

## **Mining Code**

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**Ordinance No 93-16 of 2 March 1993 related to the Mining Law**

CONSIDERING the **Constitution**

CONSIDERING fundamental law No I/CN, dated 30 July 1991 on the legal status of the National Conference;

CONSIDERING Act No III/CN, dated 9 August 1991 on the attributes of sovereignty of the National Conference;

CONSIDERING fundamental law N° XXI/CN, dated 29 October 1991 on government structure during the transition period;

The Council of Ministers heard;

The High Council of the Republic considered and adopted;

The Prime Minister signed the following Ordinance:

TITLE 1

**GENERAL PROVISIONS**

CHAPTER 1

**INTRODUCTORY PROVISIONS**

ARTICLE 1 – SCOPE OF THE MINING LAW

Exploration, prospecting, mining, possession, detention, movements, marketing and processing of mineral or fossil substances on the national territory of the Republic of Niger as well as the taxation system applicable to such activities shall be governed by the provisions of this ordinance, including its implementing law (the Mining Law). Shall be excluded from the scope of this ordinance such activities related to liquid or gaseous hydrocarbons, and underground waters shall be governed by special provisions of other laws, unless otherwise provided for in this ordinance.

Unless otherwise stated, this order shall not preclude the application of legislations and regulations.

Art. 2. – STATE PROPERTY

On the territory of the Republic of Niger, natural deposits of mineral or fossil substances in the subsoil or on the surface shall be the exclusive property of the Government of Niger and are not liable to any form of private ownership, subject to the provisions of this ordinance.

CHAPTER II  
CLASSIFICATION OF MINERAL SUBSTANCE DEPOSITS

Art. 3. – LEGAL REGIME

Natural mineral or fossil deposits, other than liquid or gaseous hydrocarbons, are classified either as mines or quarries according to their legal regimes.

Art. 4. - QUARRIES

Deposits of building, gravelling, ceramics industry, agricultural land improvement materials and other similar substances shall be classified as quarries, with the exception of phosphates, nitrates, alkaline salts and other related salts found in the same deposits.

Peat bogs shall also be classified as quarries.

There may not be any severance of land property or surface rights on the one hand and quarry ownership on the other hand. They shall be governed by the same conditions.

Art. 5. - MINES

Any mineral or fossil deposits that are not classified as quarries shall be considered as mines. Such substances shall be referred to as mine substances.

Depending on their prospective use, some mine substances deposits which can be considered as quarry products may be developed as quarries for public works, within the limits prescribed by the relevant administrative authorities.

There is a severance of mine ownership and land property. Mines belong to the State and represent a specific public domain.

Art. 6. – CHANGE IN CLASSIFICATION

At any time, a decree may be taken, on the proposal of the Minister of Mines, to transfer, at a given date, substances formerly classified as quarry substances into the mine substances category.

CHAPTER III  
RIGHT TO ENGAGE IN MINING AND QUARRYING OPERATIONS

Art. 7. –Rights of individuals

Subject to the provisions of this ordinance, the Government may authorize one or several duly qualified persons (Niger or foreign nationals) or legal entities - constituted as corporations under Nigerien or foreign law - to engage in the prospecting, exploration or mining of mine or quarry substances on the territory of the Republic of Niger:

- The right to explore in order to find mine substances shall be subject to acquisition of an “exploration license”;
- The right to prospect in order to find quarry substances shall be subject to the acquisition of a “prospecting license”;
- The right to prospect for mine substances shall be subject to the acquisition of a “prospecting permit”;

- The right to develop a mine shall be subject to a “small scale” or “large scale” mining permit;
- The right to develop one or several deposits using artisanal methods shall be subject to the acquisition of “artisanal mining license”;
- The right to develop quarry substances shall be subject to the acquisition of a “quarry opening and development license”.

**Art. 8. – RIGHT OF THE STATE**

Issuance by the State of a mining permit shall entitle the latter to free shares for property representing 10% of the capital, in compensation for wealth distributed, sub-soil impoverishment and prospecting expenses incurred as provided for in article 89 below. No financial contribution shall be requested from the State for these shares.

The State may engage, for its own benefit, in any mining or quarry development activities, either directly or through a public agency, acting alone or in partnership with third parties.

The State reserves the right to participate, directly or through its agencies, in the development of mine substances or quarry substances, in association with holders of mine or quarry titles. In such a case, the State’s participation in the capital of the relevant mining companies shall not exceed thirty-three per cent (33%), including free shares for property.

In case the States participates in one or several mining or quarry development activities involving third parties, the nature and modalities for State shareholding shall be clearly determined by mutual agreement of the parties and, beforehand, in the Mining Agreement supporting the mine prospecting permit or in the document authorizing the opening and development of the quarry.

Where the State engages directly or indirectly in activities governed by this ordinance, it shall comply as much as possible with the provisions of this ordinance, except for prospecting activities conducted under the authority of the Minister of Mines for the purposes of improving geological knowledge of the territory of the Republic of Niger or for scientific purposes.

**CHAPTER IV  
CONDITIONS FOR SECURING MINING OR QUARRYING TITLES**

**Art. 9. - OBLIGATION TO COMPLY**

No individuals or legal entities, including land owners and surface rights holders, may engage in one of the activities or more referred to in Article 1 above, on the territory of the Republic of Niger without complying with the provisions of this ordinance.

The total or partial refusal of the State to grant a mining or quarry titles shall not entitle unsuccessful applicants to any compensation, if their applications do not meet the requirements set forth in this ordinance.

**Art. 10. – REQUIREMENTS FOR INDIVIDUALS**

All individuals may apply for:

- a prospecting card,
- a prospecting license for quarry substances,

- an artisanal mining license,
- a permanent or temporary quarry development license.

No individuals may either obtain or hold one of the above-mentioned mining or quarry titles if:

- their personal status is incompatible with the conduct of commercial activities in Niger;
- they have been sentenced to prison for non compliance with the provisions of the Ordinance related to mining or regulations governing the detention, possession, movement and marketing of mineral substances in Niger;
- their applications do not meet the requirements set forth in this ordinance.

#### Art. 11. – REQUIREMENTS FOR LEGAL ENTITIES

No entities shall obtain or hold a mine or quarry development title if they are not incorporated in conformity with the legislation governing the legal status of companies in the Republic of Niger.

#### Art. 12. – COLLECTIVE TITLE HOLDERS

When several persons hold collectively a mining title, they shall be jointly and severally liable and shall submit to the Minister of Mines a copy of any mining agreements entered into by the relevant parties.

## TITLE II MINE TITLES

#### Art. 13. – DEFINITION OF MINE TITLES

Exploration and artisanal mining licenses, as well as prospecting permits and small and large scale mining permits shall be referred to as “mine titles”.

## CHAPTER 1 EXPLORATION LICENSE

#### Art. 14. - DEFINITION

“Exploration” shall mean all prospecting activities, limited to surface and subsurface operations, aimed at determining the composition or structure of the subsoil for the purpose of discovering elements indicating the presence of minerals.

Simple exploration operations using rams are based on simple geological methods (geological mapping, sample collection).

Systematic exploration combines geological, geophysical and geochemical methods.

#### Art. 15. – CONFERRED RIGHTS

Exploration licenses shall confer on their holders the right to prospect for one or several mine substances in areas that are not considered as closed areas or subject to mine title.

Exploration licenses shall confer on their holders a pre-emptive right on the prescribed perimeter, in accordance with the perimeter and period of validity the said licenses. They shall not be exclusive.

**Art. 16. - ISSUANCE**

Exploration licenses shall be issued by the Director of Mines to applicants for:

- artisanal mining licenses for areas referred to in Article 44 below;
  
- prospecting permits in areas referred to in Article 15 above, except for areas mentioned in Article 44 below.

**Art. 17. – PERIOD OF VALIDITY**

Exploration licenses shall be valid for a period of one (1) year and are renewable for a period of one (1) year, provided their holders have met their obligations under this ordinance.

**Art. 18. – PROSPECTOR’S CARD**

Notwithstanding the provisions of Articles 7 and 16 below, prospectors authorized by the Director of Mines may carry out prospecting operations using hammers. The Director of Mines shall issue to each authorized prospector a prospecting card in lieu of exploration license.

A prospectors’ card is valid for one (1) year. It shall confer on its holder the same rights as exploration license for prospecting operations using hammers. In case of discovery of ore, prospectors may apply for artisanal mining licenses or assign their rights to individuals or legal entities with the appropriate resources.

**Art. 19. – WITHDRAWAL, SURRENDER**

A prospector’s card may be withdrawn by the Director of Mines at any time, if the holder thereof fails to report the results of exploration operations.

