ICLG

The International Comparative Legal Guide to:

Mining Law 2014

1st Edition

A practical cross-border insight into mining law

Published by Global Legal Group, with contributions from:

Amarchand & Mangaldas & Suresh A. Shroff & Co.
Ashurst Australia
Barros Silva Varela & Vigil Abogados Ltda.
Bloomfield-Advocates & Solicitors
Cabinet Emery Mukendi
CMS Cameron McKenna
Coelho Ribeiro & Associados
Coronel & Pérez
Dentons
FBL Advogados
Ferreira Rocha Advogados in Partnership with Abreu Advogados
Fortun Narvasa & Salazar
García Sayán Abogados
GENI & KEBE
Ghelilal & Mekerba
Hajji & Associés
Heredia, Oneto Gaona, Lede Pizzurno + Terrel Abogados
Holland & Hart, LLP
John W. Ffocks & Co
Koep & Partners
Latournerie Wolfrum & Associés
Mortimer Blake LLC
Pachiu & Associates
Pellerano & Herrera
RB Abogados
Rex Attorneys
Ricaurte Rueda Abogados
TozziniFreire Advogados
Uría Menéndez
Werksmans Inc
General Chapters:

2. Title – Tom Eldridge & Imogen Harding, Dentons UKMEA LLP
3. Overview of the West African Mining Sector – Mohamed Dieng, GENI & KEBE

Country Question and Answer Chapters:

4. Algeria – Ghellal & Mekerba: Amine Ghellal
5. Angola – FBL Advogados: Djamila Pinto de Andrade
6. Argentina – Heredia, Oneto Gaona, Lede Pizzurno & Terrel Abogados: Florencia Heredia & Maria Laura Lede Pizzurno
7. Australia – Ashurst Australia: Adam Conway & Stuart James
8. Brazil – TozziniFreire Advogados: Luiz Fernando Visconti & Eduardo Serafini Fernandes
11. Canada – Dentons Canada LLP: Guy Paul Allard & Alan Monk
13. Colombia – Ricaurte Rueda Abogados: Margarita Ricaurte de Bejarano & Andrés Jaramillo Velasquez
15. Congo - Kinshasa – Cabinet Emery Mukendi: Fulgence Kalenga & Edmond Cibambo Diata
16. Dominican Republic – Pellerano & Herrera: Luis Rafael Pellerano & Mariangela Pellerano
17. Ecuador – Coronel & Pérez: Daniel Pino Arroba & Pedro José Izquierdo
18. Guinea – John W. Ffooks & Co: John Ffooks & Richard Glass
19. India – Amarchand & Mangaldas & Suresh A. Shroff & Co.: Vandana Shroff & Alice George
20. Ivory Coast – John W. Ffooks & Co: John Ffooks & Richard Glass
23. Mali – GENI & KEBE: Mouhammed Kebe & Hassane Koné
27. Mozambique – Ferreira Rocha Advogados in Partnership with Abreu Advogados: Rodrigo Ferreira Rocha
28. Namibia – Koep & Partners: Hugo Meyer van den Berg & Peter Frank Koep
29. Nigeria – Bloomfield-Advocates & Solicitors: Kunle Obebe
30. Peru – García Sayán Abogados: Diego Grisolle & Nancy Ogata
32. Portugal – Coelho Ribeiro & Associados: Rui Botica Santos & Luis Moreira Cortez
<table>
<thead>
<tr>
<th>Country</th>
<th>Company</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>Pachiu &amp; Associates: Laurentiu Pachiu &amp; Georgiana Sava</td>
<td></td>
</tr>
<tr>
<td>Senegal</td>
<td>Latournerie Wolfrom &amp; Associés: Christopher Dempsey &amp; Johanna Cuvex-Micholin</td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>Werksmans Inc: Christopher Ian Stevens</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Uría Menéndez: Mariano Magide Herrero &amp; Carlos de Miguel Perales</td>
<td></td>
</tr>
<tr>
<td>Tanzania</td>
<td>Rex Attorneys: Mwanaidi Sinare Maajar &amp; Tabitha Maro</td>
<td></td>
</tr>
<tr>
<td>Ukraine</td>
<td>CMS Cameron McKenna: Vitaliy Radchenko &amp; Inna Antipova</td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Dentons UKMEA LLP: Tom Eldridge &amp; Sam Boileau</td>
<td></td>
</tr>
<tr>
<td>USA</td>
<td>Holland &amp; Hart, LLP: Robert A. Bassett &amp; Andrew A. Irvine</td>
<td></td>
</tr>
</tbody>
</table>
1 Relevant Authorities and Legislation

