则：即当国内外材料、服务和产品的差价在10%以内，交付日期相差在8天以内的，特许权受让人必须优先采购国内资源。

二、趋势和制度

对于矿产资源所有权，新矿业法如人们估计的一样，规定：所有位于土壤、底土、内水、领海海床、专属经济区和大陆架里的矿产资源都归国家所有。海岸权（coastal rights）将特别参照联合国海洋法公约第12部分关于领水、大陆架和专属经济区内的矿产勘探、调查研究、评估和开采权的解释予以确认。新矿业法对海洋区域内的采矿活动和特许授权有特别规定。

安哥拉管辖内的所有海洋和陆地，凡是尚未被授权许可用于其他用途的或非限于特定用途的，都属于可授予矿产特许权的区域。

任何国内外的个人或公司，都可以通过向有关政府部门或其他有权机关申请并获得矿产特许权，此外也可以通过参与公开招标获取矿产特许权。

对于通过非公开招标程序申请矿产特许权的，在申请人证实其具备开采矿产所需的经济能力和技术资质的前提下，矿产特许权的颁发将采取先到先得的原则。

地籍簿主管当局在收到矿区信息申请的90天内应当提供被申请区域的相关信息。信息申请应当包含所有法律规定的信息，包括矿产种类，申请主体的身份证明等等。

前文所述作为颁发特许权的对价，安哥拉国家将参与矿产收益分成。而根据新矿业法，特许权受让人可与相关谈判委员会就单独开采矿产资源洽谈采矿投资合同，随后获得相应的开采许可。目前该谈判委员会正在筹建中。

该类采矿投资合同涵盖矿产开采的三个阶段即探矿，评估和采矿阶段的规则，这与之前预料的两合同体系（比如探矿和开采将分别订立合同）不同。另外，采矿投资合同还进一步保证了特许权受让人从事矿产品贸易的权利。

投资矿产勘探和采矿活动（战略矿产资源的勘探和采矿除外），应获得有关部门的行政法令的批准，按照投资合同的约定，依法进行。投资额超过27,034,883.7UCF（相当于2500万美元）的，需经过总统的批准。

采矿权特许合同也需与专门的谈判委员会洽谈。目前，该谈判委员会也正在筹建中。

矿产开采项目需要先进行探矿的，需履行探矿投资合同与采矿投资合同以取得采矿权，其中探矿投资合同包括勘探、探矿、调查研究和评估。

探矿权人有优先获得所探区域采矿权，甚至可在探矿投资合同中约定矿产开采权的条款和内容。

采矿权许可证主要有以下四类：

- 1) 探矿权，权利人可进行矿产资源的勘探、探矿、调查研究和评估；
- 2) 矿产开采权，权利人对矿产资源进行开采；
- 3) 采矿许可证，可对用于建筑工程的矿产资源进行探矿和开采；
- 4) 采矿通行证，适用于小型采矿。

获得特许权必须符合上述的申请程序或者公开招标程序，特许权受让人依法享有以下法律保障：可将特许权在有关机关进行登记注册，在规定的期限内得到有关当局对特许权的授权批复，获得排他性的开采权，以及探矿权人在探矿期内就可基于探矿而获得开采权。唯一可能出现例外的情形就是对因探矿而获得采矿权所进行的限制。

投资人参与采矿特许权和矿产开采活动可采取多种形式的合作，比如成立合资企业或非公司形式的合营。该合作协议需得到有关部门的批准，合作各方也需在安哥拉官方明示其对履行（关于矿山经营的）合同义务负连带责任。

新矿业法还指出，根据促进安哥拉本土企业法及其他相关法律的规定，被认可为本国个人/公司的从事矿产经营的安哥拉合伙人或公司将享有一定的优先权。

从事矿产经营，投资人还必须提供一定的担保以保障其履约的能力，该担保可以是银行担保或其他法律规定的担保形式。担保额根据投资者从事不同的经营活动而不同：从事勘探、探矿、调查研究和评估阶段所要求的担保额为该投资额的2%，开采阶段担保额上升至4%。担保需在合同履行前提供。

新矿业法还规定：（1）资本偿还期为5年，最长不得超过7年；（2）开采成本不得超过开采收益的50%；（3）开采权期限最长35年，可再延长10年；（4）矿产业的企业税从35%降为25%。

新矿业法一个基础而又重要的变化就是将矿产资源分为一般矿产资源和战略矿产资源。

新矿业法附件一对一般矿产资源和战略矿产资源进行了认定。

此外，内阁也有权认定战略矿产资源。战略矿产资源，顾名思义，指对国家的经济社会发展有巨大的经济影响，符合国家军事安全和国际市场需求的矿产资源。

对于战略矿产资源，国家将采用保护主义的手段进行更多干预，包括采用监禁刑罚。国家是战略矿产资源的所有权人，只有国有公司和具备管理战略活动的自治事业单位才有权对该类资源进行开采。

根据矿产项目法，矿产权利人有权自由处置和出售其开采的矿产。

新矿业法还规定了采矿活动的一般性义务，包括采矿活动要符合法律规定，要符合开采规划并持续经营（除非被官方许可予以暂停或被强制暂停），需符合环境影响评估要求，需采取环境保护措施。