Holders of exploration license or a prospector’s cards may, at any time, surrender such titles, subject to a one month notice.

**CHAPTER II  
PROSPECTING PERMITS**

**Art. 20. – DEFINITION**

Prospecting shall refer to all activities carried out to discover or uncover mine substance deposits, demarcate relevant areas and their size and development potentials.

**Art. 21. – CONFERRED RIGHTS**

A prospecting permit shall confer on its holders the exclusive right to explore and prospect, within the boundaries of its perimeter and at any depth, mine substances which they have been issued for, notwithstanding the provisions of Article 26 below.

Holders of prospecting permits may extend their titles so as to cover other substances.

During the validity period of prospecting permits, only their holders may apply for and obtain a mining permit for the deposit(s) within the relevant perimeters, subject to equity participation by the State.

**Art. 22. - ISSUANCE**

Prospecting permits shall be issued by an order signed by the Minister of Mines, on the proposal of the Director of Mines, to applicants whose applications meet the requirements of this ordinance and who have adequate financial and technical resources.

**Art. 23. – PERIOD OF VALIDITY**

Prospecting permits shall be issued for a period of three years. These permits may be renewed twice and for a period of three years, following a request submitted by the applicant in the format provided for in this ordinance.

For technical reasons related to the finalization of the feasibility study, prospecting permits may be extended for a period that may not exceed one year.

**Art. 24. – AREA AND FORM**

The area for which prospecting permits are issued shall not exceed two thousand (2000) km<sup>2</sup>, except by special dispensation. Prospecting permits shall have the shape of a rectangle with sides aligned to true North-South and East-West, unless otherwise authorized.

**Art. 25. - RENEWAL**

Prospecting permits shall be renewed by an order issued by the Minister of Mines on the proposal of the Director of Mines in the same form and under the same conditions as the initial title.

Any holders of prospecting permits shall be entitled to renew their prospecting permits, provided they have met their obligations under this ordinance and the Mining Agreement.

Every time a prospecting permit is renewed, the perimeter specified in the title in validity shall at least be reduced by half.

**Art. 26. – OTHER PERMITS**

Holders of a valid prospecting permit may not be granted another mining title for the same perimeter; however they may be issued a prospecting title for quarry substances or for liquid or gaseous hydrocarbons on the same perimeter, provided such quarry substances and hydrocarbon prospecting operations do not prevent the smooth conduct of ongoing prospecting operations.

**Art. 27. – COMMENCEMENT OF PROSPECTING OPERATIONS**

Prospecting permit holders are required to start their activities within the specified perimeter, six (6) months following the issuance date of their permits, and proceed diligently and professionally.

**Art. 28. – FREE DISPOSAL OF PRODUCTS**

Holders of prospecting permits may freely dispose of the products extracted in the course of prospecting operations and tests they may involve, provided these operations do not take on the form of mining operations and subject to their notification to the Director of Mines.

**Art. 29. – DISCOVERY OF MARGINAL DEPOSITS**

Where marginal deposits are discovered within the perimeter specified by the prospecting permit, the Minister of Mines may, following consultations with the advisory bodies in charge of mining issues, may extend the validity period of the permit up to the time when economic conditions allow the development of such deposits.



Art. 30. - SURRENDER

Holders of prospecting permits may renounce them in whole or in part for justified technical reasons or in the event of *force majeure*, subject to a one month notice.

Any renunciations for reasons other than those referred to in the previous paragraph shall nullify exemptions granted to holders of prospecting permits. The amount of these exemptions shall then be discounted as at the date the application for surrender has been received and refunded to the State.

Holders of prospecting permits shall pay outstanding duties and taxes for the current year and meet all their environment-related obligations.

Surrender shall result in total or partial cancellation of the permit, as the case may be.

**CHAPTER III  
MINING PERMITS**

Art. 31. - DEFINITIONS

“Mining” shall refer to all activities carried out to extract mine substances from their deposits.

“Small scale mining” shall refer to any permanent mine with a minimum of physical facilities and using industrial or semi-industrial processes according to standard practices and following the discovery of a deposit.

The size of a small scale mine shall depend on a number of parameters, including the size of reserves, level of investment, production capacity, number of employees, annual added value, and degree of mechanization. The values of these parameters shall be determined for each substance or group of substances by an order issued by the Minister of Mines.

Used in a broader sense, “mining permit” refers to both small and large scale permits.

Art. 32. – CONFERRED RIGHTS

Notwithstanding the provisions of Article 40 below, mining permits shall confer on their holders the exclusive rights to explore, prospect for, develop and freely dispose of mine substances for which they have been granted, within the perimeter specified and at any depth.

Holders of prospecting permits may extend their titles so as to cover other substances.

Art. 33. - ISSUANCE

For small scale mines, mining permits shall be issued by an order issued by the Minister of Mines on the proposal of the Director of Mines; and for large scale mine, by a decree issued by the Council of Ministers on the proposal of the Minister of Mines. These permits shall be granted to holders of prospecting permits who have, during the validity period of their titles, not only met their obligations under this ordinance and the Mining Agreement, but also filed an application in line with the provisions of this ordinance and provided evidence of the existence of a deposit that may be commercially mineable within the perimeters specified by prospecting permits.

Issuance of mining permit shall cancel prospecting permits for the perimeters covered by such permits. However the prospecting permit remains valid for areas outside the initial perimeter until they expire.

Issuance of mining permits shall be subject to the same reservations as prospecting permits which they originate from.

**Art. 34. – VALIDITY PERIOD OF SMALL SCALE MINING PERMITS**

Small scale mining permits shall be valid for a period of five (5) years. They may be renewed three times for terms of five years.

**Art. 35. - VALIDITY PERIOD OF LARGE SCALE MINING PERMITS**

Large scale mining licenses shall be valid for a period of twenty years. They may be renewed twice for a period of ten years each.

**Art. 36. – EXTENSION OF THE PERMIT PERIOD OF VALIDITY**

The validity period of mining licenses may be extended if their holders can prove that commercial production is still possible after the expiry of the initial validity period of the permits and its renewals.

**Art. 37. –AREA AND FORM**

The area covered by mining permits shall be determined according to the deposit, as specified in the feasibility study.

Unless otherwise authorized, mining permits cover an area whose shape is a polygon with the sides aligned to true North-South and East-West.

The area covered by mining permit shall be located inside the perimeter specified in the prospecting permits which they originate from. They may, in exceptional cases, partially cover several prospecting permits held by the same persons, provided the deposit covers portions of these permits.

**Art. 38. - RENEWAL**

At the request of their holders, mining permits for small scale mining operations may be renewed by an order issued by the Minister of Mines, on the proposal of the Director of Mines, and mining permits for large scale mining operations by a decree taken by the Council of Ministers on the proposal of the Minister of Mines.

Any holders of mining permits shall be entitled to renew their permits, provided they have met their obligations under this ordinance and the Mining Agreement.

**Art. 39. – COMMENCEMENT OF MINING OPERATIONS**

Holders of small scale mining permits are required to start deposit development and mining operations within a period of one (1) year, following the date of issuance of their permits; holders of large scale mining permits shall commence such operations within a period of two (2) years.

**Art. 40. – OTHER MINE TITLES**

Holder of a valid mining permit may not be granted any other mining titles for the same perimeter. However, he may be issued a mining title for quarry substances or for liquid or gaseous hydrocarbons, provided such quarry substances and hydrocarbon prospecting operations do not prevent the smooth conduct of ongoing prospecting operations.

**Art. 41. -SURRENDER**

Holders of mining permits may surrender them in whole or in part, subject to a one year notice.

However, mining permits holders shall pay outstanding duties and taxes up to the date of surrender and meet their obligations in relation to environment and rehabilitation of mined sites, even after the effectiveness of this surrender. They shall also meet any other obligations set forth under this ordinance and Mining Agreement.

Surrender shall result in total or partial cancellation of the permit, as the case may be.

**Art. 42. – CONVERSION OF A SMALL SCALE MINING PERMIT INTO A LARGE SCALE ONE**

Holders of small scale mining permits shall be entitled to large scale mining permits, if they can justify, when submitting their applications, the presence of a commercially mineable deposit within the perimeter requested and whose size warrants the issuance of a large scale mining permit.

Holders of small scale mining permits shall apply for the conversion of their permits into large scale ones when the rate of production exceeds standard set for small scale mines.

Should such holders fail to apply within the prescribed time, their permits may be withdrawn. Prior to this conversion, the Mining Agreement referred to in Article 51 below signed by the State and holders of small scale mining permits shall be revised to take into account any new information related to the concerned mines. Holders of these new permits shall then be subject to the provisions governing large scale mining operations.

