

# ANGOLA

## 1. Investment Climate and Mineral Rights in Angola

Angolan investment climate has changed significantly over the last years and has been built now on free-market economy. Angola is aware that the main elements of an enabling environment for mining relate to foreign exchange regime, regulatory and institutional framework.

The Law on Foreign Investment of 1988 was revised and a new Law published recently through the Law No. 15/94 allows the association with the national private or public capital, in order to facilitate the entry of free capital from abroad.

It was necessary to establish through this new Law, a legal regime which may not be detrimental to the State's main interests and attractive to the potential investors, guaranteeing them security and stability of their investments.

The new Law on Foreign investment contains many relevant aspects as indicated earlier and special reference is also made to: the type of investment, the foreign investment status, rights and guarantees, obligations, taxation regime, recourse to credits, banking account in foreign and local currencies, labour force, project implementation and monitoring.

Attitude in Angola with respect to private foreign or domestic investment in mineral resources has changed substantially in recent years.

Having realised that efficient utilisation of resources is best achieved through increased participation of the private sector, the Government adopted a privatisation policy and privatisation program is under way, whose Law No. 10/94 was published in August 1994.

The privatisation process in Angola's mineral development might be initiated by a change in mines development strategy.

In Angola, mineral sector development is based on the combination of public and private systems with emphasis on mixed.

The Angolan Government recognise that, the investor is the best judge of whether or not a deposit is amenable to commercial exploitation and ultimately bears the risks of opening a mine. He will seek guarantees as to his right to mine deposit and receive the Mineral Rights.

Presently the main legislation regulating geological and mining activities is the Law 1/92 of 17 January 1992. The legislation includes a special fiscal regime compatible with the mine development projects. The emphasis of the mining policy is placed on private investment. To this end, the Government continues to do away with State monopoly over the mineral resources development.

This mining Law must be regarded in conjunction with the Law on Foreign Investment, Law No. 15/94, containing the following main aspects:

- a) The participation of the private sector, namely foreign and domestic companies in mines development programs is encouraged by the Angolan Government.
- b) Private companies – foreign and domestic are able to co-operate with the State mining enterprises, under profitable economic conditions of mutual benefit, based on the term of country's Mining Law .
- c) Attractive and consistent fiscal regime, including access to convertible currencies and profit remittance

In general, concession should be awarded on the basis of “first past the post, first served”, but with the provision that applicant must have demonstrated to the Government that he has the financial and technical expertise to carry out the mining work needed.

Two basic documents are required for mineral development: Prospecting License which gives the right to explore for and prove mineral deposits, and Mining Title which gives the exclusive right to extract minerals.

Prospecting License or Mining Title is granted through a contract form with the Ministry of Geology and Mines, to applicants of recognised worthiness who are capable of guaranteeing their own technical competence and the financial resources required to execute the operations correctly and meet the planned targets.

Apart from the Mining Law of 1992, in order to regulate the diamond industry, the Law on Diamonds NQ 16/94 was published on October 1994.

## **2. Law on Geological and Mining Activities, “Mining Law”: Law No. 1/92**

The Earlier Laws defining the mining policy in Angola were not allowing implementation according to the Foreign Investment Law of the country with exception of some restricted sectors. Such mining policy, based on the participation of the State at every stage, is no longer in accordance with the principles of a Market Economy, which has been implemented in the Country.

The present development of the mining sector at international level and particularly in Africa, made it advisable to review some of the adopted policies to encourage an increase level of development in Angolan mining sector. This resulted in introducing new legislation update and consequently reformulating a new Law, Law on Mining and Geological Activities – Law No. 1/92 of 17<sup>th</sup> January 1992. The Law aims at creating conditions required for the development of Angolan mining industry in line with the current national and international circumstances, by encouraging co-operation between national and foreign investment at all development stages, and reserving for the State the fundamental role of facilitating and efficiently observing their development, discipline and control.

The “Mining Law” has the following salient points:

1. The Law is applicable to all operations for the purpose of obtaining scientific knowledge of territories of the Republic of Angola, from a geological and mining point of view, as well as discovering, specifying, evaluating and mining of mineral resources comprising:
  - a) Geological studies and respective cartography to an appropriate scale;
  - b) Prospecting, research and reconnaissance of mineral resources;
  - c) Mining and processing of mineral resources; and
  - d) Marketing of mineral resources.
2. Mineral resources are State property in terms of the Constitutional Law. The State, through its appropriate state authority is responsible for:
  - a) Preparation of geological cartography of the national territory; and
  - b) Geological information control, as well as its collection, disclosure and publication.
3. Concessionaires of mineral rights may carry out geological survey within the scope of their regular operations. The data and results from geological work carried out must be handed over to the State's appropriate authority as soon as they are obtained.
4. The granting of a Prospecting Licence will be through a Contract with the appropriate State authority, after prior authorisation of the Minister's Council. Exclusivity regime to carry out prospecting, research and reconnaissance operation is within the area defined in the Prospecting Licence. Conditions for the extension of the initial validity period of the Prospecting Licence, one of which will be relinquishment of 50% of the initial licensed area.
5. The definition and evaluation of the reserves as well as their changes due to new geological studies and other prospecting, research and reconnaissance work will be subject to the acceptance and approval by the appropriate State authority.
  - a) Reserves are classified in accordance with the regulations of the Law.
  - b) No mining projects can be carried out without approval of the evaluation of its respective reserves by the appropriate State authority.
6. Mining of resources can not start before the respective mining plan is approved. Each mine should have a mining plan, which include a project for processing of

mineral resources. The mining plan should also comply with the specific rules on the matter, with:

- a) Mining technology established rules; and
  - b) The respective technical and economic feasibility study.
7. Mineral rights are granted to a mining activity company by a means of a Contract with the appropriate State authority, after the approval of the Minister's Council. The granting of the rights does not imply possession of the ground surface where the mineral resource or plant is located. Each mineral right refers to a boundary whose limits must be clearly defined and established on the ground, corresponding to the area deemed as necessary to carry out the approved mining plan.
8. Mineral rights include the right to extract, performing the operation of mineral resources, and the right of trading. Each Mining Title shows the rights and obligations of its title holder, which includes:
- a) Fulfilment of the mining plan approved by the appropriate State authority;
  - b) Fulfilment of the period established for the execution of the operations and production programme;
  - c) Guarantee regarding safety and health conditions of workers in working sites;
  - d) Guarantee of environmental protection
  - e) Provision for the use of groundwater existing around the concession area
9. The duration of mineral rights is the period required for the exhaustion of existing mineral reserves, taking in to account the market conditions and development for the minerals to be exploited.
10. Prospecting Licence holders are assured the recovery of investments made in fulfilling prospect, research and reconnaissance plans, only from mining profits from deposits which are discovered or which value is increased by those plans.
11. Annual surface tax is established for the Prospecting Licence, which will be reviewed for the extension periods and vary according to the risk estimated for the investment. An applicable fiscal regime established for the Mining Title, include:
- a) A tax on the value of run-of-mine mineral resources, or on the value of the concentrate, which will be the result of using a perceptual tax on the annual

production value, to be established in accordance with the unit value of each mineral; and

- b) An income tax, an industrial tax, ensuring the possibility of reducing its tax or other fiscal profits to be proposed as a result of analysis of the technical viability study.
12. Sending of any geological samples, and parcels of mineral resources from mining or processing, outside the Country for study, testing, analysis or any other purpose, as well as the transit of mineral resources or mining products out of the mining areas, are subject to the approval of the authority in charge of supervising the operations.
  13. Prospecting Licence and Mining Title holders, and their associates or contractors, are under the obligation of protecting Nature and the Environment.
  14. Geological and mining activities in general are subject to the inspection and control by the appropriate Angolan State authority.

### **3. Law on Diamonds: Law No. 6/94**

A diagnosis of the earlier situation of the diamond mining industry in Angola, had implied a detailed analysis of the previous legislation in force and its influence on the operation on the activities of mining companies and on the socio-economic situation of the population of the country. The diagnosis showed the existence of accelerated illegal digging and diamond theft within the concession areas, which has resulted in an uncontrolled dilapidation of the deposits, the social and economic deterioration of the population, the inevitable leaking of foreign currency out of the country, and difficulties for the concession holding companies.

Therefore the need to radically alter the situation became obvious, by creating new legal basis which made it possible to protect the national resource. The State established a company, Empresa Nacional de Diamantes (ENDIAMA), at its disposal to carry out its policies of diamond mining and trading. The ENDIAMA was maintained to be stronger not to play the role of competing with investing companies, but to represent the minimum

needed essential Government's intervention in the complex and delicate technical-commercial diamond activities.

The law also introduced admission on artisanal mining of diamond deposits selected according to their special characteristics in a controlled way. This type of mining falls upon those deposits which are not minable on an industrial scale and only be allowed within areas surrounding present or future demarcated areas.