1.1 What regulates mining law?

Under Moroccan law, mining law is regulated by the Dahir of 16 April 1951 promulgating the Mining Rules and its applicable decrees. The mining industry is also governed by orders and decrees issued by relevant ministers on specific points of the mining activity such as: (i) the order dated April 1951 determining the conditions of the deposit and registration of research permits requests; or (ii) the decree of the Minister of Trade, Industry, Mines, Crafts and Merchant Navy n° 519-61 of 19 September 1961 modifying the order of the Minister responsible of mines dated 5 May 1961 determining the modalities of the constitution of the commissions relating to the statute of the staff of mining firms and companies of research and operation of hydrocarbons.

1.2 Which Government body/ies administer the mining industry?

The mining industry is administered, under Moroccan laws, by the Ministry in charge of mines, assisted by the office of mining service (Bureau du Services des Mines) located in Rabat.

1.3 Describe any other sources of law affecting the mining industry.

At the outset, the mining industry is affected by common law in Morocco, which is constituted by the Moroccan Dahir of obligations and contracts (the “DOC”). Indeed, the mining industry results in the existence of rights that may be subject to agreements between the owner of the right and third parties (ex: assignment) subject to the authorisation of the Minister responsible of mines. Moreover, the permit and the concession are considered, by law, as real estate properties. Therefore, the transactions operated thereon are affected by the provisions of laws applicable to real estate properties, such as the Dahir dated 1913 relating to the registration of real estate properties as amended by law n° 14-07, to the extent compliant with the provisions of the Mining Rules and without prejudice to such provisions (article 33 of the Mining Rules). Furthermore, since the mining sector is tightly related to the environment, the laws governing the environment in Morocco are likely to affect the mining industry.

2 Mechanics of Acquisition of Rights

2.1 What rights are required to conduct reconnaissance?

Unlike exploration and mining, the Mining Rules do not directly address reconnaissance. As such, it should be noted that within the context of the mining permit, the Mining Rules indicate that the applicant for a mining permit has to produce a programme of works that it contemplates to execute. Such programme shall indicate the pursuit of reconnaissance.

Nevertheless, law n° 21-90 relating to hydrocarbons submits the conduct of reconnaissance to the obtaining of a prior authorisation of reconnaissance.

2.2 What rights are required to conduct exploration?

Under Moroccan law, especially pursuant to the provisions of article 8 of the Mining Rules, works for the exploration of mines can only be performed by virtue of a permit of exploration. However, article 7 of the Mining Rules provide for the possibility of the law to designate some lands in which exploration and operation of mines may only be determined by way of tender, or are reserved to the State. Besides, it should be noted that the exploration or research permit is only delivered for a determined category of mines which is determined in the permit.

2.3 What rights are required to conduct mining?

In order to conduct mining, it is required to obtain a permit of operation of the mines of all categories except for petroleum and phosphate. Moreover, the permit for the operation of mines is only delivered to the holder of an exploration permit. In case the mining permit is delivered, then the exploration permit is annulled. Otherwise, if the mining permit is refused, then the exploration permit is also annulled (articles 52 and 53 of the Mining Rules).

2.4 Are different procedures applicable to different minerals?

Yes, there are different procedures applicable to different minerals. In this regard, it should be noted that Moroccan law sets out a classification of minerals by categories and determines the applicable procedures for each category.
Generally, all categories are subject to the same procedures, except the fourth category (natural oil and gas), which is submitted to different procedures set out by the provisions of law n° 21-90 on hydrocarbons. For more details, please see our response to question 2.5 below.

Besides, article 24 of the Mining Rules indicates that the permit of exploration is subject to conditions when it has to be delivered with respect to the first and seventh categories, respectively being: on the one hand coal and lignite and other solid fossil fuels, except schistes and bituminous limestone; and on the other uranium, radium, thorium, cerium, rare earths and non-radioactive substances which may be used in atomic energy such as beryllium and boron.

In this case, the applicant shall justify its technical and financial capacity. Moreover, it shall (i) present a general programme for works, adapted both to the duration of the permit and the geographical and geological characteristics of the territory concerned by the application, and (ii) undertake to devote to its research a financial minimum effort.