**CHAPTER IV  
ARTISANAL MINING PERMITS**

**Art. 43. - DEFINITION**

“Artisanal mining” shall consist in extracting and concentrating ores with the view to recovering the useful substances they contain, using traditional methods and processes.

Processes, methods, equipment that may be used in artisanal mining activities shall be prescribed by an order issued by the Minister of Mines.

Artisanal mining activities shall be conducted by duly authorized individuals or legal entities (companies, mining associations or cooperatives, etc.) and artisanal miners.

**Art. 44. - SCOPE**

Artisanal mining shall apply to mineral occurrences of some substances which are mined in a traditional way or to deposits whose industrial mining has not proved profitable.

Areas where artisanal mining activities may be legally conducted shall be determined by regulations.

**Art. 45. – CONFERRED RIGHTS**

Artisanal mining licenses shall confer on their holders the right to prospect for and mine the substances for which they have been issued, within the boundaries of their perimeter and up to 30 m deep in cases of step-room mining activities, and 10 m in cases of excavation mining operations. However, such licenses shall not allow mining using tunnels.

Artisanal mining licenses shall confer personal, indivisible movable rights which cannot be hypothecated, assigned or transferred or subleased.

Holders of artisanal mining licenses may, at any time, request the conversion of their titles into small scale mining licenses, provided they have the necessary financial and technical resources and prove the presence of deposits within their perimeters. Prior to such a conversion, the Mining Agreement referred to in Article 51 below shall be signed between the concerned and the State.

**Art. 46. - ISSUANCE**

Artisanal mining licenses shall be issued by an order of the Minister of Mines, on the proposal of the Director of Mines, to individuals with sufficient financial resources and legal entities, for areas referred to in Article 44 below.

**Art. 47. – PERIOD OF VALIDITY**

Artisanal mining licenses shall be valid for a period of two (2) years, renewable as many times as requested, provided their holders have satisfactorily carried out activities on their perimeters during the previous validity period and provided they have fully complied with the provisions of this ordinance.

**Art. 48. - FORM**

Artisanal mining licenses shall cover an area that has the shape of a polygon, with sides not exceeding 100 meters, unless otherwise authorized.

**Art. 49. – INDIVIDUAL CARDS**

Notwithstanding the provisions of Article 46 below, individual cards shall be issued to all artisanal miners in lieu of artisanal mining licenses for areas referred to in Article 44 above.

Such cards shall be valid for a period of six (6) months. In areas where artisanal mining operations are authorized and within an administrative unit, they shall confer on their holders the right to conduct artisanal mining activities:

- for their benefit, in areas for which an artisanal mining license has not been issued,
- on behalf of individuals or legal entities, on perimeters allotted to the latter.

**Art. 50. –AUTHORIZATION TO MARKET PRODUCTS**

Nationals of Niger or legal entities constituted under Nigerien law may be authorized to buy and sell mine substances produced in artisanal mines by an order issued by the Minister of Mines. However, only authorized legal entities may export such substances.

Artisanal mining license holders as well as self-employed artisanal miners are required to sell all mine substances extracted to individuals or legal entities authorized by the Ministry of Mines.

**GENERAL PROVISIONS RELATING TO SOME MINE TITLES**

**Art. 51. – MINING AGREEMENT**

Prior to the issuance of prospecting permit as well as a mining license, a mining agreement shall be signed between the State and prospective holder(s) of these documents.

Mining Agreement shall set forth the rights and duties of the parties relating to the legal, financial, fiscal and social requirements applicable to prospecting and mining operations during the validity period of agreement. This agreement also guarantees holders that these requirements shall remain unchanged.

Mining Agreement signed by the Minister of Mines and a prospective holder of a mine title or his/her authorized representative shall be effective and binding on both parties once it have been approved by decree.

Once it becomes effective, the mining agreements may only be amended by written agreement of parties.

A sample Mining Agreement is attached to this ordinance.

**Art. 52. – BOUNDARIES AND DEMARCATION OF PERMIT AREA**

The area covered by the permit shall be delineated using either Cartesian coordinates or geographic landmarks or a combination of both.

The rights of the holder are limited to the area delineated on the surface but shall extend downwards to any depth within this perimeter.

A holder of a mine title, other than an exploration permit, must demarcate his/her perimeter in conformity with the implementing laws of this ordinance.

**Art. 53. – PRE-EXISTING RIGHTS**

Mining titles shall always be issued subject to pre-existing rights.

**Art. 54. - REPORTING**

A holder of a mining title is required to submit to the Director of Mines reports whose content and timing shall be specified in the implementing laws of this ordinance.

**Art. 55. – EXPANSION OF THE SCOPE OF A MINE TITLE**

A holder of a prospecting or mining permit may request the expansion of his/her title to cover other substances.

Such expansion shall be approved in the same forms and under the same conditions as the initial title.

A holder of prospecting and mining permits may be given formal notice to apply, within a period of three months, for the expansion of his/her title to cover other substances.

**Art. 56. - EXTENSION**

In case an application for renewal, conversion or extension of a mine title is introduced before its expiry date, the validity period of the title shall be extended as long as no decision is taken on the said application.

**Art. 57. – CONSTITUTED RIGHTS**

Prospecting permits shall be an indivisible moveable right which cannot be hypothecated.  
Mining permits shall be an indivisible moveable right which cannot be hypothecated.

**Art. 58. - MOVEMENT OF MINING TITLES**

Subject to the approval of the Minister of Mines:

- prospecting permits shall be transferable and transmissible,
- mining permits may be sub-leased.

Any contracts or agreements, whereby holders of mining title pledge to entrust, assign or transfer or whereby they entrust, assign or transfer, in whole or in part, rights and obligations attached to mine titles, shall be subject to prior approval by the Minister of Mines.

The Minister of Mines shall approve the proposed transactions, if they are not detrimental to the interests of Niger.

For transactions involving large scale mining permits, such approval shall be given by a decree issued by the Council of Ministers.

**Art. 59. - WITHDRAWAL**

Mine titles provided for in this ordinance may only be withdrawn by the issuing authorities in the same forms in any of the following cases:

- prospecting, development or mining activities are either delayed or suspended for more than one year for prospecting and for more than two years for mining operations, or seriously restricted for no legitimate reason and in a way that may be detrimental to public interest;
- the final feasibility study suggests the presence of a deposit that can be profitably mined within the perimeter covered by the prospecting permit and is not followed by an application for a mining permit, within a period of one year;
- non compliance with any of the provisions of this ordinance;
- any causes of forfeiture under Article 60 below.

Mining titles may only be withdrawn if, following a notice by the Minister of Mines, no action is taken, within a period of less than:

- one month for exploration licenses,
- two months for prospecting permits and artisanal mining licenses,
- three months for mining licenses.

**Art. 60. – FORFEITURE OF A MINE TITLE**

Mine titles provided for in this ordinance may only be withdrawn if their holders fail to comply with the provisions of this ordinance and implementing laws, in the following cases:

- Non compliance with sanitation and health regulations;
- Interference with administrative supervision and technical control operations conducted by duly authorized engineers and staff from the Directorate of Mines or by any other staff member instructed in this respect;

- Failure to pay the duties and taxes under this ordinance as well as penalties that may result from late payments;
- Non compliance with the obligations relating to environment protection;
- Non compliance with contractual commitments.

Forfeiture shall only be decided if the holder fails to respond to two notices from the Minister of Mines, given at an interval of two months.

#### ART. 61. – LOSS OF RIGHTS

If prospecting or mining permits expire without being renewed or converted, and in case of withdrawal or forfeiture, holders of such permits shall be deprived of rights over the land under the said permit.

### TITLE III

#### ZONES WHICH ARE CLOSED AND PROTECTED OR WHERE EXPLORATION PROSPECTING AND MINING OPERATIONS ARE PROHIBITED

##### Art. 62. – CLOSED AREAS

For reasons of public order, decrees taken by the Council of Ministers, on the proposal of the Minister of Mines may, for a limited period of time, classify some areas as closed areas and suspend the issuance of exploration or artisanal mining licenses, prospecting or mining permits of licenses for some or all mine or quarry substances in these areas.

##### Art. 63. – PROTECTED OR PROHIBITED AREAS

For the purpose of protecting buildings and towns, cultural or burial sites, water points, roads, engineering works, and public utility works and in areas where it is deemed necessary in the general public interest, perimeters of any size may be designated within which mine substance or quarry substance prospecting, exploration, and mining operations may be subject to certain conditions or prohibited; in such cases, title holders may not claim any compensation.

In case title holders have to demolish or abandon any works or constructions established, prior to the classification of these perimeters as protected or prohibited areas, they shall be entitled to compensation amounting to expenses incurred in connection with the demolished or abandoned works and constructions.

