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Cabinet d'Avocats BAO & Fils is one of the oldest law firms in the Republic of Guinea, and advises domestic and international clients on Guinean law matters, in both English and French. It works closely with renowned international law firms from all the major financial centres in the world

to offer strategic advice in all circumstances, and provides a deep understanding of commercial drivers and local realities on the ground in the Republic of Guinea. The team advises on commercial transactions, and handles litigation and arbitration (domestic and international).

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1. General Structure of Mineral Ownership and Regulation

1.1 Ownership of Mineral Deposits

The principal mineral or fossil substances contained in the subsoil or existing on the surface in the Republic of Guinea (and in the exclusive economic zone) are the property of the State, as are ground waters and geothermal deposits. They cannot be subject to any form of private appropriation, unless provided otherwise in the Mining Code and the Code on Private and State-Owned Land.

1.2 Regulation of Mining Industry

The Guinean mining industry is regulated by Law L/2011/006/CNT of 9 September 2011 as amended by Law L/2013/053/CNT of 8 April 2013 (the "Mining Code"), completed by its implementing provisions. The Mining Code is independent from the applicable regulations for oil and gas.

1.3 Administration of the Mining Industry

The Guinean mining industry is administered by the Ministry of Mines and the Mining Promotion and Development Centre (*Centre de Promotion et de Développement Minier* – CPDM), which is under the authority of the Ministry of Mines that serves as an interface between investors and the Administration. Alongside these two major governmental bodies, there is also the following:

- the National Geology Authority (*La Direction Nationale de la Géologie*);
- the National Mines Authority (*La Direction Nationale des Mines*);
- the National Bureau of Diamond, Gold and other Precious Metal Expertise (*Bureau National d'Expertise des Diamants, Or et autres Matières Précieuses* – BNE);

- the Study and Strategy Office (*Bureau d'Etude et de Stratégie*);
- the Precious Materials Anti-Fraud Squad (*La Brigade Anti-Fraude des Matières Précieuses*);
- the Directorate General for Mining Projects Authority;
- the Inspectorate General for Mines and Geology;
- the Geological Services Authority; and
- the Managers and Assistant Managers of Mining Projects.

2. Required Authorisations and Permits

2.1 Requirements to Conduct Prospecting

Due to the above, permits and licences are necessary for any person undertaking mining explorations, development and operations. An Exploration Permit is required for conducting prospecting activity, and it can be either an Industrial or Semi-Industrial Exploration Permit. Following exploration, the title-holder is required to file for an Exploitation Permit, which is required in order to conduct exploitation activity. Like the Exploration Permit, the Exploitation Permit can also be either an Industrial or Semi-Industrial Exploitation Permit. For large-scale mining activities and operations, the title-holder shall apply for a Mining Concession Permit, under certain conditions. Mining operations must be carried out with careful consideration for environment, social and health issues. However, the Mining Code does not provide a list of particular environmental, social and health authorisations/permissions that must be obtained by the title-holder; instead, they are identified based on the Environmental and Social Impact Study established in relation to the mining project. Under Guinean law, even though the obligations of the mining title-holders are very similar, they are presented for each specific mining title.

2.2 Requirements to Conduct Exploration

An Exploration Permit confers on its holder the exclusive right to prospect for the type of mining substance(s) for which the Permit is issued, within the limits of its area and without limitation as to depth. In order to protect the title-holder and secure the exploration work already carried out, the Mining Code provides that only the title-holder is entitled to an Operating Permit or a Mining Concession for any deposits found within the perimeter of the Exploration Permit during its term.

However, such a right comes into effect only if the title-holder has submitted all the results of the mining exploration and relinquished one half of the initial area covered by the permit in accordance with the Mining Code.

The Exploration Permit confers on its holder a movable property right, which is undivided and not assignable, and may not be pledged or mortgaged. Nevertheless, the holder of an Exploration Permit can enter into a technical partnership that enables it to raise the necessary capital to finance the exploration activities required for the discovery of a deposit. Such a technical partnership should be submitted to the Minister of Mines for approval, and should not consist of a direct or indirect transfer of the relevant Exploration Permit. Because the Exploration Permit is not assignable, the Mining Code precludes any arrangement that tends to have the same consequence as an assignment of right under the Exploration Permit. The main objective is to compel the exploration title-holder to carry out prospection works and to communicate findings and results to the State, and not simply to apply for an exploration title in order to sell back or delay the exploitation. Following that requirement, the Government will be able to collate a comprehensive database with sufficient information on its mineral deposits.

A company can hold a maximum of three Exploration Permits for bauxite and iron ore, with a maximum perimeter size of 1,500 sq km. A company may hold up to five permits for other substances, with a maximum perimeter size of 500 km. The perimeter and the term are set out in the mining title. Under normal conditions, this should not exceed 500 sq km for an Industrial Exploration Permit for bauxite and iron ore, and 100 sq km for an Exploration Industrial Operations Permit. The size of the perimeter drops to 16 sq km for other substances under Semi-Industrial Exploration Permits.

Exploration Permits are granted through a decree by the Minister of Mines on the recommendation of the CPDM, and following the approval of a Technical Committee, to applicants who comply with the regulations and show sufficient technical and financial capability. The applicant should commit to a works programme to a level of expenses that is acceptable to the mining administration.