2.5 Are different procedures applicable to natural oil and gas?

Yes, there are different procedures applicable to natural oil and gas. The latter is governed by the provisions of the law n° 21-90 relating to the exploration and operation of hydrocarbon deposits. Article 4 of such law provides that geological, geophysical, and geochemical reconnaissance, search for hydrocarbons deposits and operation of the latter are subject to the obtaining of, as the case may be, reconnaissance authorisation, a research permit or a concession of operation. Those are granted in accordance with provisions of the aforementioned law 21-90 which provides, for example, that the granting of a research permit is subject to the entry into a petroleum agreement with the State.

3 Foreign Ownership and Indigenous Ownership Requirements and Restrictions

3.1 Are there special rules for foreign applicants?

No, there are no special rules for foreign applicants. However, when the applicant is a foreign entity, then it shall have a representative in Morocco, notably for the accomplishment of the administrative formalities.

3.2 Are there any change of control restrictions applicable?

Yes, there are change of control restrictions. Indeed, the holder of a permit of exploration of mines of the fourth category (liquid, gaseous, and solid hydrocarbons excluding schistes, and bituminous limestones) as well as the holder of mining permits are obliged to inform the Minister responsible of mines, by a registered letter with a receipt of acknowledgment, prior to the contemplated change of control.

The contemplated change of control may not take place prior to the expiry of a period of two months, as from the date of receipt of acknowledgment. During this period of two months, the Minister responsible of mines may notify the holder of the permit that the change of control will result in the withdrawal of the permit. (Article 16 bis of the Mining Rules.)

3.3 Are there requirements for ownership by indigenous persons or entities?

No, there are no requirements for ownership by indigenous persons or entities. However, it should be noted that pursuant to the provisions of article 12 of the Mining Rules, the permits and concessions do not prevent from the exercise by indigenous of their customary rights for the extraction of some materials.

3.4 Does the State have free carry rights or options to acquire shareholdings?

No. The State does not have free carry rights or options to acquire shareholdings except with respect to hydrocarbons. In this case law n° 21-90 relating to the exploration and operation of hydrocarbons provides that the State will detain, by virtue of the petroleum agreement entered into with the holder of the permit or concession, a beneficial interest in the research permit or the operation concession. The rate of such beneficial interest will be determined in the above-mentioned agreement and may not be greater than 25 per cent from said permit or concession.

Besides, it should be noted that article 6 of the Mining Rules provides that the research and operation of phosphates is restricted to the State.

3.5 Are there restrictions on the nature of a legal entity holding rights?

No, there are no restrictions on the nature of a legal entity holding rights.

4 Processing and Beneficiation

4.1 Are there special regulatory provisions relating to processing and further beneficiation of mined minerals?

Article 36 of the Mining Rules provide for the possibility for the holder of a permit of exploration to dispose of the product of his research after declaration to the head of the mining department. The holder of a permit of exploration may be prohibited from disposing of the product of his/her research through a decree, if it fails to comply with the obligation of prior declaration to the head of the mining department.

4.2 Are there restrictions on the export of minerals?

To the best of our knowledge, there are no restrictions on the export of minerals. However, there is an ad valorem tax that has to be paid in relation to the export of minerals. This results from the provisions of a joint decree of the Minister of Energy and Mines and the Minister of Finances n° 778-79 dated 29 June 1979.

5 Transfer and Encumbrance

5.1 Are there restrictions on the transfer of rights to conduct reconnaissance, exploration and mining?

Yes, there are restrictions on the transfer of rights to conduct reconnaissance, exploration and mining. Indeed, pursuant to the provisions of article 9 of the Mining Rules, inter vivos mutations or leasing with respect to mining titles are subject to the prior consent
of the Minister responsible of mines. Furthermore, it indicates that no one can be allowed to become, by inter vivos mutations or leasing, the holder of a mining title, unless it complies with the conditions set out by law for the granting of such title. Mutations and leasings which have been granted the prior authorisation of the Minister responsible of mines shall be registered with the land registry on the mining title.

5.2 Are the rights to conduct reconnaissance, exploration and mining capable of being mortgaged to raise finance?

As indicated in our response to question 1.3 above, mining titles (permits and concessions) are considered as real estate by law (article 9 of the Mining Rules). However, the law only expressly allows the constitution of mortgages upon concessions; it is silent with respect to permits. As such, it seems that mortgages may not be constituted on permits, but only on concessions.