环境保护和环境影响评估要求投资者在履行相关环境义务的同时提供相应担保。

另外，矿产权人还需保证雇用安哥拉技术人员和劳动者并对其进行技术培训，并提供合法的健康安全的工作环境。

受矿区采矿活动影响的当地居民有权与矿产权人就经济补偿的形式和数额进行要求，并有权提出高于法定标准的经济补偿。

其他权利义务在新矿业法中也有规定，例如可在合同中约定的事项及其特点，税和应扣款项，关税制度，犯罪和刑法。

转让采矿权需得到有关政府机构或国家特许权经营者（尚在筹建中，或者获得授权的符合法律要求的其他机构）的批准。对于战略矿产资源，采矿权的转让必须得到内阁的批准。

本通讯旨在向客户及同事介绍一些普遍和抽象的概述。它不应该被用来作为作出决策和专业法律意见的基础。本通讯的内容未经作者明确统一不得复制或全部内容。如果需要有关此主题的详细信息，请联系：Luis Sáragga Leal (luis.saraggaleal@plmj.pt) 或 Manuel Santos Vítor (manuel.santosvitor@plmj.pt)。

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NEW MINING CODE IN ANGOLA

ANGOLAN LEGAL NEWS – NEW MINING CODE APPROVED

I - MAJOR INNOVATION

The recently approved new Mining Code was published by Law no. 31/11, of 23 September 2011.

This law was preceded by effective mining activities laws dispersed in several pieces of legislation, which it revoked, such as Law 1/92, of 17 January 1992, setting forth the legal framework for Mining and Geologic Activities (the “Mining Law”), and Law 16/94, of 7 October 1994, setting forth the specific Diamond Law, this mineral receiving a different and more protectionist treatment.

The main feature of the new Mining Code is that aims to achieve the unification of all legal provisions and material, procedural and regulatory principles covering mining activities within a sole Code, only excluding reconnaissance, prospection, research, appraisal and exploitation of gaseous and liquid hydrocarbons.

Another feature of this code is that, as consideration for granting mining exploitation and trade concession rights, the State is given the right to participate in the “appropriation of the mining product” either (i) by means of, at least, a 10% participation in the share capital of the concessionaires, through a State held company, or (ii) by participation in kind in the mining product produced in proportions to be defined throughout the production cycles, the State’s share increasing with the increase of the Internal Rate of Return (IRR). A combination of both these types of State participation may also be applied.

The new Mining Code brings us to an evolved Angolan reality, with shown concern for sustainable development – including protection of local communities -, environment and, as an inheritance from the past, for national defence and national interest.

Obligations of training of nationals by the concessionaires and national market protection through the mandatory preference on the use of national materials, services and products conditioned to a maximum 10% difference on price and a further 8 days delay on delivery date when compared to foreign offer are also included in the menu.

Further, and although foreseen as to be applied subsidiarily to the new Mining Code, a new Private Investment Law (LIP) is to be enacted soon. It is anticipated that the LIP will require foreign companies to negotiate all tax benefits and incentives and to enter into a contract with the relevant governmental body. It should be mentioned that the envisaged minimum investment amount falling under the scope of the LIP, is of USD 1 million.

II - TRENDS AND REGIME

As expected, the new Mining Code maintains State ownership of all mineral resources located in the soil, subsoil, internal waters, territorial sea seabed, in the exclusive economic zone (EEZ) and on the continental shelf. However, definition of coastal rights is no longer left to guess, a specific reference to Part XII of UNCLOS convention regarding interpretation of the attribution of prospection, research, appraisal and exploitation mining rights in territorial waters, continental shelf and EEZ being made, and a specific part of the Code is dedicated to mining activities and licensing in sea areas.

To note that all sea or land areas under Angolan jurisdiction regarding which title has not yet been granted for carrying out other activities or are not limited to specific activities, are considered as available for mining concession rights.

Access to Mining Titles is opened to any individual or company, national or foreign, by means of submission of a request for this purpose before the competent Ministry or another State body to be defined, or by means of launching of public tender by the competent State body.

Whenever the request is not subject to the public tender procedure, rights shall be granted on a first-come first served basis, technical and financial capacities for the development of the mining activities having to be evidenced.

Information requests on areas for the concession of mining rights may be submitted to the mining cadastre services for the purposes, information being foreseen as to be provided within a 90-day term if the said request includes all the necessary legally defined data on the type of mineral, identification of the entity requesting such information, etc.

Further to the referred right of the Angolan State to participate in mining exploitations as a compensation for the concession of mining rights, the new Mining Code innovates with the creation of a sole Mining Investment Contract to be negotiated with the competent Negotiation Commission, yet to be created, and following which the applicable licensing title is issued.

The Mining Investment Contract shall contain the rules for the 3 phases of the mining process: prospection, appraisal and exploitation, in opposition to the previously foreseen 2-contract system (e.g., one for prospection and another for the exploitation phase), and a strengthening of the guarantees regarding the access to rights of trade of the minerals by the titleholders to mining titles.