During the process, the CPDM should be the office in charge of evaluating the application, in collaboration with the administrative bodies involved. The Direction Nationale des Mines and the Ministry of the Environment, in conjunction with the Technical Committee, are responsible for the technical and environmental evaluation. The Minister of Mines will be in charge of issuing the mining title to applicants through a notification, followed by the publication of the mining title in the official gazette.

Once an application is made, the terms and conditions for granting the mining title depend on whether or not the area covered by the mining title is already explored. For areas without geological information or with geological information that does not identify a specified deposit, the mining title is granted to the first applicant. A tender process will be organised for areas that have already been prospected (and are therefore known to contain a specified deposit) or areas covering deposits that are coveted by several companies.

The call for tender must be completed within a maximum period of one year from the date of the decree by the Minister of Mines calling for such a tender. On the recommendation of the Minister of Mines, a decree by the President of the Republic will launch the formal call for tender, and the advertisement of the tenders must be published in at least two newspapers widely circulated at least 45 days before the deadline for submission to the tender.

Notwithstanding the tender process, Guinean mining laws impose a restriction on the Exploration Permit for Semi-industrial Operations by providing that they shall be granted exclusively to individuals of Guinean nationality, or companies wholly owned by Guinean nationals. When an application is made by a foreign national, that individual must be from a country that awards reciprocity to Guinean nationals on the same matter. Following the awarding of a mining title in all circumstances, the deed granting the title and the deed expanding or renewing, transferring or leasing the same should be published in the official gazette and displayed on the official website of the Ministry of Mines.

Industrial Exploration Permits are granted for an initial term of three years, and Semi-industrial Exploration Permits are granted for a period of two years. Before the expiration of this term, the holder must file a renewal under the same conditions as those allowing the grant of the permit. The term of an Industrial Exploration Permit may be renewed twice, for two years each. However, the term of a Semi-industrial Exploration Permit can only be renewed one time, for one year. The renewal is guaranteed if the holder has met all the obligations contained in the title and the Mining Code.

In order for the administration to assess the right to the renewal, the applicants are required to provide the following:

- For the first renewal: copies of all quarterly reports, which is 12 reports for Industrial Permits and eight reports for Semi-Industrial Permits; the results of works and primarily geological, geophysical, geochemical and drilling results accompanied by corresponding maps; the proposed plan to relinquish half of the area; documents certifying compliance with the obligations contained in the title; and a work programme with a budget for the subsequent period.
- For the second renewal: copies of the eight quarterly reports; work results and primarily geological, geophysical, geochemical and drilling results accompanied by corresponding maps; a proposed relinquishment plan; documents certifying compliance with the obligations contained in the title; and the work programme, with a budget for the subsequent period and work to be completed. The area surrendered back to the State must be available for subsequent development and must, to the extent possible, form one or several blocks with sides attached to a side of the area of the initial title.

If the holder of an Exploration Permit did not finalise a feasibility study for justified reasons at the end of the second renewal, the Minister of Mines may grant an extension for a term not exceeding 12 months. If the holder is still not able to submit the feasibility study at the end of the extension, then the title shall be cancelled.

The holder of the Exploration Permit must start exploration work within the area of the permit no later than six months from the date of the permit, and must continue the same diligently and in accordance with standard mining methods. During the six-month period, the title-holder must complete the activities set forth in the title and confirm that work has begun.

The holder of an Exploration Permit is entitled to dispose freely of products extracted in the course of its exploration and assays, provided that these works are not mining operations, that the disposal is declared to the Direction Nationale des Mines, and that all the provisions of the mining regulations are complied with.

For the duration of the mining exploration, the title-holders must prepare activity reports and financial statements, which must be approved by the Mining Administration. The exploration activities can be carried out within the perimeter, either by at least one geologist hired by the title-holder or, alternatively, by an aerial geophysical survey including at least three days of flights over the area.

Following the survey or any other exploration work, the title-holder must submit copies of the environmental notice to the Mining Authority and the CPDM. In addition, he or she must provide an environmental notice to Local Authori-

ties (for informational purposes), with explanations of any mitigation and rehabilitation measures envisaged.

2.3 Requirements to Conduct Mining

An Operating Permit confers on the holder the exclusive right to search, prospect, develop, operate and dispose freely of the mine substances extracted from the perimeter, without limitation as to depth. The Operating Permit creates a movable and divisible right, to the benefit of the holder, that may be sub-leased and may be pledged in order to secure loans for the operation of the mine. The area for which an Operating Permit is granted is set out on the face of the title. It is demarcated based upon the deposit found, as detailed in a feasibility study.

The area of the Operating Permit must be located entirely within the area of the Exploration Permit from which it derives. In exceptional cases, it may cover several Exploration Permits when the permits belong to the same holder and relate to the same substance. The perimeter of the Mining Operation Permit must be shaped as a simple polygon, with sides aligned North-South and East-West, and with no more than ten vertices, unless a derogation is permitted by the CPDM.

The procedure for granting an Operating Permit, and for determining who is entitled to one, depends on whether the applicant is a Guinean national or a foreigner. Industrial or Semi-Industrial Mining Operation Permits are granted to Guinean companies by a decree issued during the Council of Ministers, on the recommendation of the Minister of Mines, following approval by the National Mining Commission, to the holder of an Exploration Permit that fulfils its obligations under the Mining Code. The application must be filed in accordance with the regulations at least three months prior to the expiry of the Exploration Permit. If the Exploration Permit holder that finds a deposit is a foreign company, the shareholders must set up a Guinean subsidiary to apply for the Exploitation Permit.

