Client Alert

Global Mning and Metals Industry Group

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What next for Guinea's regulation?

Tracking the evolution of the Guinean mining code against the ups and downs of the global mining industry

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On April 9, 2013, the Republic of Guinea enacted amendments to its 2011 mining code, with the aim of reinforcing the message to international investors that Guinea is open for business. In a press statement, the Guinean minister of mines, Mohamed Lafine Fofana, declared the government's intention to provide for a more flexible regime and show that Guinea can adapt to a changing global economy.

The 2011 Code

Remember 2011? It was the height of the commodities boom. Mining companies were eager to develop new projects and, despite political instability, Guinea was targeted for its large and mainly undeveloped reserves of bauxite and iron ore.

In this context, the Guinean state adopted its 2011 code, which included harsher measures at the expense of mining companies. The objectives were to promote economic growth, improve transparency and to ensure that more revenue from mining went to Guinean citizens.

The 2011 code gave the state a right to participate in a large range of mining activities (including iron ore and bauxite) on a free carry basis. This free carry provision, along with several other provisions in the code, increased the cost and risk of mining in Guinea and hit the viability of existing or proposed projects.

The code took time to affect investment, but it became all too clear after the commodities boom peaked and various projects moved closer to a construction decision. Construction, of course, requires steeper capital investment than feasibility work.

There is now a clear trend towards reduced investment and greater risk aversion, with major players such as BHP Billiton and Rio Tinto re-evaluating their portfolios or exiting altogether.

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2013 amendments

The outflow of capital encouraged the Guinean government to review the 2011 code, and to introduce amendments this year. "Although not ideal, the new mining code is more investor-friendly and is a move in the right direction," stated UC Rusal's deputy chief executive Oleg Mukhamedshin in May.

The accompanying table outlines the key changes in 2013:

Impact of amendments

The 2013 amendments adjust the mechanism to apply the 2011 code to existing mining conventions that pre-dated the 2011 code (pre-existing conventions). After the 2013 amendments, only a few provisions of the 2011 code are applicable in their entirety to pre-existing conventions, as follows:

- The provisions regarding transparency, anti-corruption action, transfer of mining title, valued-added tax (VAT), environmental requirements, relations with local communities, health, hygiene and labour safety apply immediately after an amendment of the pre-existing convention; and
- The provisions requiring convention holders to provide local training and employment and give preference to local companies apply within a transitory period of up to eight years.

The applicability of all other provisions is to be negotiated between the state and the mining companies. This could be seen as a balanced approach. However, the mandatory applicability of part of the 2011 code and the 2013 amendments to mining conventions containing stabilisation clauses and/or that are entered into and ratified before the 2011 code, is questionable.

A committee has been established to review the existing mining conventions and will propose amendments to be negotiated with the title holders of each mining convention.

Key provisions that were not amended

Certain key changes that were introduced in the 2011 Code have been retained in 2013:

- The state's free-carry equity interest right in a mining project up to 15% (applicable notably for iron ore and bauxite);
- The state's right to purchase additional participation in a mining project (up to a total participation of 35%, including the free-carry interest), which is transferrable without pre-emption rights; and
- Mining companies engaged in projects must build the infrastructure for their mining operations in a public-private partnership regime.

While such provisions have been retained, the exact framework of the state's involvement remains unclear. As yet, there are no regulations to implement the 2011 code and the 2013 amendments. In particular, Guinea does not have public-private partnership (PPP) legislation or standardised policy. Furthermore, it remains unclear what shareholder rights the state will request in its joint ventures.

At a briefing in London on June 12, 2013, the various speakers (including Fofana and Guinea's economy and finance minister Kerfalla Yansane) mentioned the next steps would be to introduce regulations in order to implement the new code; the provision of better reporting tools and clearer governance rules for the national mining company; and audit improvements linked to the licensing and budgetary process.

Certain mining companies have welcomed the 2013 amendments, such as UC Rusal, which is pushing ahead with development of the Dian-Dian bauxite deposit and considering a resumption of operations at its refinery in Fria.

However, only time will tell if these amendments will be sufficient to attract mining investors back to Guinea, or encourage investors who remain in Guinea to piggy back on the development of the many projects that are close to take-off.

Key amendments to the Guinea mining code		
Provision	**Position under 2011 code**	**Amended position under 2013 amendments**
Surface of exploration permits	350km² maximum (for bauxite and iron ore)	500km² maximum (for bauxite and iron ore)
	50km² maximum (for other substances)	100km² maximum (for other substances)
Mining concession minimum initial investments	US$1 billion	US$1 billion (bauxite and iron ore)
		US$500 million (other substances)
Free transfer of infrastructure ownership to the state (includes transport, power, water and other infrastructure)	After the accounting amortisation, within a maximum limit of 20 years	Five years from the date when the mining company has reached a fair return on investment. After transfer to the state, the company retains the priority right to use such infrastructure.
State right to transport the production by sea	50% of production, directly or through other entities, in accordance with best international practice	50% of production, directly or through other entities, in accordance with best international practice and in the same conditions as the other service providers (tariff, delivery period, safety, insurance)
State off-take right	Up to 50%	Up to the equivalent of the State participation in the company
State pre-emption right	Not applicable	If the company is selling at lower than arm's length price, the state has a pre-emption right to purchase 50% at a price equal to 105% of the applicable freight on board (FOB) price.
Mining Royalty*	Bauxite: 0.55% of the LME vendor price for a 50% bauxite base grade.	Bauxite: 0.075% of the LME vendor price (3 months) for a 40% bauxite base grade.
	Iron ore: 1.5% of the official LME (3 months).	Iron ore: 3% of the price, as measured by Platts China Iron Fines CFR 62%, minus the transportation price, as measured by Baltic Exchange Capesize Index Route C3-Tubarão/Oingdao.
	The triggering event is removal from stock.	The triggering event is removal from the mine perimeter.
Export tax*	Not applicable	Bauxite: 0.075% of the LME vendor price (3 months) for a 40% bauxite base grade.
		Iron ore: 2% of the price, as measured by Platts China Iron Fines CFR 62%, minus the transportation price, as measured by Baltic Exchange Capesize Index Route C3-Tubarão/Oingdao.
Corporate tax	The generally applicable rate (35%)	30%
Custom duties	Some goods are exempt during construction, then the rate is 6% on material and equipment for transformation of mineral resources and 8% on material and equipment for extraction of mineral resources.	Some goods are exempt during construction, then the rate is 5% on material and equipment for transformation of mineral resources and 6.5% on material and equipment for extraction of mineral resources.
		Heavy fuel oil for the extraction, concentration and processing of the ore is exempt from VAT and customs duties.
Stabilisation of tax and customs regime in mining conventions	10 years; meaning that the title holders cannot be penalized by changes resulting in an increase in the tax burden.	15 years; meaning that during this period the rate of taxes will not be increased or reduced.
		Note: The text exhaustively notes the tax rates subject to stabilisation.

* Note: Other rates apply to different substances apart from bauxite and iron ore.

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