



Angola

Overview of legal system

The legal system in Angola is based on a multiparty democracy with a semi-presidential system. As a result of its Portuguese colonial past, Angola's legal system is largely derived from Portuguese civil law, with legislation being the primary source of law. Courts base their judgments on legislation and there is no binding precedent.

The key piece of legislation is the Constitution of the Republic from 2010, and according to it, the sovereign bodies in Angola are the President, the National Assembly, the Government and the Courts, which are separated but interdependent.

Overview of laws applicable to mining activity

The Mining Code, approved by Law 31/11, of 23 September 2011 (the "**Mining Code**") is the principle legal framework for mining operations in Angola. This piece of legislation regulates the activities of exploration, evaluation, reconnaissance, mining and marketing of mineral resources in general.

The Mining Code is supplemented by additional regulatory acts including the Joint Executive Decree 316/17 and other Presidential Decrees.

Mineral Investment Contract

A mineral investment contract ("**MIC**") is required to be negotiated and entered into with the Ministry of Mineral Resources and Petroleum ("**MMRP**") and/or a national concessionaire. However, a mineral permit suffices for exploration and mining of mineral resources used in civil construction and public works. In respect of artisanal activities, only a mineral ticket is required.

A MIC can be entered into either through (i) a public tender, or (ii) a spontaneous application. Public tenders may be optional or compulsory, depending on the geological potential of the relevant area and/or whether the mineral to be exploited is classified as strategic or non-strategic. Minerals may be classified as strategic by the Angolan government depending on their economic relevance, its use for strategic purposes or other specific technical mining aspects. In the absence of a mandatory public tender procedure, mineral reconnaissance, exploration, evaluation, appraisal and mining rights will be granted on a first-come, first-served basis. The applicant has to demonstrate the technical and financial capability required to carry out the relevant mineral activities.

Exploration and Mining Licence

The Mining Code stipulates the MIC as a single-contract model under which mineral rights are granted from the outset for the whole mineral process (exploration, evaluation, reconnaissance, mining and marketing). Although all mineral rights are formally granted by means of a MIC, the holder of the mineral rights must obtain an exploration title, which is to be issued upon the approval of the MIC, and subsequently, a mining title, in order to commence the mining activities in relation to each phase.

Exploration, evaluation and reconnaissance rights may be granted for an initial period of up to five years and extended by successive one-year periods up to a maximum of seven years. If the seven-year period proves insufficient to prepare or complete the feasibility study, the holder of the mineral rights may apply for and be granted an exceptional one-year extension.

In order to obtain a mining title, a technical, economic and financial feasibility study, which must include an environmental impact study, must be submitted to and approved by the MMRP. Following approval and the issuance of a mining title, a project can then transition from the exploration phase to the mining phase.

Mining rights are granted for a period of up to 35 years (which includes the exploration and appraisal stage), extendable by one or more 10-year periods. Holders applying for extension must justify their application by submitting the relevant technical, operational and other grounds. Extensions are only granted if the applicant is not in breach of its legal and contractual obligations.

Restrictions on foreign ownership

Artisanal mining activities may only be carried out by Angolan citizens and mineral rights for civil construction and public works minerals and mineral-medicinal waters exploitation may only be granted to either Angolan citizens or legal persons having at least two-thirds of its share capital owned by Angolan citizens.

There are no provisions in place to restrict foreign ownership of a company wishing to commence mining operations in Angola. However, as a consideration for granting mineral rights for mining and marketing, the State is entitled to participate in mineral production either through a State-owned company holding an equity of at least 10% in the company to be set up for the mining phase, and/or receiving a share of the production in kind, in terms to be negotiated and defined taking into consideration the production cycles. In any event, preference shall be given to national partners or companies when setting up a business partnership.

For the mining of diamonds, Empresa Nacional de Diamantes de Angola – Endiama E.P. ("**Endiama**") acts as the exclusive national concessionaire and consistently engages in projects as both a member of unincorporated joint ventures for the exploration stage and shareholder of the companies incorporated for the mining stage, either directly or through an Angolan subsidiary company wholly owned by Endiama.

For the mining of noble materials, ferrous and non-ferrous metals, Empresa Nacional de Ferro de Angola – Ferrangol - E.P. ("**Ferrangol**") usually associates itself with both national and foreign partners, through either unincorporated or incorporated joint ventures.

Ownership of Real Property

The granting of mineral rights grants the holder the right to use and exploit such land against payment of surface fees. In the case of privately owned land and areas in the private domain of the State or a public entity, the holder of mineral rights may only use the land upon obtaining the consent of the owners and/or possessors. Consent is deemed to be granted upon deposit of the annual rent and the posting of a provisional bond.

If the concessionaire fails to reach an agreement with the owners and/or possessors during the mining phase, operations may not commence until the land is acquired by the holder of mineral rights or expropriated by the State on grounds of public interest.

Holders of mineral rights are entitled to request the creation of easements required for the full exercise of their rights, including rights of way.

Local content

Angola has no specific legislation on the matter. However, the Mining Code has provisions on the rights of local communities residing in areas where mineral activities are to be carried out, including the right to be consulted prior to any decisions being made that could affect their living conditions or rights. In the event that a mining project is likely to destroy or damage any assets or cultural or historical heritage belonging to the local community as a whole, consultation is mandatory. Holders of mineral rights must relocate, at their expense, any local community that is displaced by reason of the mineral operations and all traditions, customs and practices of local communities must be taken into account in the relocation process.