The application for an Industrial or Semi-Industrial Operation Permit must be supported by precise documentation, as listed in the mining regulation as follows:

- a copy of the valid Exploration Permit and proof of payment of all taxes and royalties due;
- a report on the exploration results regarding the nature, quality, volume and geographic location of the mineral resource identified;
- a plan in respect of the relinquishment (first or second), as applicable, the results of the exploration work are relinquished and corresponding to one half of the previous area; and
- a feasibility study including a plan for the development and operation of the deposit.

In addition to the above, the applicant must provide a detailed Environmental and Social Impact Study with a Social and Environmental Management Plan that includes the following:

- an Emergency Plan;
- a Risk Management Plan;
- a Hygiene, Health and Safety Plan;
- a Rehabilitation Plan; and
- a Resettlement Plan for the population affected by the project, as well as any measures envisaged to mitigate the impacts of the project.

The applicant must submit an economic and financial analysis of the project as well as all plans and cost estimates for infrastructure needed for the project.

While the objective of the Mining Code is to encourage, promote and enhance investment in the mining sector for a significant development, it also focuses on local content in expressly requiring a plan for supporting and building the capacity of small and medium-sized companies owned or controlled by Guinean nationals, in order to allow them to participate in the provision of goods and services to the mining sector. The same spirit inspires the requirement for Exploitation Permit holders also to provide a plan to promote the employment of Guinean nationals, with a minimum number needed in order to comply with a quota as set out in the Mining Code.

In order to promote social responsibility, the Mining Code focuses on community development through the requirement of a specific Local Development Agreement covering, among other aspects, training, medical, social, educational, roads, water supply, and electricity infrastructure to enhance the construction of infrastructure in the country. The Exploitation Permit holder must construct its offices in the country. In order for the State to provide adequate land for the construction of the offices, the title-holder must submit an architectural plan of the company's offices. When the mining substance is iron ore, bauxite, gold or diamond, the office must be constructed within a maximum period of three years from the date of the Operating Permit.

For Semi-Industrial Mining Operation Permit holders, the obligations in respect of the environment and community development plan will be specified in the decree granting the permit. The CPDM is responsible for reviewing the application. The technical and environmental evaluations are left with the Direction Nationale des Mines and the Ministry of Environment, in association with the Technical Committee and the National Mining Commission. The decision to grant the permit or to reject the application, the notification to the applicant and the publication in the official gazette are the responsibility of the Minister of Mines.

Once an Industrial or Semi-Industrial Operation Permit is issued, the Exploration Permit will be cancelled. However, in order to allow the development of new mines, the exploration activities may continue within the perimeter of the title. If a mineral substance other than the one covered by the title is discovered during the exploration, the title-holder shall have a pre-emptive right in respect of such a deposit, which should be exercised within 18 months from the date of the notification of the discovery to the State. As with the Exploration Permit, all deeds granting the expansion, renewal, transfer, lease or revocation of an Operating Permit must be published in the Official Gazette, on the official website of the Ministry of Mines.

An Industrial Operation Permit is granted for a maximum of 15 years, whereas a Semi-Industrial Operation Permit is granted for a maximum of five years. These terms can be renewed several times, upon an application of the title-holder under the same conditions as those for the issuance of the initial permit. Each renewal should be for five years, as long as the title-holder has met its obligations as detailed on the face of the title and within the Mining code.

Development work and exploitation work must commence within a maximum of six months following the date of the Permit. Failure to comply with this deadline will result in the following penalties:

- For a one-year delay: GNF10 million per month for the first three months. The penalty will increase by 10% per month, effective from the fourth month until the 12th month.
- For a two-year delay, the State has the right to revoke or cancel the Title.

The holder of a Industrial Operation Permit must begin development work within a maximum period of one year from the date of the permit. Failure to comply with that deadline will be sanctioned as follows:

- For a one-year delay, USD100,000 per month for the first three months. Penalties will increase by 10% per month, effective from the fourth month of delay until the sixth month.
- For an 18-month delay, the State reserves the right to revoke the title.

Notwithstanding the deadlines as provided above, the real timelines are those detailed in the feasibility studies, because those are specific to the project. The feasibility study is supposed to take into account all the aspects relevant to the project, in order to provide a reliable schedule. Therefore, the holder of an Operating Permit is required to begin the Operating Phase within the timeframe indicated in the feasibility study, with a maximum of four years for Operations Permits for the extraction and export of unprocessed ore; for permits

related to processing raw materials within the Republic of Guinea, the deadline is five years. Failure to comply with the deadline will result in a penalty corresponding to the unused balance of the expenditures contemplated for the calendar year, unless the unused balance of the expenditures is less than 10% of the expenditure for the relevant calendar year. For the purposes of the above, the “commencement of development work” is defined as undertaking preparatory, development and construction work amounting to a minimum sum representing between 10% and 15% of the total amount of the investment.