No mine substance prospecting, exploration or mining activities may be undertaken on surface within a radius of one hundred (100) meters:

- around properties enclosed by walls or similar structures, villages, clusters of houses, wells, religious buildings, burial sites and sites considered as sacred, without the approval of their owners,
- on both sides of communication routes, water pipes and more generally around all public utility works and engineering works, without any prior authorization.

The measures provided for in this article shall be taken by a joint order of the Minister of Mines and the Minister of Domains, for all mine title holders.

### TITLE IV

#### SPECIAL PROVISIONS ON SUBSTANCES CLASSIFIED AS QUARRY SUBSTANCES

**Art. 64. SCOPE**

Regardless of the legal status of the lands where quarry substances are found, mining operations, either by way of open pit mining or underground gallery, and reopening of quarries shall be governed by the provisions of that title.

**Art. 65. – CATEGORIES**

Quarries are classified in three (3) categories:

- permanent quarries opened on lands within the public domain and whose mining is subject to a quarry opening and mining license, issued in conformity with the provisions of Article 72 and subsequent articles;
- quarries opened on a temporary basis, either on lands within the public domain or on private lands and whose mining is subject to a license issued in conformity with the provisions of Article 77 below; and
- public quarries opened on lands of the public domain, in conformity with the provisions of Article 80 below.

**CHAPTER I  
PROSPECTING LICENSES**

**Art. 66. – CONFERRED RIGHTS**

Quarry substance prospecting permits shall confer on their holders the right to explore and to prospect for all quarry substances on any portions of the national territory of the Republic of Niger, which are not classified as closed, protected or prohibited areas, and which are not subject to a quarry substances mining title. Such licenses may not be assigned or transferred.

**Art. 67. - ISSUANCE**

Quarry substance prospecting license shall be issued by the Director of Mines.

**Art. 68 – PERIOD OF VALIDITY**

Quarry substance prospecting permits shall be valid for a period of one (1) year, and renewable as many times as requested, for periods not exceeding one (1) year.

**Art. 69. - SURRENDER**

Holders of quarry product prospecting license may at any time surrender them, provided they give notice to the Director of Mines.

**Art. 70 - WITHDRAWAL**

Quarry substance prospecting permits may be withdrawn at any time, if their holders fail to report prospecting results.

**CHAPTER II  
PERMANENT QUARRY OPENING AND MINING LICENSES**

**Art. 71 – CONFERRED RIGHTS**

Permanent quarry opening and mining licenses shall confer on their holders the right to occupy a plot on the public domain of the State and freely dispose of the mineral substances they have been granted for.



**Art. 72 - ISSUANCE**

Permanent quarry opening and mining licenses shall be issued by a joint order of the Minister of Mines and the Minister in charge of State Property [*ministre des Domaines*], after consultation with the relevant regional or municipal authorities.

**ART. 73 – PERIOD OF VALIDITY**

Permanent quarry opening and mining licenses shall be valid for a period of five (5) years and renewable without limitation, in the same forms, for periods of five years.

**Art. 74 – ASSIGNMENT AND TRANSFER**

Permanent quarry opening and mining licenses may not be assigned, transferred or subleased.

**Art. 75 - SURRENDER**

Holders of permanent quarry opening and mining licenses may surrender them at any time, subject to one (1) month notice. However, they shall remain liable to payment of duties and taxes due up to the date of surrender and shall meet their obligations related to the environment and rehabilitation of mined sites, even after the effectiveness of this surrender.

**Art. 76 - WITHDRAWAL**

Permanent quarry opening and mining licenses may be withdrawn at any time if no action is taken within a period of three months, following a notice by the Minister of Mines for non compliance with the provisions of this order including:

- non payment of duties and taxes under the tax regime in force;
- non compliance with obligations relating to environment protection and urban planning, as well as to protection of forest heritage;
- non compliance with sanitation and security regulations;
- abandonment of mining activities for a period of one year, without any good reasons.

**CHAPTER III  
TEMPORARY QUARRY OPENING AND MINING LICENSES**

**Art. 77 - ISSUANCE**

Temporary quarry opening and mining licenses shall be issued by a joint order of the Minister of Mines and the Minister in charge of State Property [*ministre des Domaines*], after consultation with relevant regional or municipal authorities.

**Art. 78 – PERIOD OF VALIDITY**

Temporary quarry opening and mining licenses shall be valid for a maximum period of six (6) months. They may not be renewed.

**Art. - 79 – FURTHER INFORMATION**

Temporary quarry opening and mining licenses shall set forth the mining period, the quantities of substance to be extracted and taxes to be paid as well as the occupancy conditions attached to extraction sites and related activities. They shall also specify obligations of title holders, including rehabilitation of sites after extraction operations.

**CHAPTER IV**

## **PUBLIC QUARRIES**

### **Art. 80 – OPENING**

The Minister of Mines and the Minister in charge of State Property have the authority to open permanent public quarries by a joint order on lands within the public domain, where every citizen may conduct open-mining activities of quarry substances for construction or public works.

The order of the Minister of Mines and the Minister of State Property shall be taken after consultation with relevant regional or municipal authorities.

### **Art. 81 – FURTHER INFORMATION**

The Order authorizing public quarries mining shall specify the site of quarries, substances that may be developed, quarry access conditions, extraction plan, mining tax and conditions for the rehabilitation of sites.

## **TITLE V TAX PROVISIONS**

### **Art. 82 – FIXED FEES**

Any applications for the issuance, renewal, expansion, extension, assignment, transfer, sublease, conversion, merging or division of a mine or quarry titles for the purpose of prospecting or mining mine substances or developing permanent or temporary quarries, shall be subject to payment of fixed fees at rates attached as Annex.

### **Art. 83 – AREA TAX**

Prospecting and mining permits as well as artisanal mining and quarry opening and mining licenses shall be subject to payment of an annual area tax at rates attached as Annex.

### **Art. 84 – MINING ROYALTIES**

Extracted mine substances shall be subject to payment of a mining royalty. The tax base is the market value of the final product. This royalty shall be payable when the substances are removed from stocks for sale.

The rate of the mining royalty is 5.5%. This royalty shall be paid by all mine title holders, except artisanal mining license holders. Mining royalties shall be deducted in calculating taxable profits.

Samples of mine substances collected for assays, analyses and other tests shall not be subject to payment of any mining royalties.

### **Art. 85 – EXTRACTION TAXES**

Quarry substances development and collection shall be subject to payment of extraction taxes at a rate of CFA F 250/m<sup>3</sup> of mined substances.

### **Art. 86 - ARTISANAL MINING TAXES**

Holders of artisanal mining licenses shall be subject to payment of artisanal mining taxes at rates corresponding to 3% of product value.

Individuals and legal entities licensed to sell mine substances extracted from artisanal mines shall be liable to artisanal mining tax at the rate of 2.5% of the product value.

Product value shall refer to the value of products at the time they are sold by producers.

**Art. 87 - DIRECT TAX ON BENEFITS**

In addition to fixed fees, area and mining taxes, extraction taxes provided for in this ordinance, holders of mine substance mining permits and legal entities holding quarry opening and exploitation licenses shall also be liable to direct tax on industrial and commercial profits calculated each year based on the statement of income of the fiscal year closed in the previous year. Companies holding artisanal mining licenses shall also be liable to direct tax on industrial and commercial profits.

This tax shall be calculated in conformity with the provisions of the tax regime in force. The rate of profits tax is set at 40.5%.

Holders of large and small scale mining permits are exempt from tax on industrial and commercial profits, for five (5) and two (2) years respectively, from the date of their first commercial shipments.

**Art. 88 – INCOME TAX ON MOVABLE CAPITAL**

Dividends, share of profits and directors' fees paid to their shareholders by mining companies constituted as trading companies shall be liable to a tax on movable capitals. This tax, amounting to 16%, shall be imposed on the above-mentioned products in accordance with rules set in the Registration Code in force.

Relevant companies shall, in addition, be liable to the payment of registration fees, stamp duties and mortgage and rights publication fees, pursuant to the provisions of the Registration and Stamp Code. Interests and other proceeds accruing from monies borrowed by the concerned companies to meet their equipment or mines requirements shall be exempt from any taxes and duties.

**Art. 89 – EXPENSES INCURRED BY THE STATE**

If the State has conducted prospecting operations on a given perimeter before issuing a prospecting permit for the said perimeter, expenses incurred shall then be discounted from the date on which such a permit is issued.

Such expenses shall be considered as accruing to the State before the issuance of the mining permit.

These provisions shall apply, subject to reporting the results of prospecting operations conducted by the State to the holder of the prospecting permit.

