

COTE D'IVOIRE NEW MINING CODE

By Alban Dorin

On 24 March 2014, the Ivorian parliament approved the **Law No. 2014-138 adopting the new mining code in Côte d'Ivoire** (the “**Mining Code**”). A **Decree No. 2014-397 implementing the Mining Code** was issued on 25 June 2014 (the “**Decree**”).

The Mining Code replaces the former mining code (Law No. 95-553 dated 18 July 1995) and is aimed at enhancing mining investment in Côte d'Ivoire, particularly in the gold sector, and strengthening its contribution to local development.

This text of one hundred and ninety seven (197) articles provides, among other new measures, **the removal of the additional profit tax** (“*taxe sur le profit additionnel*”), which was payable by permit holders at the rate of seven per cent (7%) of their turnover, less transport and refinery costs according to article 38 of the 2012 Ivorian Finance Act.

In the event a more favorable mining tax and customs regime is introduced, the Mining Code allows permit holders to opt for the more favorable regime provided they adopt it in its entirety.

Furthermore, **a holder of an exploitation permit is required to sign a mining convention** (“*convention minière*”) **with the State, within sixty (60) working days from the award of the exploitation license** for an initial period of twelve (12) years (renewable for successive periods of ten (10)

years maximum). The purpose of the mining convention, according to the Mining Code, is to stabilize the tax and customs regime.

The new law also intends to introduce **greater transparency in the permit allocation procedures**. Accordingly, Article 11 of the Mining Code provides that all persons having access to “strategic mining information” are prohibited from taking any direct or indirect interest in mining companies for a period of five years following the cessation of their duties. In practical terms this prevents individuals such as members of the Government, mining Administration officers and all officials and State agents playing a role in the management of the mining sector from taking an interest in mining companies.

An exploration permit is now issued for an initial period of 4 years (compared to three (3) years before), renewable twice for successive periods of three (3) years (compared to two (2) years before). An exceptional renewal may be granted for a period not exceeding two (2) years (compared to three (3) years before). **The scope of an exploration permit now covers an area of 400 km²** (against 1,000 km² under the previous mining code). Upon each renewal, the scope is reduced by one fourth (unless the holder provides evidence that it occupies the entire area of the permit, in which case the holder may opt to maintain the initial area of the permit subject to payment of additional fees).



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While the “free” State participation in each exploitation company remains set at ten per cent (10%), **the Mining Code limits additional State participation in cash to 15%** of the share capital of each mining company. Although, the participation of state-controlled companies and majority-state-owned companies is not factored in the calculation of this 15% threshold.

The Mining Code affirms, in line with the UEMOA regulations, that **a holder of a mining title or a beneficiary of an authorization, is subject to Côte d’Ivoire exchange control regulations.** Thus, all revenues from the sale of minerals must be repatriated to Cote d’Ivoire within one (1) month from the due date of payment, which in turn must occur within one hundred and twenty (120) days from the date of shipment.

It should also be noted that the Decree requires the specific authorization of the Minister of Mines if an investor executes an agreement which may result in the change of control of a mining company holding a mining title (such as a pledge over shares granted to lenders). The authorization is given at the Minister’s discretion but in our experience the

Minister would likely check, among other things, if the transferee (or nominee) has the relevant technical capability to operate the mine. There is also no clear guidance in the Decree on when this authorization should be sought but again we would suggest that this is obtained on signing of the security (rather than on enforcement).

The Mining Code now also specifically refers to **international arbitration to settle disputes in connection with the Mining Code**, provided that this has been agreed in the relevant mining convention.

Finally, the provisions of the Mining Code apply immediately to new mining titles but do not apply retroactively to prior authorizations and conventions, which remain subject to their respective legislation until they expire, unless the investors opt to be governed by **the provisions of the (new) Mining Code.**

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