Rights and obligations of the titleholder under a mining concession permit

A Mining Concession confers on the holder the exclusive right to carry out all kinds of mining operations on a deposit for which the Concession is granted, within the limits of the perimeter of the concession, without limitation as to depth. A Mining Concession is an immovable, divisible right that can be subleased, and can be mortgaged in order to secure loans to finance the mining operations. The area for which a Concession is granted is defined on the face of the title. The co-ordinates must correspond to the boundaries of the deposit as detailed in the feasibility study, as closely as possible.

For Concessions, the perimeter must be a polygon, with sides aligned North-South and East-West. The issuance of a Concession cancels any prior Exploration or Operation Permit for the area covered by the Concession. Unless otherwise prescribed by the title, the obligations upon the holder pursuant to any Exploration Permit or Operating Permit are reduced or broadened to take into account the reduction or increase in the size of area covered by the initial permit.

Mining Concessions are only granted to Guinean companies on the recommendation of the Minister of Mines, following approval by the National Mining Commission, to the holder of an Exploration Permit or an Exploitation Permit holder fulfilling its obligations under the Mining Code. The application must be filed at least three months before the expiration of the Exploration Permit supporting the application.

Because Mining Concession permits are only granted for large-scale mining operations, the investments anticipated for the project should amount at least USD1 billion.

Applications for a Mining Concession must be supported by the following documents:

- a copy of a valid Exploration Permit and proof of payment of all fees and royalties due at the date of the application;
- a report on the exploration results, regarding the nature, quality, volume and geographic location of the mineral deposit identified;

- a plan in respect of the first or second relinquishment, as applicable, with the results of the exploration work;
- a feasibility study, including a detailed Environmental and Social Impact Study with a Social and Environmental Management Plan, an Emergency Plan, a Risk Management Plan, a Hygiene, Health and Safety Plan, a Rehabilitation Plan, and a Resettlement Plan for the population affected by the project, as well as any measures envisaged to mitigate the negative impacts of the project on the surrounding communities;
- an economic and financial analysis of the project and the plan for obtaining the required permits and authorisations;
- plans and estimates for the infrastructure; and
- a plan for supporting Guinean companies and/or reinforcing the capacities of small and medium-sized enterprises owned or controlled by Guinean nationals to allow the provision of goods and services necessary for the mining sector. In the same spirit, the title-holder is required to provide a plan to promote the employment of Guinean nationals, aligned with the quotas provided in the Mining Code.

The development of the surrounding communities is an important commitment. In order to promote community development, the Guinean Mining Code requires the Concession holder to form a Local Development Agreement with local communities, covering, among others, aspects of training, medical, social, educational, road, water supply, and electricity infrastructures, and an architectural plan for the company's offices with an application for a land allocation before the competent administration. The head office must be constructed within a maximum period of three years from the date of the Concession for iron ore, bauxite, gold and diamond.

Because Mining Concessions are granted for large-scale projects, the operation of a Mining Concession requires stability on economic conditions (tax and customs), warranties from the State, etc. Therefore, in order to allow the operations, the holder of a Concession must sign a Mining Agreement with the State, setting out the terms and conditions for the operations.

Granting a Mining Concession results in the cancellation of the Exploration Permit over the area of the Mining Concession. However, to allow the development of futures mines, exploration activities may continue in the perimeter of the Concession. If another deposit is discovered during the exploration works, the holder of the Concession shall have a pre-emptive right over such deposit. That right should be exercised within 18 months of the date of the notification of the discovery to the State.

The CPDM will be in charge of reviewing the application, and the technical and environmental evaluations are left to

the National Mining Authority and the Ministry of Environment in association with the Technical Committee of Titles and the National Mining Commission. The Minister of Mines will be responsible for the decision to grant the Concession, for notifying the applicant and for the publication in the official gazette.

Where the applicant is not holding a valid Exploration Permit, the Mining Concession is granted following a competitive and transparent tender procedure. The Technical Committee will carry out the tender process, in partnership with the National Mining Commission. The grant, renewal, transfer, lease, revocation or renunciation of a Mining Concession must be published in the official gazette and displayed on the official website of the Ministry of Mines.

Mining Concessions are granted for a period of 25 years. The term of the Concession may be renewed, one or several times, each for a period of ten years, under the same conditions as those for the original grant, as long as the title-holder complies with its obligations and files a new feasibility study.

The Mining Concession holder must begin development work within one year of the date of the Concession. Failure to comply with that deadline means the holder will be subject to a penalty of up to USD2 million per month for the first three months. That penalty will increase by 10% per month, from the fourth month until the twelfth month of delay. After two years of delay, the State reserves the right to revoke or cancel the Title.

However, the accurate timeline will be that provided in the feasibility study, where all the relevant aspects would have been taken into account in order to present a reliable schedule for the operation. Therefore, a Concession holder must start the Operating Phase within the timeframe indicated in the feasibility study but within a maximum of five years from the date of the Concession for the extraction and export of unprocessed ore. When the Concession is granted for other substances, such as those processed in raw material in the Republic of Guinea, the deadline is six years. Following this deadline, the penalty amount will be the balance of the planned expenditure not yet spent on the mining operations.

To avoid cancellation of the Mining Concession, the title-holder should not spend less than 25% of the budget over the period of two consecutive years, unless doing so is justified due to a force majeure event. However, even under force majeure, this cannot last more than 12 months.

