LEGAL ENVIRONMENT

JOGMEC New Caledonia Mining Investment Seminar
24 April 2008
Tokyo

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Key facts and figures (source ADECAL)

- 18,500 Km2
- GDP 5.7 billion US$
- GDP per Capita 24,800 US$ (Australia 30,000 US$ and New Zealand 23,000 US$)
- Population 240,000
  - Melanesians 45%
  - Europeans 35%
  - Polynesians 13%
  - Asians 5%
  - Other 2%
- Language: French
- Currency: Franc Pacific Franc (XPF) Fixed rate with Euro
Introduction: New Caledonia Sophisticated Regulations

Sophisticated Regulations

• Self determination process
  • Noumea Agreement of May 1998
  • Organic Law of March 1999
• Powers progressively transferred to New Caledonia
• Civil (French Law) legal system
• Safe legal framework
• Transitional adjustments
Heads of powers progressively transferred to New Caledonia

Transferred to New Caledonia
- Taxation, Labour law, Access to work for foreigners, Native titles, insurance, mining

Remaining with the French State
- Justice, Education, Immigration, Police, Civil and Commercial Law

Transferable to New Caledonia
- Education, Civil and Commercial Law
Introduction: New Caledonia Sophisticated Regulations

Legal Framework

- Mining
- Corporate law
- Employing people
- Tax
The regulations evolution

- From 13 November 1954 to 1 January 2000, the French State had authority to rule on most of the mining activities.

- Since 1 January 2000, transfer of powers from France to the New Caledonia government and provinces.
Division of powers between the different levels of Government in New Caledonia

- **The French State**
  - Sole authority over substances useful for research/development of atomic energy
  - Substantial influence in practice: the High Commissioner sits on all mining bodies

- **New Caledonia**
  - New Caledonia Government: The DIMENC is the Government Body responsible for regulation of mining sector. It also handles all mining applications and is responsible for the drafting of the New Mining Law
  - The Three Provinces: They have delegated their respective authority to the DIMENC to be responsible for the mining sector
The New mining Law

- Expected to be adopted by the New Caledonian Government and sent before the New Caledonian Congress for final approval by the end of 2008

- To homogenise and simplify the laws and principles regulating the administration of mining matters into one code

- To facilitate a conducive environment for foreign investors and conducive operating and trade environment for mining operators with various tax incentives and reduced restrictions on foreign miners
Mining Legal Framework

- Personal Mining Authorisation
- Exploration Permit
- Mining Titles (mining concession)
Step 1: Personal Mining Authorisation

Step 2: Exploration Permit

Step 3: Mining Titles
Mining Rights: Personal Mining Authorisation (APM)

Does not confer any intrinsic right to prospect or mine in relation to the minerals covered by it. Merely, an APM permits its holder to:

- Qualify for a right to prospect
- Apply for new exploration permits
- Request either the transfer of existing exploration permits to a Mining Concessions
- Lease their Mining concessions (Amodiation); and export ore
- Once the APM has been obtained, the holder can apply for mining titles (Exploration permit or Mining Concession)
Mining Rights: Exploration Permits

- The New Mining Law will provide for a single type of exploration permit (so far, three categories of permits have been proposed but two of them are not in use anymore)

- After the exploration license has been obtained and conclusive tests carried out, the holder of the APM can apply for a mining title (Mining Concession)
Mining Legal Framework

Mining Titles

Confer to their holders exclusive rights to prospect, explore and mine mineral deposits covered by the Exploration Permit.

- **Mining Concessions**
  - Issued for a maximum term of 50 years - shortest term 6 years
  - Specific procedure and formal requirements
  - Grant its holder a real property right (highest property and security right)
Procedure for Granting APMs and Mining Titles

- **Domicile and Legal Agent**
  - Any applicant must elect domicile in Noumea
  - Any permit holder or concessionaire must maintain a legal agent in Noumea

- **Nationality of the Company:** incorporated either under French law or under the laws of another Member State of the European Economic Community, (unless exemption)

- **Nationality of Company Directors and Officeholders:** must be nationals of a member state of the European Union (unless exemption - to be abolished under the New Mining Law)
Lease of Mining Titles ("Amodiation Contract")

- **Definition of the Amodiation contract:** holder of a mining title leases his/her title to a third party
- **Need for administrative authorisation (valid 3 years)**
- **Length of the amodiation contract**
  - An Amodiation contract is typically concluded for a duration of about 10 years
  - An authorisation can be renewed every 3 years (renewals are not limited)
- **The holder of the amodiated title can, upon prior administrative authorisation, sell these titles to a third party**
Export control and procedures

- **Under the existing Mining Law:** Every transaction related to nickel ore is subject to the exporter holding sale authorisation, regardless of whether the ore is for export or for sale between domestic parties.

