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This article was first published in *Mining Journal*,19 January 2016 - http://www.mining-journal.com/services/legal-services/changes-to-mining-codes-in-africa/

Changes to Mining Codes in Africa

By Ian R. Coles, Partner and Head of Global Mining Group; Mayer Brown LLP

Ian R. Coles
Partner
E: icoles@mayerbrown.com

Mining codes change frequently. A recent World Bank publication estimated that over a period of 20 years governments in 110 different countries had amended the local mining code – approximately 25 of these were in Africa. Historically this has been in the context of encouraging foreign direct investment, frequently through pressure for change from donor agencies. More recently though, economic interests have come to the fore, particularly in connection with the level of royalties and taxes demanded by governments. Requiring local content during the development of a mining project is also a frequent theme. In addition requirements for transparency, highlighted by legislation such as the Dodd-Frank Act in the US and the Bribery Act 2010 in the UK have motivated changes in mining legislation.

One of the most recent examples of change – and one where competing interests played out in the public domain – is in Zambia. The budget statement for 2015 (an election year – which was probably relevant) announced an increase in mineral royalties from 6% to 8% (in the case of underground mining) and to 20% (in the case of open cast projects). Other tax increases were also proposed. In aggregate the new proposals were estimated to produce a 30-40% increase in the amount of revenue generated for the state by the mining industry.

Immediately sponsors took to the airwaves to press that the proposals would render many projects unviable. Following the elections the government announced in April 2015 that the royalty rate for all mines would be set at 9%. This remained a significant (50%) increase on the rate which had previously existed but nothing like as large an increase as had previously been proposed for open cast projects. The new tax regime was scheduled to come into effect on 1 July. However during the course of June the government rolled back the proposed changes even further – with royalties on open cast and underground mines set at 9% and 6%, respectively. In addition other sponsor friendly changes to the way income tax was calculated were announced.

In the realm of free carried interests, and in March 2015, the Minister of Mines of DRC submitted a draft of a new mining code to Parliament. The draft is awaiting approval but contemplates an increase in the state's free carried ownership interest in mining projects from 5% to 10%. This is one of a steady stream of amendments to the mining code which have been made in DRC over the past several years.

Kenya is another country which has made various efforts to increase the host state's revenue from mining projects. The difference here is that a mature mining industry has yet to develop – there are relatively few producing mining projects of any size and the mining industry has historically produced less than 1% of GDP. The latest attempt in this direction is incorporated in the new Mining Bill which is expected to be passed into law. The legislation contemplates a 10% free carried interest in new projects (mining companies would also be obliged to float 20% of their shares on the

Nairobi Stock Exchange). Some non-material changes to the income tax regime are contemplated but of greater concern to the mining fraternity is the proposed increase in royalty rates (for example from 3% to 10% for titanium ores and increasing to 12% for diamonds). Mines processing minerals locally would be entitled to a lower royalty rate.

Other examples in Africa include a new mining code in Senegal which was proposed to be implemented by the end of 2015. Unlike many revisions to mining codes this does not contemplate a total revamp of the law (as, for example, occurred in an earlier change to the mining code in Guinea Conakry in 2011). While it does contemplate higher royalties and taxes, concessions are granted to investors in the form of higher permitted ownership interests. On the other hand a requirement to contribute to local development funds is provided for along with provisions for stricter compliance with the terms of mining licences. However, a stability regime is provided for such that an existing licence will continue to be governed by the code as in effect when that licence was originally granted.

One of the most recent changes to a mining code in Africa occurred in June 2015 in Burkina Faso. With the new code, Burkina Faso joins the wave of mining law reforms throughout Africa that emphasise transparency and accountability by both mining companies and host governments. Along with the newly enacted anti-corruption laws, the new code aims to bring greater clarity and transparency to the mining industry while increasing state revenues from mining. It also specifically enumerates the fundamental obligation and responsibility of mining companies to respect and protect human rights. In doing so, it introduces several reforms that will impact current and future mining operations in Burkina Faso.

The code provides for the creation of four new funds, including a local development fund and a rehabilitation and mine closure fund. Exploitation license holders will pay 1% of their monthly gross turnover (or the value of the extracted products) to the local development fund. The rehabilitation and closure fund will be financed through a mandatory annual contribution from mining companies that will be determined based on an environmental impact assessment. The code introduces several obligations in support of local business and employees. The revised code also reduces uncertainty and increases transparency within the mining sector, in line with international standards (for example Kimberley Process and the Extractive Industries Transparency Initiative).

The change in mining codes in Africa is therefore a dynamic process, reflecting both the economic environment and increased needs for both local participation and transparency. The continued pressure on commodity prices and the globalisation of the mining industry will ensure that these changes will continue to occur.