However, shall not be taken into account: expenses incurred by the State in connection with basic geological surveys and mapping, strategic mine exploration activities, using all (geological, geophysical, geochemical, etc.) methods leading to the discovery of mineral occurrences within the perimeter covered by the prospecting permit prior to issuance of the said permit.

The amounts and terms shall be set out in the Mining Agreements.

**Art. 90. – PROSPECTING INVESTMENTS**

The total amount of prospecting investments made by holders of mining titles as at the issue date of mining permit shall be discounted to the latter date and amortized during the mining phase as expenses of first establishment.

**Art. 91. - PROVISION FOR RESOURCE DIVERSIFICATION**

Holders of substance mining titles shall be authorized to make a provision for resources diversification.

Such a provision shall not exceed one fifth of the net taxable profit made each fiscal year.

Provisions made at the end of each fiscal year shall, after a period of three years starting from the closing date, be used by the holders of the mining permits:

- to prospect for new deposits by conducting prospecting activities on the parts of their perimeters which have not yet been explored and improve the collection of mined substances;
- to diversify prospecting operations in Niger by conducting prospecting activities for mine substances on other perimeters, alone or in association with other partners. This provision may also be used for equity participation in companies engaged in the development of mine substances in Niger.

Unless otherwise authorized, at least 25% of this provision must be used to finance activities aimed at diversifying prospecting operations in Niger.

Provided resource diversification provision is used within the prescribed time and under conditions provided for in articles below, corresponding amounts may be transferred into a reserve account and accounted for as liabilities.

Otherwise, funds that have not been used shall be carried forward to taxable profits of the fiscal year during which the above prescribed three year period elapsed.

The provision earmarked for resource diversification shall be deductible from the net profit of the tax year, in calculation of taxes on industrial and commercial profits.

**Art. 92. – EXEMPTION FROM EXPORT DUTIES AND TAXES**

Mine substances extracted from mines shall be exempted from any export taxes and duties when they are exported by holders of mining permits or quarry opening and mining licenses or by any duly authorized legal entities.

**Art. 93. – EXEMPTION FROM ANY OTHER DUTIES AND TAXES DURING THE PERIOD OF VALIDITY OF PROSPECTING PERMITS**

Holders of mine or quarry substance prospecting permits shall be exempted from any taxes and duties, other than those provided for in this ordinance.

**Art. 94. – IMPORT DUTIES AND TAXES**

During the validity period of the agreement or permanent quarry opening and development licenses, mining machinery, materials, supplies, engines, equipment and spare parts to be directly used for operations shall be exempted from any entry duties and taxes when imported into the Republic of Niger by holders of prospecting permits or mining permits, holders of permanent quarry opening and mining licenses or individuals or legal entities subcontracted to conduct mining or quarrying activities.

This provision shall only apply if the said machinery, materials, supplies, engines, equipment and spare parts are not available in the Republic of Niger at the same conditions in terms of quality, quantity, delivery time and payment.

During the validity period of the agreement and permanent quarry opening and mining licenses, holders of prospecting permits and permanent quarry opening and development licenses and individuals and legal entities subcontracted shall be exempted from import duties and taxes on petroleum products used for fixed facilities.

**Art. 95. – TEMPORARY ADMISSION REGIME**

During the validity period of prospecting permits, mining licenses, and permanent quarry opening and development licenses, the above-mentioned machinery, engines and equipment as well as commercial vehicles directly used for mining or quarrying operations and imported into the Republic of Niger by holders of prospecting permits, mining licenses or permanent quarry opening and development licenses or by individuals or legal entities subcontracted for mining activities and which are intended to be re-exported, shall be declared under temporary admission regime and shall be totally exempt from import and re-export duties and taxes.

In case of disposal of such items admitted on a temporary basis, duties payable shall be those applicable to the residual value of these items on the date of their disposal.

Pursuant to the Customs Code, foreign staff employed by holders and residing in Niger shall also be exempted from duties and taxes on the import of their personal belongings and effects.

**Art. 96. – EXEMPTION CERTIFICATE**

To be entitled to exemption from duties and taxes provided for in articles above, beneficiary companies doing business for their own benefit shall produce an exemption certificate approved by the Minister of Mines.

Companies that are entitled to the above-mentioned customs regimes shall be subject to all control and supervision measures set out by Customs Administration, pursuant to the regulation in force.

**Art. 97. - STABILITY OF TAX REGULATIONS**

Throughout the period of validity of this agreement, the tax regime applicable as at the date of signature of the Mining Agreement shall remain unchanged for prospecting and mining companies. The same applies to holders of permanent quarry opening and development licenses.

For the duration of the agreement, rates specified in it, regulations regarding tax base and tax collection shall remain as they were at the effective date of the mining or permanent quarry opening and development licenses, unless these rates are reduced in the meantime, in which case the holder shall benefit from these new rates.

**Art. 98. – COMMENCEMENT OF INVESTMENT OPERATIONS AND TAX ADVANTAGES**

Investment operations must be undertaken within the time prescribed for launching of prospecting or mining operations and provided for in this ordinance; these operations shall be conducted diligently by title holders. If holders of prospecting and mining permits, permanent quarry opening and development license fail to undertake investment operations within this time prescribed, tax advantages granted under this ordinance may null and void and in case no action is taken within a period of three months following a notice given by the Minister of Mines. The date for starting permanent quarry development activities shall be specified in the order authorizing quarry opening and development.

TITLE VI

**RIGHTS AND OBLIGATIONS RELATING TO MINE OR QUARRY OPERATIONS**

Art. 99. – NATIONAL RESOURCES AND ENVIRONMENT

Mine and quarry operations must be conducted so as to ensure sustainable development of national resources and environmental protection.

For this purpose, companies must conduct their operations using technologies accepted by the mining industry and take the steps necessary for preventing environmental pollution, treating waste and preserving forest and water resources.

Art. 100. - COMPENSATION

Holders of mine or quarry titles must indemnify the State or any other persons for damages and injury they may have caused.

Art. 101. - ACCOUNTING

In Niger, holders of mine titles or permanent quarry opening and development licenses must keep their accounts in conformity with the current accounting system applicable in this country. They must have their financial statements and operating accounts audited every fiscal year by an auditor and submit their financial statements at the end of each fiscal year to the Minister of Finance and the Minister of Mines. They must allow authorized State agents access to accounts and supporting documents for audit purposes. They must also facilitate the verification and audit work of Government officials.

Regarding artisanal mining, this obligation shall only be applicable to companies.

Art. 102. – PREFERENCE TO NIGERIEN COMPANIES

Holders of mine or quarry titles and their subcontractors shall give preference to Nigerien companies for any construction, supply or service provision contracts, under the same conditions in terms of price, quantity, quality and delivery time.

Art. 103. - PREFERENCE TO NIGERIEN LABOR

Holders of mine or quarry titles and their subcontractors shall give preference to Nigerien workers so as to allow them to access to whatever positions that commensurate with their qualifications.

Holders of mine or quarry titles and their subcontractors shall develop a training program and promote local staff at all levels.

Art. 104. – TRANSFER OF SKILLS

Holders of mine or quarry titles and subcontractors shall carry out their activities in such a way as to promote as much as possible skill transfer in favor of Nigerien contractors and workers.

Art. 105. – CURRENCY REGULATIONS

Holders of mine or quarry titles shall comply with currency regulations in force in the Republic of Niger.

In this regard, during the validity period of the Mining Agreements and provided they meet their obligations, foreign title holders may:

- have one or several bank accounts in Niger to repatriate proceeds from sales,
- receive in Niger any funds acquired or borrowed from abroad, including proceeds from the sales of their production,
- transfer abroad dividends and proceeds from funds invested as well as proceeds from liquidation or capitalization of assets,
- pay foreign suppliers of goods and services necessary for the conduct mining operations.

Free convertibility of the national currency into foreign currencies is governed by international treaties instituting the CFA monetary zone and West African Monetary Union.

Foreign staff residing in Niger and employed by mine or quarry title holders shall be free to convert and transfer to their countries of origin, in whole or in part, their income, provided they have paid their taxes and contributions according to the regulation in force in Niger.

**Art. 106. – FREEDOM TO IMPORT, DISPOSE AND EXPORT**

Subject to Trade legislation and regulations and the provisions of this ordinance, holders of mining licenses and holders of permanent quarry opening and development licenses shall be free to import goods, services and funds necessary for conducting their activities, dispose of mine substances, compounds and their derivatives as well as metals and alloys derived from such substances on local and foreign markets, and export them.

**Art. 107. – INFRASTRUCTURE**

Holders of mine or quarry titles may build or have a third party build any infrastructure necessary to conduct their mining or quarrying operations, in accordance with standards of Niger.