Investment in mining prospection and exploitation activities – strategic minerals aside - is covered by a specific regime, subject to the execution of a public law investment contract, approved by the competent Minister by means of Executive Decree. Should the projected investment exceed in Kz 27,034,883.7 UCF (at the conversion of 1 UCF= Kz 88, presently equivalent to USD 25 Million), such approval shall be subject to approval by the President of the Republic.

Mining rights exploitation concession contracts are to be negotiated with the competent Negotiation Commission, yet to be created.

In case previous prospection is required, two contracts shall be executed for concession of mining rights i.e., an Investment Contract for Prospection – including reconnaissance, prospection, research and appraisal and an investment Contract for Exploration.

An Investment Contract for Prospection grants its titleholder a pre-emption right for the execution of the second phase Investment Contract for Exploration, the terms and conditions for this second phase being possibly included in the first phase Prospection Contract.

As regards the mining titles available to access mining activities, the current Mining Code enunciates the following 4 types of titles:

- (i) Prospection title, for reconnaissance, prospection, research and appraisal of mineral resources;
- (ii) Exploration title, for exploitation of mineral resources;
- (iii) Mining Licence, for the prospection or exploitation of mineral resources for construction works; and
- (iv) Mining Pass, for small-scale mining activities.

Submission procedures or tender procedures referred above shall be complied with and legal guarantees are set forth as assisting mining titles titleholders, such as registration of the title, compliance with the delays foreseen for decision of title grant, and exclusivity of the Exploitation titles granted, jointly with attribution to Prospection title titleholders of a derived exploitation right of mineral resources revealed during the prospection phase. Only the specifically foreseen exceptions to this derived right are applicable for the purposes of limitation of such acquired exploitation right.

Should the mining title and activities be developed under any type of partnership, e.g., by means of an incorporated or unincorporated joint venture, the underlying agreement shall be subject to prior approval by the competent bodies and the joint venturers shall expressly declare their joint responsibility for the fulfilment of the contractual obligations regarding the exercise of the mining rights, before the Angolan State.

This Code further states that preference should be granted to Angolan partners or companies in these commercial partnerships, following the terms of the Law on Promotion of Angolan entrepreneurship or any other legislation with the same scope defining the concept of “national” individual and/or company.

For the purposes of access to mining activities, a guarantee of compliance with the agreed contractual obligations is demanded. This guarantee may be rendered by bank guarantee or by any other means accepted by law. The guarantee shall amount to up to 2% of the amount of the foreseen investment in the reconnaissance, prospection, research and appraisal phase, this percentage being increased to up to 4% in the exploitation phase. Guarantees are to be delivered before execution of the contract providing the mining title rights.

This Mining Code also includes (i) a mandatory reimbursement of the capital invested within a 5-year term, the permitted reimbursement period being of 7 years at the most, jointly with (ii) the prohibition for the exploitation costs to overcome 50% of the exploitation revenues, (iii) the 35-year maximum exploitation rights period to be granted – possibly extendable for a 10-year delay, and (iv) the Industrial tax applied to the mining industry being proposed to be decreased from 35% to 25%.

One basic and important change of this Mining Code is that it bears a distinction between minerals qualified as ordinary and strategic.



The new Mining Code produces, in its Annex I, the qualification of the minerals as strategic or ordinary.

The Council of Ministers is also granted the powers to qualify determined minerals as strategic. Minerals are deemed strategic following their importance to the Country, namely due to their economic impact in the country's economic and social development, as well as pursuant to military security and international market demand.

In case of strategic minerals a more protectionist approach with more intervention from the State is taken, including a criminal regime with imprisonment sanctions. The State is the owner of all rights to Strategic Minerals, mining of these minerals being exercisable exclusively either by a public owned company, assuming the role of a national concessionaire, or by an autonomous public institution with mining strategic activity regulatory competences.

Titleholders of mining rights are guaranteed the freedom to dispose of and trade the extracted minerals, under the rules and procedures included in the Project Mining Code.

Standard obligations regarding mining activities apply, including compliance with the applicable laws, the submitted exploitation programme and maintenance of activities – except if suspension was officially authorised or imposed -, compliance with environmental impact assessment impositions and environmental protection measures to be implemented.

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

Title holders to Mining Rights must, among other obligations, ensure the local hiring and training of Angolan technicians and workers, as well as compliance with health and safety rules.

Local communities affected by mining projects have the right to negotiate the type and amount of compensation to be paid by titleholders to mining concessions whenever this type of compensation is more favourable than the legally established financial compensation.

Other rights and obligations applicable to the (prospective) mining right title holder and to the Angolan competent public entities are foreseen in this content complete Mining Code, such as the type of contractual regime and specificities to be therein included, tax and permitted deductions, customs regime, crimes and penalties.

Mining titles may be transferred upon express authorization by the competent State body or national concessionaire (yet to be created or powers to be granted to an already existent entity fulfilling the legal requirements). In the case of strategic minerals, the Council of Ministers shall be the entity with competence for provision of such authorisation.

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