6 Dealing in Rights by Means of Transferring Subdivisions, Ceding Undivided Shares and Mining of Mixed Minerals

6.1 Are rights to conduct reconnaissance, exploration and mining capable of being subdivided?

The Mining Rules are silent with respect to the subdivision of reconnaissance, exploration, mining rights. However, law n° 21-90 relating to hydrocarbons expressly provides that the total or partial sale of beneficial interests in an exploration permit or an operation concession shall cover the entire perimeter upon which the permit or the concession has been granted.

As a consequence, and given the authorisation to partially sell beneficial interests in permits and concession, it seems that nothing prohibits from subdividing reconnaissance, exploration, or mining.

6.2 Are rights to conduct reconnaissance, exploration and mining capable of being held in undivided shares?

Yes, the rights to conduct reconnaissance, exploration, and mining are capable of being held in undivided shares. Nevertheless, the holders of such undivided shares should designate a representative which has to be declared to the head of the mining department.

6.3 Is the holder of a primary mineral entitled to explore or mine for secondary minerals?

The holder of a permit or a concession is only entitled to conduct exploration or mining with respect to the category upon which its permit or concession is granted. However, the exploration or mining permit automatically extends to all mineral substances of the category designed by the permit, at any depth and in all the perimeter of such permit or concession.

6.4 Is the holder of a right to conduct reconnaissance, exploration and mining entitled to exercise rights also over residue deposits on the land concerned?

To our view, the holder of a right to conduct reconnaissance, exploration, and mining is entitled to also exercise rights over residue deposits from its own reconnaissance, exploration, and mining on the relevant land.

6.5 Are there any special rules relating to offshore exploration and mining?

To the extent of our knowledge, there are no special rules relating to offshore exploration and mining.

7 Rights to Use Surface of Land

7.1 What are the rights of the holder of a right to conduct reconnaissance, exploration or mining to use the surface of land?

Pursuant to the provisions of article 9 of the Mining Rules, a permit or concession constitute real estate properties and are distinct from the property of the soil. As such, the holder of a permit or concession is only granted the right to conduct exploration or mining within the defined perimeter of his/her title, and without prejudice of the right of the owner of the land. In this regard, article 11 of the Mining Rules authorises the owner of the land to claim the minerals that have been extracted from its land and which are not used by the holder of the title. This claim can only be made upon payment of an indemnity to the holder of such title.

7.2 What obligations does the holder of a reconnaissance right, exploration right or mining right have vis-à-vis the landowner or lawful occupier?

The holder of reconnaissance right, exploration right, or mining has several obligations vis-à-vis the landowner or lawful occupier:

- First of all, it should be noted that after granting of a permit or a concession, the holder of such permit or concession has to seek an amicable settlement with the landowner in respect of the conditions of the occupation and conduct of the works relating to its permit.
- Should the holder of the permit/concession and the landowner fail to reach an amicable settlement, then the holder of the permit/concession may be authorised, by a decree to temporarily occupy the lands located outside of the perimeter of the permit/concession and which are necessary for the conduct of the works.
- Such temporary occupation may only occur in exchange of the payment by the holder of the permit/concession of an annual indemnity determined by the judge. Such indemnity is payable in advance at the beginning of each year of occupation.
- Besides, no exploration or mining may be conducted within an area of 50 meters surrounding the closed properties or an equivalent device.

7.3 What rights of expropriation exist?

Under Moroccan law, especially pursuant to the provisions of article 93 of the mining Rules:

- Works may be prohibited without the possibility for the holder of the permit or the concession to claim any indemnity. There is no exception to this rule except in the case where the holder of the permit or the concession is obliged to demolish or abandon works regularly established by him. In this case the indemnity will amount to the sums disbursed by the holder of the permit or concession for the implementation of such works.
- The existence of a permit or concession does not prevent the performance of public works within the perimeter of such permit or concession. In this case the holder of the permit or
concession is only entitled to the reimbursement of the expenses incurred by him and made unserviceable by the performance of such public works.

8 Environmental

8.1 What environmental authorisations are required in order to conduct reconnaissance, exploration and mining operations?

First of all, pursuant to the provisions of article 2 of law n° 12-03 relating to the studies of impact on the environment, undertaking mining activities is subject to the conduct of a survey on the impact of such activity on the environment.

Besides, pursuant to the provisions of article 24 of the law n° 13-03 on the pollution of the air, mining is subject to compliance with some qualitative restrictions to the extent that it is likely to adversely affect the air and pollute it.