**Art. 108. - TRANSPORT**

During the validity period of mining titles and within six months following their expiry, holders of mining licenses may transport or have their mine products transported to the place where they shall be stored, treated and loaded.

**Art. 109. – PROCESSING**

Pursuant to the legislation in force, holders of mining titles may establish in Niger facilities for packaging, treating, refining and processing mine or quarry substances, including working of metals and alloys, and compounds or primitive derivatives of such mine substances.

**Art. 110. - EXPROPRIATION**

Mine or quarry plants shall be expropriated by the State only under very specific conditions against a fair compensation determined by an administrative or arbitral tribunal and payable to the holders of mining licenses within the prescribed time.

**TITLE VII  
TITLE HOLDERS' RELATIONSHIPS**

**CHAPTER 1  
RELATIONSHIPS WITH LAND OWNERS**

**Art. 111. – QUARRY OPENING - PUBLIC WORKS**

Land owners may open on their lands quarries for extracting substances other than mine substances, provided they are duly authorized and subject to the provisions of Articles 26, 40, 62 and 63 above.

Issuing prospecting permits or mining licenses shall not prevent the implementation of public works within the perimeter covered by such documents.

Holders of such permits or licenses shall only be refunded expenses they incurred and which have become unnecessary because of the implementation of works and by the opening of quarries, including any benefits that may have accrued as a result of such activities.

**Art. 112. – DISPOSITION OF NON MINE SUBSTANCES NECESSARY FOR MINING ACTIVITIES**

Holders of mining permit shall be entitled, for the purpose of their mines and relating industries, to dispose of non mine substances when their activities require that they be necessarily demolished.

Land owners may, where necessary, require title holders to dispose of unused substances against a fair compensation, unless they are derived from treatment of extracted mine substances.

**Art. 113. - OCCUPANCY OF LANDS**

Prospecting or mining permits shall be authorized, by a joint decree of the Minister of Mines and the Minister of State Property, to occupy lands necessary for their prospecting or mining activities and related industries, both inside and outside the perimeter of their titles, subject to the conditions prescribed in regulation.

Regarding quarries, relevant opening and development decrees shall also authorize the occupation of necessary lands.

**Art. 114. – WOOD CUTTING – UTILIZATION OF WATERFALLS**

A joint order of the Minister of Mines and the Minister of Environment shall authorize holders of mining or quarrying titles to:

- cut wood necessary for their activities, use waterfalls that are not utilized or reserved for the purpose of their activities within their perimeters;
- conduct the necessary works for their activities and related industries, inside and outside their perimeters.

In addition to prospecting and mining activities per say, activities, industries and works, as provided for in Article 113 above and in this very article, shall include:

- safety facilities, including wells and galleries to facilitate ventilation and drainage,
- installation and exploitation of power plants, power stations, transmission lines,
- preparation, washing, concentration, mechanic, chemical and metallurgical treatment of extracted metals, agglomeration, distillation, and gasification of fuels,
- storage and warehousing of products and wastes,
- buildings for staff accommodation, hygiene and healthcare, and food crops for workers,
- establishment of all communication routes, including roads, gutters, channels, canalizations, pipe-lines, overhead conveyors, transporters, inland ports, and landing fields,
- establishment of boundary markers and pillars.



**Art. 115. – PUBLIC INTEREST STATEMENT**

Whenever necessary, mining projects provided for in Articles 113 and 114 may be declared of public interest under the conditions prescribed by regulation on public utility expropriation, notwithstanding specific or additional obligations that may be imposed on title holders.

**Art. 116. – COMPENSATION, FEES AND CHARGES**

Compensation and fees and, in general, all expenses resulting from the application of Articles 113, 114 and 115 above shall be borne by title holders concerned.

Where land occupancy deprives landowners or title holders from their rights over lands for more than one year or where occupied lands can no longer be used for agricultural purposes after mine operations, landowners or customary land right holders may require title holders to purchase these lands. Pieces of land that are largely damaged or degraded shall be totally purchased, if landowners or customary land right holders so demand.

Lands to be purchased under such conditions shall always be estimated at twice their value before occupancy.

Communication routes or power transmission lines established by title holders may, provided they do not hinder installation and subject to fair compensation, be used by neighboring mines, if they so request and possibly by the public.

**Art. 117. – COMPENSATION FOR DAMAGE**

Mine or quarry title holders whose activities might cause any damages to surface property shall be liable to compensation. In such cases, they shall only pay a compensation corresponding to the value of damages caused.

**CHAPTER II  
RELATIONSHIP WITH OTHER TITLE HOLDERS**

**Art. 118. – CONDUCT OF WORKS USEFUL TO NEIGHBORING MINES**

Where it is deemed necessary to carry out works to either connect neighboring mines for ventilation or drainage or open air and drainage ways or emergency routes to be used by neighboring mines, holders of titles may not oppose the implementation of such works and shall each contribute in proportion of their respective interests.

**Art. 119. – COMPENSATION FOR DAMAGE CAUSED TO NEIGHBORING MINES**

Where mining activities cause damage to a neighboring mine operator – e.g. there is a greater quantity of water flowing in – the person carrying out such activities shall pay compensation for damage caused.

Conversely, where the same works tend to drain water, in whole or in part, from other mines, by way of machines or galleries, the mine operator is entitled to compensation.

**Art. 120. – NEUTRAL ZONE**

Investments may be made to provide for an area that is large enough to prevent activities carried out in a mine from encroaching on an existing or potential neighboring mine. Such investments may not result in any compensation in favor of the other party.

**TITLE VIII  
HYGIENE AND SECURITY IN MINES AND QUARRIES**

**Art. 121. – HYGIENE AND SECURITY RULES**

Any individuals or legal entities that carry out mineral substance prospecting or mining activities, pursuant to this ordinance, must proceed in accordance with standard practice so as to guarantee the security and health of their employees and third parties.

Minimum health and safety rules applicable to prospecting and mining activities, provisions governing health hazards (silicotic risks, ionizing radiations, etc.) related to mining or quarrying operations as well as safety rules regarding transport, storage and use of explosives shall be provided for in rules and regulations.

**TITLE IX  
ADMINISTRATIVE CONTROL**

**Art. 122. - ADMINISTRATIVE AND TECHNICAL CONTROL**

Authorized engineers and workers of the Directorate of Mines shall be responsible for technical and administrative control of mineral substances prospecting and mining activities and those conducted in accessories and subsidiaries.

They control application labor regulation and legislation in companies referred to in this Ordinance.

To this effect, they are vested with powers of Labor Inspectors in addition to those conferred on them by the Labor Code.

They report to the Labor Inspector any measures taken and/or notices given.

They ensure that mineral substances are mined in accordance with standard practices and, more generally:

- ensure the administrative, technical, economic and social control of the activities referred to in this ordinance and relevant implementing laws;
- carry out labor inspection activities in the mines and their accessories and subsidiaries;
- develop, maintain and disseminate material providing general information on mineral substances;
- keep mine titles; to that effect, they keep the registers and maps provided for in the Mining regulation; these registers and maps are accessible to the public and must be made available, upon request, to any persons who prove their identities.

**Art. 123. - OBLIGATIONS OF MINE TITLE HOLDERS**

Any mine title holders shall:

- provide any technical, geological, hydro-geological, mining, financial, economic, social or accounting information as well as any plans, maps, surveys and sections, at the request of the Director of Mines ;

- submit to the approval of the Director of Mines any plans to effect technical and organizational changes or any other changes that may affect the conduct of activities;

- forward to the Director of Mines periodic reports, including monthly and annual reports as well as minutes of meetings of their policy-making bodies (Board of Directors, General Assembly, etc.);
- keep on sites all underground and surface registers, maps, in the forms prescribed in the Mining Regulation.

The above-mentioned documents and information collected may only be disclosed to third parties by the administration with the agreement of the person who has implemented the operations, during the validity period of the relevant mining titles or as soon as the corresponding perimeters are no longer covered by valid mine titles held by the company which provided the information.

**Art. 124. – OPENING AND CLOSING OF OPERATIONS**

Any opening or closing of prospecting or mining operations shall be subject to the prior authorization of the Minister of Mines.

**Art. 125. – CONDUCT OF MINING OPERATIONS**

Mining operations shall be conducted in conformity with standard practices. In each mine, they are carried out under the technical supervision of a single Departmental Manager whose name must be communicated to the Minister of Mines.

Any individual carrying out activities such as soundings, construction of underground structures or excavation for whatever purpose and at a depth exceeding ten (10) meters, must notify the Minister of Mines; the latter may have access to the sites or instruct employees and agents reporting to him/her to have access to the such sites, have any samples and any geological, hydro-geological or mining documents or information delivered to him/her.