3. Duties and Rights Derived from a Mining Title or Concession

3.1 Duties Acquired by the Title Holder

The mining title provides security and protection to the title-holder in relation to the perimeter that will be obtained on the prospection. Therefore, if for any reason the Operating Permit or a Concession is issued to a person other than the finder of the deposit, the beneficiary of that permit must pay fair compensation to the finder, the amount of which is determined by private commercial negotiations. The compensation is intended to cover the costs effectively incurred by the finder for the exploration work carried out in order to find the deposit. The finder may lose this right if it is not compliant with its obligations under the Mining Code. There is a threshold of USD500 million, depending on the type of mining substance concerned.

3.2 Rights Acquired by the Title Holder

Mining title does not provide the right to own the land covered by the title; it simply grants the right to use the area for mining activities temporarily. Therefore, the holder of a mining title cannot use the perimeter or part of it for activity other than that for which the permit has been given. However, on the perimeter and for the activities allowed under the mining title, the title-holder acquires the exclusive right to carry out any and all kind of activity, without limitation.

3.3 Duties Acquired by the Landowners

In general, mining activities are carried out on public land (managed by the State); however, if an application is made for title over private land, the landowner may have three options in responding to such an application:

- he or she may refuse the application;
- he or she may sell his or her property to the applicant; or
- he or she may make the property available for a specified period of time, under certain conditions specified in a private agreement.

If the site ceases to be a mining site for any reason, the landowner is entitled to require that the site be restored.

All damage caused by the title-holder to the landowners, or to any legitimate occupants of the land, shall give rise to the payment of compensation. In particular, where the owner or lawful occupant of the land or its successors have undertaken works or facilities that would be rendered useless due to the mining operations, they shall be reimbursed by the title-holder for the cost of these works or facilities at their value on the date on which they became useless. However, if there is a fraud or a fault attributable to the landowner, the landowner might be exposed to pay compensation to the title-holder, if there is damage to the title-holder.

If the mining site is in the State-owned domain, there are two options, depending on whether the site is within the private domain of the State or the public domain of the State. Land in the private domain of the State can be made available for a determined period of time under conditions specified in an implementing decree of the Mining code, but land in the public domain should remain public.

3.4 Duties of the Title Holder at End of the Title

Mining title-holders are required to proceed with the closure of their mining operations in a gradual and orderly manner in order to prepare the Local Community for the cessation of activities. The title-holder shall notify the administration at least 12 months before the planned date for closing out the site, and six months before the closing of a plan for closing the mining site. As part of that plan, an opinion is required from a competent department of the State to determine the compliance and suitability of the measures envisaged for making the site livable, so that it is compatible with all forms of life and activity. The plan should focus on eliminating harmful risks to the health and safety of persons; the rehabilitation of the site to conditions acceptable; and the restoration of the vegetation with similar characteristics to those of the surrounding area.

In order to allow rehabilitation at all times, mining title-holders are required to open and fund an environmental rehabilitation trust account to guarantee the rehabilitation and closure of the mining site, in accordance with the Environmental and Social Management Plan. This account should be established by decree, and the terms of its operation shall be determined by a joint order of the Ministers in charge of Mines, Environment and Finance. The amounts so allocated are exempt from any corporate tax. This implementation decree of the Mining Code is yet to be instigated, so the trust account mentioned above has not been instituted.

In practice, the rehabilitation of mining sites implies the removal by the title-holder of all facilities on the site. To the extent possible, all former mining sites must be restored to conditions of safety regarding agriculture and forestry, and the surrounding landscape should be restored as closely as possible to its original state, followed by a site inspection by the technical department in charge of rehabilitation, whose report will be drafted in the form of a notice of discharge provided to the titleholder, in order to testify that the rehabilitation has been completed.

The report must include the following:

- an assessment of the implementation of the rehabilitation measures prescribed in the Environmental and Social Impact Study, the Health Impact Study and the programme for supporting the development of basic healthcare in the Local Community;

- an analysis of the healthcare system in the area where the project is located, including the identification of potential hazards, an assessment of the level of exposure and characterisation of the major risks, with a calculation of the likelihood of conditions leading to death; and
- an analysis of the site's environmental system, including a description of the physical, biological and sociological environment.

If there is a failure to rehabilitate the mining site adequately, the National Environment Office will carry out the rehabilitation at the cost of the title-holder, notwithstanding any other action that may be taken against the title-holder.

4. Environmental

4.1 Environmental Obligations

Mining activities must comply with the legislation and regulations governing environmental protection and management as well as health. In particular, any application for a Mining Operation Permit must include an Environmental and Social Impact Study in accordance with the Environmental Code and international standards. These requirements may vary, depending on the level of the work to be carried out. In relation to environmental protection, legal requirements may range from the simple Environmental Impact Notice (Exploration Permit) to a detailed Environmental and Social Impact Study, including a Risk Management Plan, a Hygiene, Health and Safety Plan, a Rehabilitation Plan, and a Resettlement Plan for the persons affected by the mining operations. In addition, title-holders must provide compensation for any loss of income or means of subsistence resulting from such an impact. Resettlement and related compensation will be implemented at the cost of the title-holder, in accordance with a procedure determined by the Government, taking into account international principles together with consultation with the Local Community.

