



Morocco

Overview of legal system

The Moroccan judicial system is a civil law system inspired by French law. This system is the result of a long evolution from the Protectorate to the present day. Morocco has a legal system consisting of ordinary courts, specialized courts and exceptional courts.

The ordinary courts, with the general jurisdiction, include communal and district courts, courts of first instance, appellate courts, and a Supreme Court. The specialized courts are the administrative courts and commercial courts. The exceptional courts are the military courts and the high court (which has jurisdiction over matters regarding members of the government). The Supreme Council of the Judiciary regulates the judiciary. Judges, who must be Moroccan, are appointed on the advice of the Council and Arabic is the official language of the courts.

Overview of laws applicable to mining activity

The Moroccan mining sector's principal regulators are the Ministry of Energy, Mines and Sustainable Development (*Ministère de l'Énergie, des Mines et du Développement Durable*, MEMDD) and the National Office of Hydrocarbons and Mines (*Office National des Hydrocarbures et des Mines*, ONHYM).

The MEMDD is responsible for realising government policy in the mining sector, managing and developing national resources, implementing guidelines for resource prospecting and various other tasks. The ONHYM is responsible for carrying out exploratory studies, undertaking the development and exploitation of deposits and carrying out related activities.

Moroccan mining law has been recently overhauled by Mining Law 33-13 of July 2015 and its April 2016 implementation Decree.

Exploration Authorisation

Exploration authorisations, whilst in force, give holders exclusive rights to conduct exploration activities and apply for research permits within a set area.

Exploration activities include geological, geothermic and geophysical works and studies by excavation, drilling and sounding assessment carried out on the ground and/or in the water, or by airborne methods, to identify sites or zones with a mining potential.

Exploration Authorisation Details:

- Initial duration is two years, renewable once for a one-year period if additional exploration is approved based on findings and contemplated investment.
- Application fees are MAD 50 per square kilometre and MAD 100 per square kilometre in case of renewal.
- An authorisation can only be granted to a legal entity and must cover a continuous area between 100 and 600 square kilometres.
- An authorisation cannot be transferred, leased, or used as security.

Research Permit

Research permits give their holders exclusive rights to research mining products within set areas. The discovery of deposits within an area entitles the relevant permit holder to exclusive rights to apply for an operating licence within the perimeters of the discovered deposits.

Permits provide mining operators with rights *in rem* over mining products that may be extracted from a permit area; either excavated from underground or taken from the surface. These rights are granted for a limited duration and are distinct from the ownership of the land around the mine – mining operators must secure occupancy rights separately from mining titles.

Research Permit Details:

- Initial duration is three years, renewable once for a four-year period. Renewal is subject to the completion of a minimum work programme and related expenditures.
- Application fees are MAD 2,000 per square kilometre and MAD 4,000 per square kilometre in case of renewal.
 - » Other fees may also apply for other required permits, such as for research permits for geological cavities.
- Permits can only be granted to legal entities and must cover square areas with sides of at least four kilometres in length each.
- Research permits can be transferred or leased. Such transfers and leases are subject to prior authorisation by the MEMDD and must cover the whole of the relevant mining title.
- Subject to the provisions of the international agreements duly ratified by the Kingdom of Morocco, the beneficiary of a research permit for geological cavities must be a legal person incorporated under Moroccan law.

Operating Licence

Operating licences grant holders exclusive rights to extract and/or develop mining products from deposits within a certain area with a view to obtaining commercial mining products. Activities covered include studies, preparatory work, operating and/or enrichment and/or upgrading work on such products and the construction of the infrastructure necessary for such work.

Licences provide mining operators with rights *in rem* over mining products that may be extracted from a licence area; either excavated from underground or available on the surface. These rights are granted for a limited duration and are distinct from the ownership of the land around the mine – mining operators must secure occupancy rights separately from mining titles.

Operating licence details:

- Initial duration is ten years, renewable for successive ten year periods until available reserves are exhausted.
- Application fees are MAD 18,000 per square kilometre, MAD 34,800 per square kilometre in case of first renewal and 60,000 in case of second renewal.
 - » Other fees may also apply for other required licences, such as operating licences for geological cavities or operating licences for tailings and slagheaps.
- Operating licences can only be granted to Moroccan legal entities.
- Licence areas are set at the request of the relevant research permit holders and with reference to the extent of the discovered deposits. Each site cannot exceed the area of the research permit from which it derives or be less than one square kilometre.
- Licences can be transferred or leased. Such transfers and leases are subject to prior authorisation by the MEMDD and must cover the whole of the relevant mining title, except upon express administrative authorisation for partial lease on an ancillary basis.

Special Mining Licences

In addition to the mining-specific laws and regulations above, international conventions ratified by the Kingdom of Morocco and other regulations apply to mining activities, such as in relation to environmental matters. Also, the mining activities in the regions of Tafilalet and Figuig are carried out in accordance with the mining-specific laws and regulations above, subject to the provisions of Law No. 74-15 on the Tafilalet and Figuig mining region.

Restrictions on foreign ownership

There are no shareholder nationality restrictions for companies engaging in mining activities in Morocco. Furthermore, it is not necessary to have a majority of local managers or directors, and no particular balance is required with respect to the nationality of the members of the board or managers.

Ownership of Real Property

There are no general restrictions on foreign ownership of property in Morocco, but specific laws and an inefficient property transfer system can hinder ownership. As an example, foreigners are prohibited from owning agricultural land unless a change in the title deed and purpose is obtained declaring the land to be a non-farm property. Alternatively, the agricultural land may be leased for up to 99 years.