The "Diamond Law" has the following salient points:

1. The law is applicable to operations of prospecting, research, reconnaissance, mining, treatment and trading of rough diamonds within the territory of the Republic of Angola.
2. The mining rights of prospecting, research, reconnaissance, mining, treatment and trading of rough diamonds within the whole of Angolan territory, including the continental shelf and the exclusive economic zone, is exclusively granted to ENDIMA, UEE or to mixed companies of which it is part. Investment projects for the formation of mixed companies with the participation of ENDIAMA, UEE, the contract should be negotiated between ENDIAMA, UEE and the other partners.
3. The procedure in respect of foreign investments is governed by the rules which include:
  - a) In contracts concerning diamond operations a form of contract in two stages must be adopted.
  - b) For the geological-mining investigation stage, the investor should submit a statement of intent to ENIDIMA.
  - c) For the mining stage the investor should submit a technical-economic feasibility study.
  - d) The contracts of the concession of mining rights should be negotiated with ENDIAMA, who must obtain agreements with other Government Authorities, before they are submitted to the Cabinet Council by the Ministry of Geology and Mines.

4. Artisanal mining will be using exclusively artisanal means and methods without intervention of mechanical mining technology. ENDIMA authorises demarcation of areas for artisanal mining.
5. Licence for artisanal mining may only be given to Angolan citizens over 18 years of age residing for more than ten years in the commune around the areas allotted for artisanal mining. The Ministry of Geology and Mines will grant the licence and the Ministry may delegate the authority to ENDIAMA.
6. Trading of diamonds is exclusively carried out by ENDIAMA or a company formed for the specific object of trading.
7. Access to circulation of people and goods, residence and the exercise of economic activities may be controlled, limited or prohibited within the mining production areas or those reserved, established within areas with diamond occurrences.
8. The prevention and repression of illegal diamond traffic fall, in the whole of Angolan territory, to the usual State criminal prevention and repression authorities.

#### **4. Procedures and Rules for Granting Mining Title**

According to the Angola Mining Law, “Law No. 1 of 1992”, the Mining Title is the document which grants the minerals rights to carry out the mining activities in the Country. The application can be submitted to the Ministry of Geology and Mines or through his Representative body in the Provinces where the mineral deposit is located for their normal handling.

##### **4.1. Application for Mining Title**

1. The application for a Mining Title shall be submitted to the Ministry of Geology and Mines on a 25 lined paper duly stamped and, if possible, authenticated by the notarial services accompanied by the following documents and proof:
  - a) A document authenticated by the Notary legalising the activity of the Company in the Angolan territory;
  - b) Brief introduction of the Company and its organisational charter;

- c) The sketch of location on and detailed design of the required area at scales of 1:100000, 1:20000, 1:10000 or 1:250000, signed by a professionally qualified expert;
- d) Memorandum and geological report on the exploration of the area, as well as the respective economic pre-feasibility study;
- e) Investment project and working programme,
- f) Certificate of the Angolan citizenship (for nationals only);
- g) Financial Capacity Certificate and proof of Funds availability, or the existence of financial pledges required for the implementation of the project into question; and
- h) Copy of the Mining Register Certificate.

If the application is not accompanied by the document above, it will be rejected by the National Directorate of Mines, who is the executive body for appraisal. When the application has not been properly completed, it will be returned to the applicant and he will be required to complete the file within a certain time frame, each situation being assessed separately.

The Sketch of the location and detailed design should have one of the vertex of the polygon demarcated from the area linked to a clear point of reference of the ground of the area applied for, whose sides should be directed to North/South and East/West. The point of reference should be easily recognised on the ground and have an unchangeable geographical position. The detailed design should contain all the geographical elements and other important elements such as: rivers, brooks, railways, roads, and villages. The detailed designs are usually submitted to DAM at the scales mentioned in c) and maps at the scales 1:50000 and 1:100000 are also accepted.

- a) Deed or documents related to the Constitution of the Foreign Company;
- b) Status, if required at the Country of origin;
- c) Document certifying that the Company is legally constituted according to the legislation of the Country of origin; and

- d) Letter of Intent, according to the standardised form of the Angolan Foreign-Investment Office.
2. The application for the Mining Title should be based on several documents, information and documentary evidence as indicated above. After the assessment of the different documents, the investment and proposed mining plan can be approved or rejected without demands, each situation being considered separately.
3. After the approval of the different documents, the investment and mining plan on the acceptance of the application, the applicant will be notified and invited to pay through the National Department of the Budget Management of MGM the fees on the demarcation and other authenticated process required for the area applied for against the revenue receipts issued by the DAM.
4. Trips for the reconnaissance and demarcation, mentioned in the previous number will be carried out according to the programme drawn up by DAM, each situation being assessed separately.
5. After the demarcation of the area by the Licensing Department in co-operation with the Department of Mining Development, a technical report accompanied by the detailed documents and Demarcation Act will be produced for the decision of the National Director of Mines.
6. On the following ten days after the approval of the application, the applicant will have to pay the emoluments provided for on the Internal Official Communication of the Ministry of Geology and Mines on that issue, based on the revenue receipts issued by the DNM.