For Exploration Permits, the Environmental Impact Notice must be filed before the work starts and no later than six months after the title. Appropriate techniques and methods must be used to protect the environment and the safety of the workers and the Local Community, in accordance with the Environmental Code and international practices.

In order to ensure a mindful exploitation of mineral resources, mining title-holders must address the prevention or minimisation of any adverse effects on health and environment in their assessment of the impact of the project, including:

- the use of harmful and hazardous chemicals;
- noise emissions that are harmful to human health;
- unpleasant odours that are harmful to human health;
- pollution of water, air and soil;

- degradation of the ecosystem and the biological diversity; and
- the prevention and/or treatment of any spillage and/or waste to neutralise or minimise the effect on nature.

Title-holders must ensure the promotion or maintenance of the living conditions and general good health of the population. They must allow for the prevention and management of HIV/AIDS at the local level, and must participate in effective waste management by ensuring that they are disposing of non-recyclable waste in an environmentally friendly manner.

Title-holders must be careful to ensure the protection of workers from occupational and industrial hazards by the application of standards and procedures set out by the National Health Policy, including screening for nuisance factors, routine medical visits for workers at least once a year, and the implementation of any adjustment plan.

In conducting mining operations, any title-holder is directly responsible for any health-related damages and harm caused to workers and the Local Community in cases where there is a failure to comply with the terms of its health and safety plan. If the mining title is assigned for any reason and by any means, the assignee and the assignor of the mining right will need the opinion of the competent departments to perform health and environmental due diligence of the mining site, which will determine the health and environmental risks and responsibilities of the transferor during the time they held the mining right.

Any land-clearing, cutting or removal of trees or plants, as well as excavation work, mining and quarry operation or building of communication transmission lines within the perimeter of a mining title shall be subject to prior authorisation from the Minister of Forestry. Valuable forest species identified by the Forestry Code or its implementing regulations enjoy special protection and may not be cut or mutilated during mining operations.

5. Miscellaneous

5.1 Restricted or Excluded Zones

For reasons of public order, the President of the Republic, acting on the recommendation of the Minister of Mines, may classify certain zones as closed zones, for a limited period. From then onwards, the Minister of Mines would not issue any mining title over that area. Depending on the reason for restrictions being provided, a perimeter may be carved out where exploration and exploitation work will be subject to certain conditions or simply prohibited. Most of the time these restrictions are related to public interest – in particular, for the protection of cultural sites, burial sites, waterholes, coastal areas, communication channels, art, etc. Once such a

restricting order is enacted, no compensation will be due for the title-holder, but they may be entitled to compensation for expenses incurred for mining work or construction carried out before the perimeter was classified as a protected site. Following a restriction order, no prospecting, exploration or exploitation work can be carried out within a radius of 100 metres around the protected site.

For specified reasons, a title-holder may apply for a restriction around his or her mining site when third-party exploration or exploitation works may harm or present a hazard to both operations. Upon the request of a title-holder and after careful investigation by the National Mining Authority, the Minister of Mines may determine a protection zone surrounding such a title-holder's worksite, so that all activities in that area are totally or partially forbidden to any third party.

5.2 Rights of Indigenous or Ethnic Communities

The Mining Code does not provide any specific right for any ethnic group or indigenous group. All areas surrounding a mining site are treated as Local Communities, and any mining operation must be carried out in a manner that promotes the development and guarantees the protection of the Local Communities. For those reasons, any holder of a Mining Operation permit must enter into a Local Community Development Agreement with the surrounding Local Community in the immediate vicinity of its Mining Operation. The terms for drafting these agreements are set out in a joint order of the Minister of Mines and the Minister of Decentralisation. However, because the implementation decrees of the Mining Code have yet to be instated, these terms are still to be specified. Nevertheless, there is no doubt that the purpose of the Local Community Development Agreement is envisaged in order to set out conditions that would allow the efficient and transparent management of the title-holder's Contribution to Local Community Development, and to strengthen the capacities of the Local Community in the planning and implementation of the community development programme.

The Local Community Development Agreement must cover, among other aspects, the training of Guinean nationals, enhancing environmental protection and health measures for the Local Community, and the development of social projects. These objectives will be achieved by using the principles of transparency and consultation with the Local Communities. Once signed, all Community Development Agreements should be published and made available to the Local Community.

Unless otherwise provided in the Mining Agreement signed between the title-holder and the State, the amount of the contribution to the Local Community Development fund ranges between 0.5% and 1%, depending on the type of mining substance concerned. Contribution to that fund must

start from the date of the first commercial production. Once the contribution is made, the rules for the management are set out by a decree of the President of the Republic.

