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## Ivory Coast: New Mining Code

If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

### Contacts

Christophe Asselineau  
Paris  
+33.1.53.89.70.00  
[christophe.asselineau@shearman.com](mailto:christophe.asselineau@shearman.com)

Nicholas Buckworth  
London  
+44.20.7655.5085  
[nbuckworth@shearman.com](mailto:nbuckworth@shearman.com)

Laurence Levy  
London  
+44.20.7655.5717  
[laurence.levy@shearman.com](mailto:laurence.levy@shearman.com)

Cynthia Urda Kassis  
New York  
+1.212.848.7969  
[curdakassis@shearman.com](mailto:curdakassis@shearman.com)

Patricia G. Hammes  
New York  
+1.212.848.8269  
[phammes@shearman.com](mailto:phammes@shearman.com)

Marwan Elaraby  
Abu Dhabi  
+971.2.627.4477  
[marwan.elaraby@shearman.com](mailto:marwan.elaraby@shearman.com)

Bill McCormack  
Singapore  
+65.6230.3877  
[wmccormack@shearman.com](mailto:wmccormack@shearman.com)

Xiaogang (Sean) Wang  
Beijing  
+86.10.5922.8168  
[xiaogang.wang@shearman.com](mailto:xiaogang.wang@shearman.com)

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**A new mining code (the “New Mining Code”) was voted by the Ivorian Parliament on March 5. Current mining titles will be valid for their remaining term but their renewals will be subject to the provisions of the New Mining Code.**

**Changing the mining code had been a recurring theme with Ivorian governments over the past years and the mining companies and Shearman & Sterling had provided industry comments on previous bills at various stage of the process. This New Mining Code aims, as is often announced in such cases, at modernizing the mining sector and increasing its transparency.**

**As a whole, it follows current trends by emphasizing local community development and environment protection as well as refining mining permits application, renewal and perimeter.**

**Codifying existing local practices, the New Mining Code now expressly requires mining companies to enter into a mining convention governing the exploitation phase and guarantees the stability of its tax and customs regime. Taking into account changing market conditions, the government has not attempted to reinstate the additional profit tax or introduce a production-sharing mechanism. Additionally, it has sought to clarify the terms and conditions of the State participation in the share capital of the project company, although the provisions of the New Mining Code remain broad enough to leave a certain degree of flexibility to the government or of uncertainty for investors.**

**Whilst eagerly expected and containing important and useful provisions, its full impact cannot be entirely assessed as for instance royalties imposed on mining title holders remain set out in a separate ordinance and most of the New Mining Code provisions will require additional decrees to be fully implemented.**

## Mining Titles

The New Mining Code introduces several major changes to the regime governing mining titles:

- All title holders must now be of Ivorian nationality – exploitation permit holders must additionally be incorporated as a company.
- The State can impose the participation of a local partner in the share capital of the company holding an exploitation permit. Such requirement of a local partner is to be further detailed in a separate decree.
- Exploitation permit holders are now allowed to grant security over their title (*hypothèque*) subject to prior approval of the Ministry of Mines (mortgages and pledges over exploration permits remain prohibited).
- Previous drafts of the New Mining Code required title holders to provide a bank guarantee. The New Mining Code only requires them to keep funds (*réserve bancaire*) with an Ivorian bank prior to applying for an exploration permit and within 6 months following the grant of an exploitation permit. Specific requirements applicable to this deposit are to be further detailed in a separate decree.
- Exploration permit's duration is increased up to 12 years divided as follows:
  - initial duration of 4 years;
  - renewable twice for 3 years under strict conditions: (i) relinquishment of ¼ of the exploration area, unless the operator proves work is executed on the entire perimeter and (ii) administrative fees; and
  - additionally, an exceptional renewal for 2 years can be granted to finalize feasibility study.
- The area covered by an exploration permit is now limited to a maximum of 400 km<sup>2</sup> (1000 km<sup>2</sup> under the current legislation) and works must be initiated within 6 months following the grant of the exploration permit.
- Exploitation permits remain valid for the duration of the life of the mine, with an initial duration of up to 20 years (unchanged), but subsequent renewals are now limited to consecutive periods of up to 10 years (previously of up to 20 years).
- Exploitation permit holders must, within 60 days of the grant, enter into a 12-year mining convention (renewable for periods up to 10 years). This convention sets out the tax and customs regime whose stability is guaranteed but which must be compliant with the tax and custom provisions of the New Mining Code. Specific additional content and scope of the mining conventions remain to be further detailed in a separate decree.
- One of the most notable changes relates to the State participation in the share capital of companies holding an exploitation permit. In addition to its 10 % free-carried and non-dilutable participation, the State is entitled to an additional participation for value now limited to 15 % of the share capital of the company. However:
  - the valuation of such participation is broadly defined as it is based on “market price” (*conditions du marché*) but we note that, perhaps following comments of mining industry representatives, the reference to Abidjan local market price has at least been removed; and
  - the level of such participation remains uncertain as this 15% capped additional participation (i) does not include the shares held by companies fully- or majority-owned by the State and (ii) does not apply when the State has financially contributed to the project since the beginning of the exploration stage.

## New Rights and Obligations

While previous drafts had envisaged the use of production-sharing agreement mechanisms, the New Mining Code maintains the royalty system comprising taxes based both on surface rent and turnover of the project company (after deducting freight costs). Profits made on the sale of mining titles are now subject to taxation in accordance with the Tax Code although the New Mining Code does not state which specific provisions should be applied. The New Mining Code however has not sought to re-introduce the additional profit tax previously repealed by the 2013 Amended Finance Law.

The New Mining Code also provides new tax incentives for titles holders during both the exploration and the exploitation phases such as:

- VAT and customs for a broader range of imported goods;
- income tax exemption for the five first years following production; or
- various tax exemption such as property tax on specific land, water tax.

Profits from ore sales must now be repatriated in accordance with exchange control regulations.

Additionally, the New Mining Code contains numerous new obligations imposed on titles holders which will be further detailed in a separate decree:

- Title holders must comply with the ITIE requirements (*Initiative pour la Transparence des Industries Extractives*) and the Equator Principles - concept of corporate social responsibility is introduced;
- Exploitation permit holders must create a Mining Local Development Fund (*Fonds de Développement Local Minier*) to support local communities and implement social and economic projects as set out in a Community Development Plan (*Plan de Développement Communautaire*) developed with local administrative authorities;
- Exploitation permit holders must give priority to (i) local companies for subcontracts related to mining operation, construction, supply and services when offered on equivalent conditions (quality, price and quantities) as foreign suppliers and (ii) Ivorian staff;
- Exploitation permit holders must (i) establish and finance a training program for the local population under the terms of its mining convention and (ii) financially contribute to the training of governmental agents, engineers and geologists; and
- Exploitation permit holders must comply with specific provisions on decommissioning and environmental rehabilitation of the site including a mandatory escrow account in an Ivorian bank to finance the related costs.

The New Mining Code also creates additional causes for titles withdrawal to reflect these new obligations and increases existing penalties, including now prison sentences up to 5 years.

As indicated above, the New Mining Code will require extensive additional legislation for most of its provisions to be fully implemented. Accordingly, the impact of these changes will only be assessed over time.

**Please feel free to contact us if you would like to discuss the New Mining Code or your investments in Africa.**

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This note is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details about specific situations if desired.

114 AVENUE DES CHAMPS-ELYSEES | 75008 | PARIS

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