#### 4.2. Granting of the Mining Title

1. Once accepted the conditions and terms for the granting of the Mining Title for the mineral- resource applied for, with the National Negotiating Concessions Granting Commission of the MGM, the file is submitted by the National Director of Mines to the Minister of Geology and Mines for approval. The Mining Title contains the Taxation System applicable.
2. Once the conditions and terms for granting the Mining Title have been approved at Superior Level by the Minister of Geology and Mines or by Council of Ministers, each situation being considered separately, the Mining Title Contract is signed in two copies, between the MGM represented by DAM as the awarder and the awardee as Concessionaire. DNM will immediately communicate to the local Government of the Province where the Concession area is located for appropriate measures.
3. One of the copies of the mining Title duly authenticated with the white stamp in use in the MGM will be kept in the record file of the DAM and the other is handed over to the Concessionaire by the Department of Licensing and Mining Record of the DNM against the proof of the payment receipts of emoluments and other charges stipulated by the MGM for that purpose and will be previously communicated to Concessionaire.
4. The Mining Title granted will be valid for a period, as provided for by the contract.
5. In addition to what is provided for in article 17 of the Mining Law, the expiry of the Mining Title can take place when any of the following contravention happened:
  - a) Certificate statement of the abandonment, or definite suspension of the mining activities;
  - b) Ambition practice, that is, in a manner different from that approved on the economical mining plan of the deposits, or extraction of the mineral resources not covered by the Mining Title;

- c) If the Concessionaire, in spite of warning or fine, continues to fail to fulfil the time frame for start or restart of the mining activities, and does not submit report on his activity or resists against monitoring and inspection.
6. The Concessionaire should start the mining activity according to the mining plan drawn by him and submitted for approval to DAM, in line with the time frame provided for on the Mining Title.
7. If the working plans do not start within the stipulated time frame without plausible reasons, in writing, and accepted by DAM, penalties will be applied.
8. The Concessionaire should inform the DNM on the starting date the activities outlined on the plans approved.
9. The Concessionaire should provide DNM with reports on the monthly quarterly and annual activities accompanied by maps on the advancement of mining within the stipulated time frame, ten days after the previous month and, fifteen days after 3 months of the previous year.
10. Once the activities get started, the Concessionaire should fulfil his duties and respect the periodical monitoring and inspection of his activities by the certified experts of DNM at any time, with or without previous notice.
11. All changes to be made on the mining plans should be founded and implemented only through a previous authorisation of DNM.
12. Penalties will be applied in the case of failure to fulfil the contractual provisions of the Law on mines and taxation dues.
13. Once announced the expiry of the mining of the deposits by the Concessionaire, the area can be applied by the third parties and it is the responsibility of the MGM to

select the prospective Concessionaire through a public tender taking into account his technical, administrative and financial capacity.

14. If the situation referred to in the previous number takes place, the previous Concessionaire will be responsible for the damages caused to the State in the area of Concession.
15. The period of validity can be extended for one or more additional periods, if the Concessionaire has fulfilled the Contractual provisions. For that purpose, the authorisation for the extension will be granted through an application to be submitted by the Concessionaire to the MGM within a period of 60 days, prior to the expiry of the existing Mining Title.
16. Production and mining of mineral resources are different from those Constituting the object of the Mining rights granted, they are not allowed, except when such a mining, or production have been, formally authorised or it is inevitable due to the operations carried out according to the procedures accepted in the mining Industry.
17. The MGM reserves itself to the right of getting any mineral resources, in, addition to those solely granted by the Contract awarded to the Concessionaire within the area of Concession and the rights reserved by the MGM will be exercised in such a way that they do not endanger or interfere with the activities carried out under the Contract.
18. DNM of MGM will issue to the Concessionaire within 60 days, after the award of the Mining Title, a declaration to be presented at the Taxation Office of the Ministry of Finance, for taxation purposes according to what may be stipulated for each case separately.
19. The holders of Mining Titles should until the fifteenth day of each month, submit to the relevant Taxation office a declaration in four copies containing the quantities

produced during the previous month, its value, the bases used price and other elements needed for the estimation of the royalty due.

20. The copies of declaration mentioned in the previous numbers after having been certified by the Ministry of Finance are submitted to the declarer; two copies to the Ministry of Finance and one to the MGM.

Within sixty days after the starting of the activities, the concessionaire in co-operation with DNM should open an Occurrences Register Book.