5.3 Unilateral Termination of a Mining Title

According to the Mining Code, the Minister of Mines may revoke a mining title on one of the following grounds:

- If exploration or mining activity is suspended or seriously restricted for more than six months for exploration, and more than 12 months for mining operations, unless there are justified reasons;
- when the feasibility study demonstrates the existence of a deposit that is economically and commercially exploitable within the perimeter, but the title-holder does not commence mining operations within the timeframes provided; or
- if there is a violation of the provisions of the Mining code detailed below:
 - (a) the cost of mining work is less than 25% of the planned amount over two consecutive years for the minimum work programme, or the minimum amount of expenditure specified in the terms of reference of the Mining Concession, unless for justified force majeure (not to exceed 12 months);
 - (b) failure to start work within six months of the date of the exploration permit, 18 months for Operating Permits, and two years for Mining Concessions;
 - (c) failure to maintain extraction records and sale and shipping information on a regular basis, and refusal to produce records to the National Mines Department representatives and the National Tax office;
 - (d) non-payment of taxes and/or royalties at due dates;
 - (e) exploration or mining operating outside the perimeter of the mining title;
 - (f) exploitation work for a mining substance other than that mentioned in the permit;
 - (g) mining operation undertaken under an Exploration Permit;
 - (h) loss of the financial or technical capability provided when the title was granted;
 - (i) assignment, transfer or lease of mining rights without the prior authorisation provided for in the Mining Code;
 - (j) failure to withhold capital gains tax following an assignment of a mining right;
 - (k) assignment, transfer or lease of all or part of a mining right resulting from an Exploration Permit;
 - (l) recurrent tax fraud and filing incorrect financial statements and balance sheets; or
 - (m) non-compliance with the provisions of the Mining Code relating to conflicts of interest.

5.4 Taxes or Royalties

In addition to taxes, royalties and duties provided in the General Tax Code, the holder of a mining title is subject to

the payment of duties and royalties provided in the Mining Code, for its activities in Guinea. Unless the Mining Agreement provides otherwise, the procedure for the collection and control of duties and royalties is that of the normal regime as set out in the General Tax Code and the Customs Code.

Fixed fees and annual royalties

The issuance of a mining title, as well as its renewal, extension, continuation, transfer, assignment and lease, is subject to the payment of a fixed fee, determined by applicable regulations. The same applies to other activities related to mining substances. For example, collection agents, trading houses and accredited trading agencies (trading diamonds, gold and other precious substances) are subject to a fixed annual royalty, the amount of which is determined by the applicable regulation.

Surface Royalties

Mining titles providing the right to engage in mining activities are issued under the condition of the payment of annual “surface royalties”, which are calculated in relation to the size of the perimeter assigned. The fee structure is detailed in the table below.

Nature of the Title	Surface Royalties USD/ km ²		
	Award	1st Renewal	2nd Renewal
Exploration Permit	10	15	20
Industrial Mining Operation Title	75	100	200
Semi-Industrial Mining Operation Title	20	50	100
Mining Concession	150	200	300
Dredging Operation Permit	150*	200*	250*

Tax on the production of mineral substances other than precious metals

The holder of an Operation Permit for mineral substance other than precious metals is liable for tax payment on the extraction. The trigger for the payment occurs when the mineral substances are extracted from the mine. Said taxes are payable no later than the 15th day of the month following the extraction. However, with regard to the extraction of precious stones and other gemstones, the tax is payable on the date of the evaluation by the National Bureau of Expertise (BNE). The tax is calculated on the basis of the value of the mine substance extracted, which in turn is determined on the basis of the grade, weight and price index applicable to the mineral substance extracted.

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In calculating the tax, the weight unit is the metric tonne (t) for mineral substances, and carat (Ct) for precious stones and other gemstones. If the weight unit contains several types of mineral substances, each mineral substance will be taxed separately according to its own weight and the price index applicable to it. The price index applicable to the mineral substance is defined in the table below, calculated on the basis of the nature of the mineral substance extracted. However, as an exception, the value of precious stones is determined by the BNE on the basis of the quality and weight expressed in carat.

Failure to pay the tax within 30 days of the extraction of mineral substances will be subject to penalties and any other applicable sanction, such as the revocation of the mining title and closing of the extraction facilities. When mining activities are carried out by a subcontractor rather than the titleholder, such subcontractor is jointly and severally liable with the titleholder for the payment of the tax on the extraction of mineral substances. The tax rates provided for extraction royalties will be increased by 15% if the holder of the mining title refuses to supply the report approved by the Minister of Mines, certifying that at least 80% of the works relating to the construction of the processing infrastructure in Guinea has been done.

Tax rates on the extraction of mineral substance, by substance

Substance extracted	Unit	Tax	Basis
<i>Iron ore</i>			
Standard content iron ore	t	3%	Price of iron ore (defined by Platts China Iron Fines, CFR [Cost and Freight] 62%) minus transport costs (defined by the Baltic Exchange Cape size Index Route C3-Tubarao /Qingdao)
<i>Bauxite</i>			
Bauxite	t	0.075%	3 month LME seller price per tonne of Aluminium for one Bauxite in Al ₂ O ₃ of 40%
<i>Other non-ferrous substances</i>			
Base metals: Copper, Tin, Nickel, Zinc			
Concentrate	t	3.0%	FOB Price
Substance extracted	Unit	Tax	Basis
Metal	t	3.0%	FOB Price

Minor metals: Cobalt, Titanium, Molybdenum	t	3.0%	FOB Price
<i>Gemstones</i>			
Raw diamonds			
Tax on industrial production	Ct	5.0%	BNE's assessment
Tax on semi-industrial production	Ct	3.5%	BNE's assessment
Stone with value per unit equal or greater than five hundred thousand (500,000) USD	Ct	5.0%	BNE's assessment
<i>Precious Stones other than Diamonds (Emeralds, Rubies, Sapphires, etc.) and other gemstones</i>			
Tax on industrial production	Ct	2.0%	BNE's assessment
Tax on semi-industrial production	Ct	1.5%	BNE's assessment
Stone with value per unit equal or greater than five hundred thousand (500,000) USD	Ct	5.0%	BNE's assessment

Key:

Ct : Carat = 0.2g

LME : London Metal Exchange

t : Metric Tonne

A new price index may be set out by joint order of the Minister of Mines and the Minister of Finance if the price index indicated in the table above becomes obsolete. Moreover, the price index and the rate for any mineral substance not mentioned in the above table will be provided by regulation.