Local content

Local Community Rights

The Mining Law provides that research or exploitation work must not be carried out within 50 meters of any building or structure, including fenced walls or similar structures, villages, residential groups, wells, religious buildings, burial or sacred sites, communication routes, water or hydrocarbon pipes, water or hydrocarbon drilling works and, generally, all public works, unless the prior authorization or agreement of the owner or the manager of the local communities is obtained.

Environmental protection and rehabilitation obligations

All mining activities should be conducted pursuant to the requirements of Law No. 11-03 on the protection of the environment. Mining titles granted under the provisions of the Mining Law do not relieve their holders of their obligations to satisfy environmental regulations.

State reservations

The administration may, subject to acquired rights, establish perimeters in which rights to explore, search for and exploit mining products are reserved for the State.

Available structures for borrowing vehicles

Limited Liability Company (Société à responsabilité limitée)

In order to incorporate a Sàrl one requires at least 1 shareholder and 1 director, who may be of any nationality and may be individuals or corporate bodies. There are no requirements for Moroccan residency. A minimum capitalisation of MAD 100,000 is required.

Limited Company (Société anonyme simplifiée)

An SAS is a form of LLC. It may only have companies as shareholders, and must have a minimum of 2 shareholders. Each shareholder must have a share capital of MAD 2,000,000.

A minimum capitalisation of MAD 300,000 is required. SASs are generally used to create joint subsidiaries or common parent companies.

Public Limited Company (Société anonyme)

In order to incorporate an SA one requires at least 5 shareholders and managed by a minimum of 3 directors to a maximum of 12 directors, who may be of any nationality and may be individuals or corporate bodies. Neither the shareholders nor the directors need be Moroccan residents. There is a minimum paid up capital requirement of MAD 300,000. Companies listing on the Casablanca Stock Exchange require a minimum share capital of MAD 3,000,000.

Branch companies (Succursale)

Branch offices are not considered separate legal entities and must abide by the laws of both Morocco and their country of origin. A branch must appoint 1 manager who may be of any nationality. There is no minimum capital requirement. The powers of the legally appointed representative in Morocco must be clearly defined in writing.

Government free/earned carried interest in projects

Not applicable.

Taxation of mining projects (including royalties)

Corporate Tax

Corporate tax rates are progressive, increasing from 10% to 31% (the top band applies to income over MAD 1,000,000). Foreign investment incentives include a five-year exemption from business tax for newly incorporated companies and companies exporting goods and reduced tax rates of 17.5% apply on export sales subsequently. This rate specifically applies to exporting mining companies, starting from the financial year in which the first export operation was carried out. These incentives also apply where manufactured goods are sold to export enterprises. A minimum tax of 0.5% of total annual revenue applies to taxable Moroccan entities, with a minimum payment of MAD 3,000.

VAT

Mining products exported from Morocco are VAT exempted. Local turnover from mining products is subject to the standard VAT rate of 20%. VAT of 20% applies to imports, though an exemption from import duty and VAT applies where equipment is imported for investment purposes and has a value equal to or greater than MAD 200,000,000.

Royalties

Mining companies are also subject to an annual mining tax ranging from one to three dirhams per extracted ton, the exact amount of which is set by the regional authorities of the territories where the mining activity is located.

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

Dividends

Dividends paid to a non-resident are subject to a 15% withholding tax, unless the rate is reduced under an applicable tax treaty.

Interest

Interest paid on a loan from a non-resident is subject to a 10% withholding tax, unless the rate is reduced under a tax treaty. A loan granted for 10 years or more is exempt from withholding tax.

Royalties

Royalties paid to a non-resident are subject to a 10% withholding tax, unless the rate is reduced under a tax treaty.

Branch remittance tax

A 15% branch remittance tax is imposed on profits remitted to a non-resident head office, unless the rate is reduced under a tax treaty.

Other

Companies that do not have their registered office in Morocco are subject to a 10% withholding tax, at source, on the gross amount of various payments.

F/X issues

Under the Foreign Exchange Regulation (FX Regulation), in principle, no authorization from the Moroccan Exchange Office is required for foreign investments. These investments are to be financed in foreign currency and can take the form of, among others, of the:

- incorporation of Moroccan companies and opening of branches in Morocco;
- purchase of or subscription to Moroccan securities;
- grant of shareholders' loans paid in cash or by supplier credit; and
- subscription in share capital increases.

Under the FX Regulation, a foreign investor is to notify the Moroccan Exchange Office with a report on such transaction. When financed in foreign currencies, these investments benefit from a convertibility regime that guarantees full freedom for foreign investors to:

- transfer abroad all revenues generated by these investments; and
- transfer abroad all proceeds deriving from the sale or liquidation of these investments,

subject to certain conditions.

Hedging

There is no ISDA opinion available which would address the enforceability of the termination, bilateral close-out netting and multibranch 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 Morocco 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 a Moroccan 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

In Morocco, security can be taken over shares, bank accounts, receivables, contractual rights, insurance policies, real property, plant and machinery, intellectual property, debt securities and future property and floating charges can be taken over all assets. The system recognises possessory and non-possessory pledges over movable assets and rights and registered mortgages over real-estate.

The most common form of documentation used to take security is contract (assignments, pledges, mortgages). Registration may incur taxes, registration before the trade register and register of transfers and notification of creditors or the land registry.

Cost of granting security

Certain types of securities such as mortgages and pledges require registration. The time and expense associated with such registrations is generally based on the amount of the related debt. Non-registration will affect the enforceability of the securities.

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