

POLICY INFORMATION FOR THE GUINEAN MINING SECTOR

The new era of change has forced decision-makers to modify the mining policy of our country towards improved contribution of this sector in the national economy.

The principle is that a mining company is only profitable for a country when it has entered into its exploitation phase, due to the economic and financial consequences thereof. Prior to this phase, the profits for the treasury department proceed the legal and economic requirements of the Search phase, which are outlined in the mining code in force.

SUMMARY OF MINING PRACTICES

In taking stock of the mining policy in force in our country during its 50 years of independence, it can be observed that there were only seven (7) factories between the 1st regime and the 2nd, with only one in 26 years under the second regime.

Holdings of Guinea in the commercial capital of mining operation companies, although majority stakeholders, were not remunerated in line with the regulations for commercial entities due to special agreements between shareholders in these companies, at the initiative of the mining company. The status of a mixed-economy mining company corresponded more to the political context of the period due to its social impact, rather than a priority of generating resources for investment, particularly since strategies for increasing foreign capital investment in our country were very restrictive.

At this period, the State agreed to derogations which are still today common practice in our mining policy. This was notably the case for the non-remuneration of dividends from State shares in the various commercial forms used in the mining sector in Guinea. Similarly, in October 1963, the allocation of one third of the national mining sector to Harvey Aluminium (ALCOA) for exploration prevented development of any mining project in the Boké region for almost 40 years.

Finally, State resources in the mining sector only comprised the fiscal package which is only beneficial when concerning mining exploitation. These practices were maintained during the second regime, despite adoption of economic

liberalism which was understood in the sector as a withdrawal of the State from all mining activities, so as to encourage foreign capital investment in our country for mining.

NON OPERATION OF THE MINING CODE IN FORCE

Adoption in 1995 of the Guinean Mining Code consolidated the practices which were favourable towards invasion of the mining sectors, especially those for solid substances such as Bauxite or Iron Ore, by foreign private entrepreneurs, through a strategy of freezing resources, initiated searches without going any further and speculated on the stock markets for geological results as assets of companies without any counterparty for the Guinean State.

These actions were possible due to the complacency of decision makers, who after setting out the legislative provisions of our mining code in 1995, did not apply the regulations or draft deeds published by the Guinean State so as to establish a mining company in Guinea, whilst the enforceable nature of these regulations is confirmed by article 2 of said Code.

This shortcoming by the parties in our mining code seriously hindered the interests of the State, all the more so since article 3 of this Code only conferred sub-surface rights to a mine and only acknowledged the ownership of substances extracted by the mining entrepreneur for commercial purposes (art. 3(2)).

The legal consequences is that immediately following search operations, the Guinean State holds rights over any income generated by entrepreneurs who hold a mining permit in Guinea. However, it is necessary that an implementing decree for this mining provision set forth this obligation in mining permits, which include unilateral administrative documents and mining conventions.

This is additionally the case for State initiatives in the mining sector of which the principle is set forth under article 9 which recognises that the State is entitled to undertake mining activities directly in its own name or by the intermediary of a State-owned body acting alone or in conjunction with third parties.

In practice this provision would allow the State to establish heritage companies for all types of mining substances, but also to develop applied geological

services for the geological inventory of the national mining sector and to determine the quality of substances and quantities available in line with the choices of our mining policy. This would allow permits to be issued for these areas and to constitute portfolios for these companies which could be traded on the stock market so as to raise capital and seek partners with third parties for our country.

It should be stated that the main cause for the loss of earnings by the Guinean State is the lack of experience of the managers in this sector in terms of speculating on natural resources. In other words, application of this code would allow the State to actually earn more than the fiscal package. Because the partnership between a heritage company and third parties can allow the State to hold a majority stake in shares of operating companies in the framework of a social agreement freely negotiated for the partial transfer of assets in said company.

The absence of the State favoured the invasion of multinationals in terms of exploitation of our substances with the only concern of speculation on the stock market of mining permits conferred in our country, without any investment for exploitation.

Recent innovation undertaken since February 2008 was a reaction from the authorities to this situation through the sanction of Rio Tinto, and encouragement of investment by B.S.G.R/ C.V.R.D so as an industrial unit be created in the mining sector of our country as soon as possible. According to the forecasts of Rio Tinto, Iron Ore from Guinea is not expected to be on the market for raw materials before 2021.

Every effort by public authorities in Guinea so as to remedy this situation, notably attempts at amending mining conventions and other special agreements, remained in vain for legal reasons or due to a lack of reference texts.

It results from that which precedes that the Guinean State can effectively take profit from its mining resources at all phases of mining activities. However, it is necessary that it be consequent in defining the standards and organisational framework of these activities, and with a guarantee for third parties, and the

legal security of investment in our country. In this regard, we can then raise private or public capital for the sector.

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