Tax on the industrial and semi-industrial production of precious metals

The extraction of precious metals is subject to tax on both Industrial and Semi-Industrial production. The trigger of the tax is the extraction of the precious metals from the mine. The basis of the tax is the value determined during weighing at the Central Bank of Guinea, which takes into account the purity of the precious metal and the price at the London PM Fix for the precious metal extracted. The tax rate is 5%.

When the weighed ingot contains precious metals other than the precious metal of which it is principally composed, the other precious metals contained in the ingot are subject to the tax, as determined by the applicable regulations.

Failure to pay the tax within 30 days of extraction is punishable by sanctions that could lead to the revocation of the mining title. When the mining activities are carried out through a subcontractor, such subcontractor is jointly and severally liable with the titleholder for the payment of the tax.

Tax rate on the industrial or semi-industrial production of precious metals

Substance produced	Unit	Tax	Basis
Precious Metals: Silver, Gold, Platinum Group Metals, Palladium, Rhodium	oz	5.0%	London PM Fix

Key:

oz: Troy Ounce = 31.103477 g

Tax on the export of mineral substances other than precious substances

Mineral substances extracted in Guinea by the holders of Mining Operation Permits and exported as raw (without having been processed in Guinea) will be subject to a specific export tax. The basis of the export tax on mineral substances is the value of that mineral substance as exported, which is determined by virtue of the “grade”, the weight and the price index applicable. The unit of weight is the metric ton for mineral substances other than radioactive substances, and the pound for radioactive substances. If the unit of weight contains several types of mineral substances, each mineral substance will be taxed separately, according to its content per unit of weight and the price index applicable. The tax is payable upon the export of the mineral substances. The liability for the tax lies with the exporter of the mineral substances, in accordance with the Customs Code. When exportation is made through an agent of the titleholder, the export tax is payable jointly and severally by the customs agent, acting under a power of attorney granted by the titleholder. Throughout the process, the customs procedures will be applicable.

Substance exported	Unit	Tax	Basis
<i>Iron ore</i>			
Standard content iron ore	Mt	2%	Price of Iron ore (gauged by the Platts China Iron Fines CFR 62%) less the transport costs (gauged by the Baltic Exchange Capesize Index Route C3-Tubarao/Qingdao)
<i>Bauxite</i>			
Bauxite	Mt	0.075%	3 month LME selling price per tonne of primary Aluminum for one Bauxite in 40% Al ₂ O ₃
<i>Other non-ferrous substances</i>			
Base metals: Copper, Tin, Nickel, Zinc			
Concentrate	Mt	2.0%	FOB Price
Metal	Mt	2.0%	FOB Price
Minor metals: Cobalt, Titanium, Molybdenum	Mt	2.0%	FOB Price
<i>Radioactive substances</i>			
Uranium			
Concentrate (Yellowcake)	lb	30%	Ux Spot Price U2O8
Other radioactive substances	lb	2.0%	Ux Spot Price

Key:

lb: US Pound = 0.4535923 kg

LME: London Metal Exchange

Mt: Metric Tonne

The regime for simplified declaration

Any holders of mining operation titles that are extracting mineral substances in Guinea exclusively for export in a raw state, without reselling them in the internal market, may request the simplified declaratory regime, which allows them to declare extraction tax and export tax in the same declaration form.

Export tax on precious stones and other gemstones

Precious stones and gemstones extracted in Guinea and exported in a crude or cut state are subject to a specific export tax, the basis of which is the value of the precious stones and gemstones exported. The value is determined by the Bureau National d’Expertise (BNE), according to the

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quality of the stones and the carat weight. The export tax rate is defined in the table below, according to the nature of the precious stones and the gemstones exported. However, the rate of this export tax is reduced by 50% if the precious stones or gemstones are exported after having been cut in Guinea.

The tax is payable at the export date, and the liability for tax is upon the exporter. The export tax is jointly and severally payable by the customs agent, acting under a power of attorney of the titleholder, and the customs procedure applies to the export. The terms for the calculation, declaration and payment of this tax are determined by the applicable regulation.

Substance exported	Unit	Tax	Basis
<i>Precious Stones</i>			
Rough Diamonds			
Tax on industrial production	Ct	3.0%	BNE's assessment
Tax on semi-industrial production	Ct	3.0%	BNE's assessment
Stone of a value per unit equal to or greater than five hundred thousand (500,000) USD	Ct	5.0%	BNE's assessment
<i>Precious Stones other than Diamonds (Emeralds, Rubies, Sapphires, etc.) and other gemstones</i>			
Tax on industrial production	Ct	1.5%	BNE's assessment
Tax on semi-industrial production	Ct	1.5%	BNE's assessment
Stone of a value per unit equal to or greater than five hundred thousand (500,000) USD	Ct	5.0%	BNE's assessment

Key:

Ct : Carat = 0.2g

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