Any geophysical surveys shall be subject to a prior notification to the Minister of Mines. The results of such surveys shall be forwarded to him/her.

**Art. 126. - DANGER AND ACCIDENTS**

Any accident which occurs in a mine, a quarry or accessories must be reported to the Director of Mines and his/her local representative.

Any serious or fatal accident which occurs in a mine, a quarry or accessories must be reported as soon as possible by the title holders to the Director of Mines, his/her local representative, and administrative and judicial authorities.

In such a case, it is forbidden to tamper with the scene of the accident or remove or tamper with objects which were there before the Labor Inspector and his/her representative have completed the fact-finding proceedings or before the Inspector so authorizes. However, this provision shall not apply to rescue or urgent reinforcement operations.

Holders of mine titles must comply with measures which may be prescribed to prevent or address the causes that are at the origin of the danger that their activities might represent for public safety, mine workers' health, preservation of mines or quarries or neighboring mines and quarries, water sources and public roads.

In case of emergency and where the mine title holders refuse to comply with such injunctions, the Director of Mines or duly authorized agents shall systematically take whatever measures are needed at the expenses of such title holders.

In cases of imminent danger, the Director of Mines or his/her duly authorized agents shall take whatever measures are needed to eliminate this danger and may make, if necessary, any demands on local authorities. Orders taken based on a report of the Minister of Mines shall determine any measures in connection with both staff and facilities or activities, aimed at safeguarding or improving the safety and health of agents working in the mines or quarries or on mine or quarry prospecting sites.

**Art. 127. - UTILIZATION OF DEPOSITS**

Mine or quarry title holders must comply with measures that may be prescribed by the Director of Mines or agents under his/her supervision for improving the development of deposits. Substances extracted from mines or quarries may, under particular conditions, be requisitioned by decree for public interest purposes, subject to compensation.

**TITLE X  
OFFENSES - PENALTIES**

**Art. 128. - DISPUTE**

Any disputes arising out of the application of an administrative act under this ordinance shall fall under the jurisdiction of the Administrative Tribunal responsible for the geographic area in which mining operations are conducted, subject to the provisions of Articles 113 and 116 of this ordinance. Any other disputes shall be brought before the courts of competent jurisdiction.

**Art. 129. - REPORTS BY THE DIRECTORATE OF MINES**

For all cases of disputes between individuals involving encroachments of perimeters of permits brought before civil or arbitral tribunals, reports drafted by the Directorate of Mines shall serve as expert reports.

**Art. 130. – RECORDING AND REPORTING OFFENSES**

Non compliance with the provisions of this ordinance and its implementing laws shall be recorded by Judicial Police Officers, duly authorized staff members of the Directorate of Mines and any other agents commissioned for such a purpose, pursuant to the provisions of the Criminal Investigation Code [*Code d'instruction criminelle*].

Reports drafted pursuant to this article shall be authentic unless invalidated by improbation.

**Art. 131. – INQUIRIES, SEIZURES, SEARCH AND BODY SEARCH**

Judiciary police officers, duly authorized agents of the Directorate of Mines and any other agents commissioned for such a purpose shall have powers to investigate, seize and search, wherever necessary. While investigating offences, they shall also have the right to make body searches. Body searches involving women shall only be conducted by physicians or other women.

**Art. 132. – ILLEGAL OPERATIONS**

Any individual who engages in illegal mineral substance prospecting, exploration or mining operations is punishable of six months of imprisonment and/or a CFA F 240,000 to 6,000,000 fine.

The seizure and confiscation of illegally extracted mineral substances shall be ruled by the competent tribunals. Willful accommodation of illegal prospectors by any individual residing in mining areas shall be considered as having participated in a crime.

**Art. 133. – OFFENCES AND PENALTIES**

The following offences are punishable by two months to two years of imprisonment and/or by a fine of CFA F 60,000 to 400,000:

- 1) Illegal destruction, removal or alteration of boundary markers;
- 2) Forgery of information on mine or quarry titles;
- 3) False statements to obtain mine or quarry titles.

**Art. 134. – OFFENSES AND PENALTIES DETERMINED AND SANCTIONED BY DECREE**

Any breaches of the provisions of this ordinance other than those already provided for in this ordinance shall be determined and sanctioned by an order.

**TITLE XI  
ENFORCEMENT PROVISIONS**

**Art. 135. – ENFORCEMENT PROCEDURES AND CONDITIONS**

Procedures and conditions for enforcing the ordinance shall be determined by an order issued by the Council of Ministers and by Ministerial Decree.

**Art. 136. – TRANSITIONAL PROVISIONS**

Mine titles and quarry opening and development titles that are valid as at the effective date of this ordinance shall remain so for their term and the substances they have been issued for and shall remain unchanged throughout their period of validity.

Mining Agreements signed before the effective date of this ordinance shall remain applicable throughout their period of validity.

However, holders of valid mine prospecting or mining permits or permanent quarry opening and development licenses may, at their request, be governed by the provisions of this ordinance; this application must be introduced within a period of twelve months following its effective date.

**Art. 137. FINAL PROVISIONS**

Subject to the provisions of the previous article, all provisions which are contrary to those of this order, including Law No 61-08 of 29 May 1961, and its implementing laws are repealed.

The provisions of prior laws which are not contrary to the provisions of this order and decrees and orders referred to in Article 134 shall remain in force, if necessary and shall be govern the local settlement of disputes.

**Art. 138. - PUBLICATION IN THE OFFICIAL GAZETTE**

This ordinance shall be published in the *Official Gazette* of the Republic of Niger and have force of Law.

Done in Niamey, this 2 March 1993  
Signed: **AMADOU CHEIFFOU**  
Prime Minister

ORDINANCE No 99-48, dated 5 November 1999  
Supplementing Ordinance No 93-16 on Mining Law, dated 2 March 1993

**THE PRESIDENT OF THE REPUBLIC OF NIGER**

CONSIDERING the Constitution;  
CONSIDERING Ordinance No 93-16 on Mining Law, dated 2 March 1999, and supplemented by  
Ordinance No 99- 048 dated 5 November 1999  
CONSIDERING the report of the Minister of Mines and Energy;

The Council of Ministers, heard;

**ENACTS:**

Article 1: Articles 82, 83, 84, 85, 86 and 133 of Ordinance No 93-16 on Mining Law, dated 2 March 1999, are amended as follows:

**Article 82 (new): Fixed fees**

Any applications for the issuance, renewal, expansion, extension, assignment, transfer, sublease, conversion, merging or division of a mine or quarry titles for the purpose of prospecting or mining mine substances or developing permanent or temporary quarries, shall be subject to payment of fixed fees at rates attached as Annex.

The Ministry of Mines and Energy shall collect such fees for the Ministry of Economy and Finance.

**Article 83 (new): Area taxes**

Prospecting and mining permits as well as artisanal mining and quarry opening and mining licenses shall be subject to payment of an annual area tax at rates attached as Annex.

Area taxes shall be calculated and collected by the Ministry of Mine and Energy for the Ministry of Economy and Finance.

**Article 84 (new): Mining royalties**

Extracted mine substances shall be subject to payment of a mining royalty. The tax base is the market value of the final product. This royalty shall be payable when the substances are removed from stocks for sale.

The rate of the mining royalty is 5.5%. This royalty shall be paid by all mine license holders, except artisanal mining license holders. Mining royalties shall be deducted in calculating taxable profits.

Samples of mine substances collected for assays, analyses and other tests shall not be subject to payment of any mining royalties.

Mining royalties shall be calculated by the Ministry of Mine and collected by the General Tax Division [*Direction générale des impôts*].

**Article 85 (new): Extraction taxes**

Quarry substances development and collection shall be subject to payment of extraction taxes at a rate of CFA F 250/m<sup>3</sup> of mined substances.

Amounts due for quarry substance extraction and development shall be calculated by the relevant department and municipality level Directorates of Mines and by Department or district level mines agencies, except for public quarries.

Relevant local governments shall collect amounts due in connection with the extraction and collection of quarry substances.

**Article 86 (new): Artisanal mining taxes**

Holders of artisanal mining licenses shall be subject to payment of artisanal mining taxes at rates corresponding to 3% of product value.

Individuals and legal entities licensed to sell mine substances extracted from artisanal mines shall be liable to artisanal mining tax at the rate of 2.5% of the product value.

Product value shall refer to the value of products at the time they are sold by producers.

Relevant department level Directorates of Mines or Department or district level public agencies shall calculate artisanal mining taxes payable by trading license holders.

Such taxes shall be collected by relevant Department and municipality level tax Directorates.

Relevant Department and municipality level Directorates of Mines as well as Department and district level public Agencies of Mines shall calculate taxes payable by artisanal mining title holders.