8.2 What provisions need to be made for the closure of mines?

Neither the Mining Rules nor the environment laws directly address the provisions that need to be made for the closure of mines. In this context, it should be noted that as a matter of principle, the administration may impose to take all necessary actions for the purpose of the protection of the environment.

8.3 What are the closure obligations of the holder of a reconnaissance right, exploration right or mining right?

The Mining Rules are silent with respect to the closure obligations of the holder of a reconnaissance right, exploration right, or mining right.

8.4 Are there any zoning requirements applicable?

The precise zoning duly approved by the public authorities for a permit for reconnaissance, exploration, and mining is the preliminary step before awarding a mining licence or permit.

9 Native Title and Land Rights

9.1 Does the holding of native title or other statutory surface use rights have an impact upon reconnaissance, exploration or mining operations?

Yes, the holding of native title or other statutory surface use rights may have an impact upon reconnaissance, exploration, or mining operations. Any such conflicting situation should be resolved amicably or judiciably before any such use of surface rights.

10 Health and Safety

10.1 What legislation governs health and safety in mining?

Health and safety in mining are principally governed by the provisions of Dahir n° 1-60-007 bearing status of the staff of mining firms.

Besides, it should be noted that health and safety in mining are also governed by the provisions of article 97 of the Mining Rules.

While the Mining Rules are silent on the obligations of owners, employers, managers, and employees in relation to health and safety, Dahir n° 1-60-007 on the status of the staff of mining firms sets out the obligation of the designation of representatives in charge of safety in mining firms.

Articles 26 et seq. of the above-mentioned Dahir provides that such representatives, called “safety representatives” (délégués à la sécurité) are vested with a permanent mission and have to permanently exist in mining firms.

The safety representatives are in charge, inter alia, of the visit of underground works, the visit of the locations where accidents occurred and report the infringements of the law with respect to the work of children, hours of work, and weekly rest.

11 Administrative Aspects

11.1 Is there a central titles registration office?

Yes, there is a Central Titles Registration Office which is the Office of the Mines Department in Rabat (Bureau du Service des Mines).

Besides, as concessions and permits are considered by the law as real estate, they are registered in the land registry.

11.2 Is there a system of appeals against administrative decisions in terms of the relevant mining legislation?

Yes, the decisions of the head of the mining department ruling on the requests of permits or their renewal, or deciding the annulment or the withdrawal of permits are subject to an application for reconsideration (recours en réformation), within three months from the date of the notification to the applicants of the decision of the head of the mining department with respect to their request.

The above-mentioned application for reconsideration is made before the Director of Industrial and Mining Production. The latter will review the decision of the head of the mining department in light of the assent of the Advisory Committee on Mines.

12 Constitutional Law

12.1 Is there a constitution which has an Impact upon rights to conduct reconnaissance, exploration and mining?

To the extent of our knowledge, the constitution of the Kingdom of Morocco has no direct impact on the conduct of reconnaissance, exploration, and mining.

12.2 Are there any State investment treaties which are applicable?

To the best of our knowledge, there are not yet applicable mining specific State treaties.
13 Taxes and Royalties

13.1 Are there any special rules applicable to taxation of exploration and mining entities?

Yes, there are special rules applicable to taxation of exploration and mining entities. Pursuant to the provisions of the first article of decree n° 2.57.1647 dated 17 December 1957 determining certain rules of application of the provisions of the Mining Rules, there are special taxes that have to be paid in relation to the institution, the renewal and the exceptional extension of mining permits. Moreover, an annual tax has to be paid in connection with concessions and the extended operation permits.

13.2 Are there royalties payable to the State over and above any taxes?

To the extent of our knowledge, there are no royalties payable, in addition to the taxes indicated above, to the State over and above any taxes.

Amin Hajji
Hajji & Associés
28 Boulevard Moulay Youssef
Casablanca 20000
Morocco
Tel: +212 522 4874
Fax: +212 522 4874 75
Email: a.hajji@ahlo.ma
URL: www.ahlo.ma

Salma Bedraoui Idrissi
Hajji & Associés
28 Boulevard Moulay Youssef
Casablanca 20000
Morocco
Tel: +212 522 4874
Fax: +212 522 4874 75
Email: s.bedraoui@ahlo.ma
URL: www.ahlo.ma

Amin Hajji and his partner, Myriam Bennani, co-animate a team formed of seven lawyers.

The Law Firm Hajji & Associés provides legal services to mainly international corporations. The firm’s activities cover the main business law subjects.