Recent Reforms of the Mining Code and Model Mining Convention in Mauritania

The mining income contributes to more than a quarter of Mauritania’s gross domestic product and mining is generally seen as a strategic asset in the country’s long-term growth strategy. While Mauritania remains attractive for mining investors, recent reforms have had a significant impact on the tax and legal framework applicable to the mining sector.

Two laws recently adopted by the Mauritanian Parliament should in particular be noted by mining investors: (i) the law n°2012-012 dated 12 February 2012 regulating mining conventions and approving the model mining convention (the “New Model Mining Convention Law”) and (ii) the law n°2012-014 dated 22 February 2012 amending the Mauritanian mining code (the “Mining Code Amendment”).

1. The New Model Mining Convention Law

One of the purposes of the New Model Mining Convention Law is to provide a standard model mining convention based on the current mining code created by the law n°2008-011 (the “Mining Code”).

The previous model mining convention (law n°2002-02) was based on the former mining code (law n°1999-013). After the implementation of the new Mining Code in 2008, such model mining convention was no longer relevant (although the law n°2002-02 had not been formally repealed by the Mining Code).

The purpose of the New Model Mining Convention Law is therefore to provide a standard and harmonized framework based on the Mining Code that will serve as a basis for negotiation between the Mauritanian State and the relevant investor.

It should be noted that the New Model Mining Convention Law specifies that a standard mining convention which is not compliant with the new model mining convention annexed to the New Model Mining Convention Law (the “New Model Mining Convention”) cannot be approved. Although this provision appears particularly stringent, there remains some space for negotiation between the parties, especially if the mining convention negotiated with the authorities is ratified at a later stage by the Parliament. The law also states that the administration remains free to decide whether it is appropriate or not to negotiate and sign a mining convention, but in practice major projects will require the protection of a mining convention.

We have summarized below a few examples of the recent changes introduced by the Mauritanian government in the New Model Mining Convention Law.

The New Model Mining Convention now refers to the 10% “free participation” and optional maximum 10% participation in cash to be granted by the relevant investor to the Mauritanian State in the operating company. This provision was introduced in the Mining Code by the law n°2009-026 and the New Model Mining Convention only specifies that the 10% mandatory “free participation” cannot be subject to dilution in case of share capital increase, as is usual in other African countries. Unfortunately the New Model Mining Convention does not provide further details on the regime applicable to such participations (issuance date, no priority on dividends, no application to existing permits etc.).

In addition, the New Model Mining Convention also contains new provisions on training, priority on recruiting Mauritanian employees, technology transfer, compliance with environment and infrastructures and use of national laboratory services. The Mauritanian government’s intention is probably to obtain a clear commitment from the relevant investor in this respect.

From a tax perspective, the New Model Mining Convention suggests that the 36 month “tax holiday” applies on the basis of the production level indicated in the feasibility study provided for the purpose of the relevant exploitation licence. Should the investors...
decide to increase the production by 10% above the level specified in the feasibility study, the standard tax regime would apply to the income generated by the excess production. This provision of the New Model Mining Convention deviates from the Mining Code.

Other notable provisions include a governmental right of prior scrutiny in case of assignment of more than 10% of the shares of the operating company and/or change in its majority shareholding.

Investors’ attention should therefore be drawn to the fact that certain provisions of the New Model Mining Convention are more detailed than (or may in certain instances differ from) the provisions of the Mining Code. In other words, the New Model Mining Convention is not a mere replication of the Mining Code. A careful review of the New Model Mining Convention by the investor and/or its advisors is therefore important to ensure that the investor’s interests are protected.

2. The Mining Code Amendment

The Mining Code Amendment is the second reform of the 2008 Mining Code since the 10% “free carry” provisions were introduced by the law nº2009-026.

Of particular interest are the new royalty rates set out in the Mining Code Amendment. The Mining Code Amendment contains in particular new royalty rates. For example, while the previous royalty rate for iron ore was set at 2% of the production in the Mining Code, the new royalty rate is now set at 2.5% if the iron ore is transformed into steel in Mauritania or ranging from 2.5% to 4% if the iron ore is exported (depending on the price of iron ore on the “Steel Index Price”).

The Mining Code Amendment also sets a specific taxation regime for capital gains arising from transfers of exploitation licences. There has been some debate in the past on this issue and the Mining Code Amendment now specifies that the capital gains tax shall not exceed 10% of the capital gain (defined as the difference between the purchase price and the costs of investments made on the area of the permit).

The Mining Code Amendment also suggests that a new mining training tax (contribution à la formation minière) equal to 1% of the net income of the mining company, will be created by future regulations. This will obviously have a meaningful impact on the economics of the operating company.

From a regulatory standpoint, the Mining Code Amendment provides that the area of the exploration licence will be automatically reduced by 25% upon each renewal of the licence. It also sets reduced maximum surface areas for exploration licences (1,000 km² instead of 2,000 km² for iron ore).

The reforms mentioned above are consistent with the Mauritanian government’s intention to encourage investment while at the same time trying to obtain its share of the benefits generated by the mining industry.

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