Available structures for borrowing vehicles

The project company is required to establish a legal presence in Angola, either as a subsidiary organised and run under Angolan law or a local branch of a foreign company. The two most common forms of business vehicles used by foreign companies are *Sociedades por quotas* ("**SpQs**") and *Sociedades anónimas de responsabilidade limitada* ("**SARLs**").

Sociedades por quotas

SpQs are similar to private limited companies; they are companies in which the share capital is divided into quotas and the shareholders are jointly and severally liable for their capital investment. SpQs must have at least two shareholders. There is no required minimum share capital amount. SpQs are managed by at least one director (*gerentes*). There is no maximum number of directors.

Sociedades anónimas de responsabilidade limitada

SARLs are similar to joint stock companies; they are companies in which the capital is held by its members and divided into shares, and each member owns a number of shares proportionate to his investment. The liability of each partner is limited to the amount of his capital share. SARLs must have at least five

shareholders. The minimum share capital of SARLs is equivalent to US\$20,000, and each share must be equivalent to US\$5. There is no maximum share capital. SARLs are generally managed by a board of directors (conselho de administração) with a minimum of three directors. There must be an odd number of directors but there is no maximum number of directors. SARLs may have a sole director (administrador único) provided that the company's share capital does not exceed US\$50,000 and the company's bye-laws provide for such a possibility.

Government free/earned carried interest in projects

Financial commitments on the part of the State are not to be expected even in the absence of specific provision on the matter, as State participation in the mining and marketing projects (as opposed to exploration projects) is a legal requirement, by means of a shareholding interest in the relevant mining companies.

Taxation of mining projects (including royalties)

The Mining Code provides for special rules on taxation of mineral activities. The industrial tax rate (income tax on mineral activities) currently in force is 25% (lower than the general industrial tax rate of 30%. For purposes of determining the taxable income, costs of exploration, evaluation and reconnaissance, contributions to the Mining Development Fund, among others, are considered as tax deductions additional to those provided for in the general tax law.

The surface fee value (fee levied on the concession area awarded payable during the exploration phase) varies according to the size of the concession area, the type of mineral explored and the exploration year in question, and can range from US\$2 to US\$40 per square kilometre. In the event of extension of the exploration period, the fee values are based on the double of the value of the 5th year amount.

On top of that, the Mining Code imposes holders of mineral rights the duty to make annual contributions to the Mining Development Fund (or other Fund legally registered) and to the Environmental Fund (contributions ranging from roughly US\$1,250 and US\$3,000, defined by the Executive power).

Royalties

A royalty (tax on the value of mineral resources) to be levied on the value of extracted mineral resources are as follows: strategic minerals and precious metallic minerals and stones – 5%; semi-precious stones – 4%; non-precious metallic minerals – 3%; and construction materials of mining origin and other minerals – 2%.

Withholding tax on interest and dividends. Possible structures to mitigate withholding on interest

Dividends paid to non-resident companies are subject to a 10% withholding tax.

All royalties paid to resident or non-resident companies are subject to a 10% withholding tax.

Interest paid to resident or non-resident companies are subject to withholding tax at a rate of 15%.

However, certain interest, such as interest on shareholders loans, corporate bonds, bank deposits, treasury bills, treasury bonds and securities issued by the Banco Nacional de Angola (BNA), the Angolan Central Bank, are subject to a 10% rate. Services are usually subject to a 6.5% withholding tax regardless they are paid to a resident or non-resident service provider. Some exemptions may apply depending on the type of service.

Angola has not concluded any double tax treaty with another jurisdiction and no international double taxation relief is available in Angola.

F/X issues

There is legislation governing the foreign exchange regime applicable to mining activities in Angola. Generally, subject to the control of the Banco Nacional de Angola (BNA), approval of MICs entitles foreign investors to repatriate dividends, pro rata to their investment, as well as to make payments in hard currency to vendors established outside of Angola providing good and services that are essential to the mining activities.

Hedging

There is no ISDA opinion available which would address the enforceability of the termination, bilateral close-out netting and multi-branch netting provisions of the 1992 and 2002 ISDA Master Agreements. This does not mean that such provisions would not be enforceable and if necessary a legal opinion from a local counsel in Angola can be sought to confirm this. Alternatively (or if such enforceability cannot be confirmed) a back-to-back hedging structure can be put in place with a shareholder of an Angolan company or another group company located in a jurisdiction where the enforceability of such provisions has been confirmed in an ISDA opinion.

Nature of available security

The Mining Code expressly provides that mineral rights may be pledged by way of credit security, but only to secure credits contracted by the holder of the relevant mineral rights to finance the activities covered by the concession title. The pledge is created by delivering an authentic copy of the title and the concession contract for the relevant mineral rights to the pledgee. The holder of the mineral rights does not forfeit possession or the exercise of the mineral rights pledged and must still comply with all its legal and contractual obligations. Mineral rights pledged may not be transferred by the relevant holder, nor encumbered again, without the express prior authorisation of the pledgee.

Cost of granting security

Stamp tax is payable on the use of credit in general at rates depending on the period, ranging from 0.1% for an undetermined period of loan, to 0.5% for a loan period that is less than or equal to one year.

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