- **Limitation of ore export**
  - New Caledonia encourages local transformation of mineral resources in order to localise the added value within the territory.
  - The New Mining Law may limit the export of high grade saprolite and laterite ore to facilitate the development of local metallurgical plants.
  - The New Mining Law should simplify the export authorisation procedure.
Environmental legal framework

- The New Mining Law legal environmental framework should deal with the establishment of:
  - A financial guarantee to ensure rehabilitation of mining sites
  - Environmental best practice guidelines
- Most of the current mining or metallurgical operations in New Caledonia already apply such provisions as a measure of good mining practice reasons and because some metallurgical plants request such environmental compliance from their ore suppliers as a requirement of their License to operate
• Commercial companies are divided between limited liability companies and unlimited liability companies

• Distribution of dividends to an overseas parent company:
  • Not limited by law
  • Absence of tax treaties between New Caledonia and all other countries except France may create tax issues
  • Alternative legal solution or tax route may need to be taken in consideration
  • A presence in New Caledonia can also be set-up through a branch or a representative office
Limited Liability Companies (Sociétés de Capitaux)

- **Characteristics**
  - Minimum capital divided into transferable shares
  - Limitation of liability onto their shareholders to the extent of their shareholding

- **Formation & registered capital of S.A.R.L, S.A., S.A.S.:**
  - **S.A.R.L:** used for small French companies formed by individuals. No minimum registered capital required
  - **S.A.:** used for companies having more important operations but complicated to operate (at least 7 shareholders). Minimum 37,000€
  - **S.A.S:** generally used for fully owned subsidiaries. Great flexibility of operation (ex: sole shareholder)
Branch of a foreign company

- The opening of a branch of a foreign company is subject to prior approval if the investor is not a resident of one of the EU countries

- The choice between a branch and a subsidiary is not neutral from a taxation standpoint
Power already transferred to the Territory

- Specific employment regulations which deal expressly with:
  “companies registered outside of New Caledonia which contract or provide services to the mining sector in New Caledonia and which employ their own staff” (Loi du Pays 2002-021 dated 20 September 2002; and Deliberation 307 dated 27 August 2002)

- New Industrial Code gathering all the existing regulations (Code du travail de la Nouvelle-Calédonie) will come into force on 1st May 2008
“Employing” People in New Caledonia

- These specific employment regulations are mandatory regardless of:
  - Terms and conditions of employment agreements
  - Industrial law of the home country

- 3 aspects:
  - Employment contract
  - Business immigration
  - Termination of employment
Employment contract

- It is recommended to draft a specific contract compliant with New Caledonian regulations for any employee assigned to New Caledonia.
- It is compulsory to draft an employment contract in French compliant with New Caledonian regulations to any employee recruited locally.
- Specific contracts exist for the purpose of mining projects.
Business immigration

- Various types of visas
- Shared power between New Caledonia Government and French State
  - Control of immigration ➔ French State
  - Work permit ➔ New Caledonian Government
- 3 Administrations involved Complex and time consuming procedures
- Business immigration from “Immigration risk” countries (Third Countries National)
- Business visa exemptions
- Stringent control on site and criminal penalties
Termination of employment

• Conditions of termination are organised by law
• Specific mandatory procedure needs to be followed to terminate an employment contract before the term
• Any breach of the legislation procedure will put the employer at risk
Personal tax

- Individual resident in New Caledonia is liable for NC Income tax on their worldwide income
- Progressive rates applicable
- Absence of double tax treaty with most countries except France
Corporate tax

- Industrial and commercial profit earned in New Caledonia
- Financial year runs from 1st January to 31st December
- Corporate tax rate at 30%
- Absence of double tax treaty with most countries except France
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