MALI NEW MINING CODE

Over the past decade, the Republic of Mali ("**Mali"** or the "**State**") has seen an upsurge in the exploitation of its natural resources.

A growth that has resulted in the development of several mining projects in the country notably gold production.

According to Mali Ministry in charge of Mines, gold is the most extracted mineral in Mali, with a production estimated at 66 tonnes for the fiscal year 2022.

State revenue from gold mining companies has reached a record of about CFA Francs of 763.7 billion in 2022 representing around 9% of gross domestic product while revenues generated by the whole extractive sector amounted CFA Francs 429.576 billion in 2020.

I. LEGAL FRAMEWORK OF MALI NEW MINING CODE

Mali mining Code has been frequently reformed. As a matter of fact, the State of Mali underwent five major reforms of its mining code between 1963 and 2019, driven by the process of liberalization of the mining sector and the government's will to increase its revenues.

Those amendments were aimed at addressing the various challenges faced by the extractive industry, reassuring mining operators and protecting State interests.

The latest reform was implemented on 8 August 2023 with the approval by the National Transition Council of the **Law No. 2023- 040 relating to the mining code in the Republic of Mali** (the "**New Mining Code**") and **the Law No. 2023-041 relating to the local content in the Mining Sector** (the "**Local Content Law**"). These two regulations were published in Mali Official Gazette on 29 August 2023 (the "**New Mining Regulations**")

This New Mining Regulations introduce for the first time an act governing specifically local content issues in the mining sector through the Local Content Law.

The spirit of the Local Content Law is to boost State and Malian private interests and strengthen mining sector contribution to local development.

The New Mining Regulations introduce major changes but have also given rise to concerns among mining operators as to their applicability to current projects.

II) THE APPLICABILITY OF THE NEW MINING REGULATIONS

(A) Applicability of the New Mining Code

The New Mining Code specifies that its provisions prevail on those of the establishment agreements and indicates that current exploitation permits remain subject for their remaining term, to the provisions of the laws and regulations that have governed their issuance.

Moreover, the renewal of an exploitation permit on expiry entails renewal of the establishment agreement, which will subject to the mining code in force on renewal date. Consequently, the benefit of the existing establishment agreements end at the expiry of the related exploitation permits.

Based on the stabilization period and the transitional provisions, the New Mining Code does not impact the tax and custom regimes benefiting to current mining projects.

However, The New Mining Code requires from large and small exploitation permits holders to initiate public consultation and discussions in relation with community development plan within six (6) months after the publication of the New Mining Code.

The purpose of this public consultation requirement is to enter into one or more local development support agreements with local populations effected by the mining projects.

Moreover, the New Mining Code confirms State free participation of ten (10) % in the share capital of operating company and grants it and grants it the right to opt for an additional 10% stake allowing to increase its participation up to twenty percent (20%).

This optional right can be exercised by State within twelve (12) months from the issuance of the exploitation permit.

Also, any newly created operating company is required to assign five percent (5%) of its shares to national investors through the state-owned company.

(B) Local Content requirements under New Mining Regulations

Mining operators are also subject to several requirements relating to local development which are set out in the Local Content Law. As a matter of fact, any individual or legal entity carrying out mining activities in the mining is subject to this Law.

Local content is defined as: "*a set of provisions and measures requiring mining companies to give priority to nationals, local communities, national companies and locally produced materials in carrying out their activities. and locally-produced materials in the execution of their activities*"

The scope of the Local Content Law covers all activities directly or indirectly related to:

- exploration, research, development, exploitation and processing of mineral resources;

- valorization, management, transport, storage, distribution and distribution and marketing of mining products.

Subject to the publication of an implementation regulation, the Local Content Law introduces several requirements for mining operators.

(i) Implementation of the local content plan by mining operators

According to the Local Content Law, mining operators must implement a local content plan which describes the company's activities, as well as the goods, services and necessary qualifications to carry them out (the "**Local Content Plan**").

As the Local Content Law aims notably at increasing local job creation and fostering the development of skilled and competitive local workforce, mining operators shall submit for approval to the Local Content Permanent Secretary (SPCL) the program for recruitment and training of Malian citizens.

(ii) Statutory ratio of foreign staff to the total number of Malian employees

The Local Content Law provides with a ratio of foreign staff payroll in relation to the operating company's total payroll which cannot exceed:

- 30% for the first three (03) years from the start of mining operations;
- 20% after the third (03) year from the start of mining operations.

Mining title holders must ensure that the twenty 20% limit is systematically reduced after the sixth (6th) year of mining operations with the intention of achieving full employment of Malian citizens.

(iii) Submission of procurement plan by the mining operators

Mining operators are required to submit a goods and services procurement plan to the SPCL for approval by "*31 March*".

However, the Local Content Law remains unclear on how often this submission should be made whereas it specifies that the procurement plan is supposed to cover an initial 3-year period renewable for the same duration.

(iv) Services exclusively performed by local companies

The Local Content Law details a list of services that can be performed by only local companies. These services notably include:

- provision of thermal and renewable energy power production services;
- research drilling activities;
- mine site rehabilitation and closure plans; and
- ore transportation.

(v) Minimum rate granted to local companies for provision of goods or services

The Local Content Law requires from mining title holders to comply with the minimum rates to be granted to local companies for all agreements relating the provision of services and/or the supply of goods. These minimum rates are appended in a table as an annex to the Local Content Law.

(vi) Procurement of goods and services by Malian companies.

Procurement of goods and services related to mining activities must be provided by Malian companies.

However, this preference for local companies is subject to derogation.

As a matter of fact, the Local Content Law specifies that foreign companies may supply goods and services in relation to mining activities when no Malian company is able to do so under comparable cost and planning conditions in accordance with the mining industry international standards.

(vii) Shareholding of foreign subcontractors' subsidiaries

The New Mining Code provides that any foreign subcontractor providing services on behalf of an operating company shall assign at least 35% of its subsidiaries share capital to Malian shareholders.

This requirement also applies to any non-Malian supplier who provide recurring one-off services on behalf of the operating company.

All the requirements set out in the New Mining Regulations are likely to be clarified as the process of adopting the implementing decrees is underway.

Pending the publication of these decrees, mining companies and their subcontractors can obtain waivers on agreements relating to specific services being performed provided they submit a reasoned request to the SPCL for approval. Benefit from this waiver cannot exceed three (3) years.

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