They shall be collected by relevant Department and municipality level tax Directorates.

**Article 133 (new): Offenses and penalties**

The following offences are punishable by two months to two years of imprisonment and/or by a fine of CFA F 60,000 to 400,000:

- 1) Illegal destruction, removal or alteration of boundary markers;
- 2) Forgery of information on mine or quarry titles;
- 3) False statements to obtain mine or quarry titles.

In case of false representations or omissions, a fine amounting to twice the fees, taxes and royalties concerned shall be imposed.

In case of delay in payment, post-maturity interests rates amounting to 3% for the first month and an additional 0.5% post-maturity interest per day, as at the first day of the second month, shall be payable.

Penalties on royalties, taxes and fees shall be determined and collected according to the same procedures as relevant royalties, taxes and fees.

**Article 2:** A title referred to as “TITLE X (a): Bonuses” is added.

**Title X (a): Commissions**

A ten percent (10%) commission shall be granted to the Ministry of Mines and Energy agents on the fixed fees and area taxes they have calculated and collected.

A fifty percent (50%) commission shall be granted to the agents of the Ministry of Mines and Energy on penalties they have calculated and collected.

Commissions shall be calculated and collected according to the same procedure as the relevant royalties, taxes and fees

**Article 3:** This ordinance shall be published in the Official Gazette of the Republic of Niger and shall have force of Law.

Done in Niamey, this  
Signed:  
The President of the Republic

**TANDJA MAMADOU**

**Copy**  
Chief Secretary of the Government



**REPUBLIC OF NIGER**

**LAW No 2006-26/**

**Dated 9 August 2006**

Amending Ordinance No 93-16 dated 2 March 1993 on Mining Law, supplemented by Ordinance No 99-48 dated 5 November 1999.

**THE PRESIDENT OF THE REPUBLIC OF NIGER**

**CONSIDERING** the Constitution dated 9 August 1999;

**CONSIDERING** Regulation No 18/2003/CM/UEMOA, dated 22 December 2003 on the adoption of the UEMOA Mining Code;

**CONSIDERING** Ordinance No 93-16 dated 2 March 1993 on the Mining Law, supplemented by Ordinance No 99-48, and dated 5 November 1999.

The Council of Ministers heard,

**The National Assembly considered and adopted,**

**The President of the Republic enacts:**

**Article 1: Article 36 of Ordinance No 93-16, dated 2 March 1993, on the Mining Law, and supplemented by Ordinance No 99-48, dated 5 November 1999, is repealed.**

**Articles 2, 8, 24, 34, 35, 44, 49, 51, 63, 82, 83, 84, 85, 86, 87, 88, 92, 93, 94, 95, 96, 97, 99, 105 and 136 and Title X a of Ordinance No 93-16, dated 2 March 1993, supplemented by Ordinance No 99-48, dated 5 November 1999, on the Mining Law are amended or replaced as follows:**

**Article 2 (new): STATE PROPERTY**

On the territory of the Republic of Niger, natural deposits of mineral or fossil substances in the subsoil or on the surface shall be the exclusive property of the State of Niger and are not liable to any form of private ownership, subject to the provisions of this ordinance.

The State shall consider, in all sovereignty, any applications filed for mining titles, or quarry opening and mining licenses. Rejection of such applications shall not entitle applicants to any appeals or compensations whatsoever.

**TITLE 1: GENERAL PROVISIONS**

**Article 8 (new): RIGHT OF THE STATE**

Issuance by the State of a mining permit shall entitle the latter to free shares for property representing 10% of the capital of the mining company throughout the duration of mining operations. These free shares shall remain unchanged in case of capital increase.

In addition to above mentioned shareholding, the State reserves the right to participate, in cash or in kind, directly or through its agencies, in the development of mine or quarry substances, in association with holders of mine or quarry titles.

The nature and procedures for such shareholding shall be clearly determined by mutual agreement of the parties and, beforehand, in the Mining Agreement signed by the parties or in the legal document authorizing the opening and development of the quarry.

**In such a case, the share of the State in the capital of such Mining Companies, including the 10% share referred to in paragraph 1 of this Article, shall not exceed forty percent (40%).**

The State may engage, for its own benefit, in any mining or quarry development activities, either directly or through a public agency, on its own or in partnership with third parties.

Where the States engages, directly or indirectly, in activities governed by this ordinance, it shall comply as much as possible with the provisions of the said ordinance, except for prospecting activities conducted under the authority of the Minister of Mines for the purposes of improving geological knowledge of the territory of the Republic of Niger or for scientific purposes.

## TITLE II: MINING TITLES

### Article 24 (new): AREA AND FORM

**Areas for which prospecting permits are issued shall not exceed five hundred (500) km<sup>2</sup>. Areas covered by the prospecting permits shall have the shape of a polygon with sides aligned to North-South and East-West.**

### Article 34 (new): VALIDITY OF SMALL SCALE MINING PERMITS

**Small scale mining permits shall be valid for a period of five (5) years. They may be renewed for periods of five years each until depletion of deposits for which they have been issued.**

### Article 35 (new): VALIDITY OF LARGE SCALE MINING PERMITS

**Large scale mining licenses shall be valid for a period of ten (10) years. They may be renewed for periods of five (5) years each until depletion of deposits for which they have been issued.**

**Renewal application files and draft agreement shall be forwarded to the Minister of Mines at least one year before the expiry date of the mining permit.**

**This provision shall apply to Article 34 (new) above.**

### Article 44 (new): SCOPE

Artisanal mining shall apply to mineral occurrences of some substances which are mined in a traditional way or to deposits whose industrial mining has not proved profitable.

Areas where artisanal mining activities may be legally conducted shall be determined by regulations. Sites selected for artisanal mining operations are divided into plots based on their potentialities. Artisanal mining plots are allocated to artisan miners' cooperatives, to individuals or Economic Interest Groupings involved in the sector.

**Article 49 (new): INDIVIDUAL CARDS**

Individual cards shall be issued to artisanal miners belonging to cooperatives or economic interest groupings, or employed by individuals holding artisanal mining license.

Such cards shall be valid for a period of one (1) year. They shall confer on their holders the right to conduct artisanal mining operations:

- for their benefit, in areas for which an artisanal mining license has not been issued to the cooperative or economic interest groupings they belong to,
- for individuals holding an artisanal mining license covering the plot where they conduct mining operations.

**Article 51 (new): MINING AGREEMENTS**

Prior to the issuance of prospecting permit as well as a mining license, a mining agreement shall be signed between the Ministry of Mine and applicants.

Mining Agreements shall set forth the rights and duties of the parties in relation to the legal, financial, fiscal and social requirements applicable to prospecting and mining operations during the validity period of such agreements.

These agreements shall cover prospecting and exploration periods as well as the first validity period of mining permits. They shall be valid for a maximum period of twenty years and can be renegotiated at the time of renewal of mining permits.

Mining agreements shall be signed by the Minister of Mines and applicants, after they have been approved by a decree issued by the Council of Ministers. They shall be effective and binding on the parties as at the date of their signature. Once effective, mining agreements can only be amended by mutual agreement of the parties.

**TITLE III: CLOSED, PROTECTED OR PROHIBITED AREAS**

**Article 63 (new): PROTECTED OR PROHIBITED AREAS**

For the purpose of protecting buildings and towns, cultural or burial sites, water points, roads, engineering works and public utility works and in areas where it is deemed necessary in the general public interest, perimeters of any size, within which mine substance or quarry substance prospecting, exploration, and mining operations may be subject to certain conditions or prohibited, may be designed.

In case title holders have to demolish or abandon any works or constructions established, prior to the classification of these perimeters as protected or prohibited areas, they shall be entitled to compensation amounting to expenses incurred in connection with the demolished or abandoned works and constructions.

No mine substance prospecting, exploration or mining activity shall be conducted on the surface within a radius of a hundred meters:

- around properties enclosed by walls or similar structures, villages, clusters of houses, wells, religious buildings, burial sites and sites considered as sacred, without the approval of their owners,
- on both sides of communication routes, water pipes and more generally around all public utility works and engineering works, without any prior authorization.

Measures provided for in this article shall be taken by a joint order of the Minister of Mines and the Minister of State Property. This order shall take into account comments made by all mine title holders concerned.

Holders of prospecting and mining permits shall ensure that their activities and facilities do not adversely affect natural and cultural heritage of the Republic of Niger.

Any occupation of land, prospecting or mining operations conducted within the perimeter of such estate shall be duly authorized by the State.

However, when a portion of the national estate is classified as global commons, at the request of the State, mine or quarry titles within this estate shall be issued in conformity with the relevant provisions of UNESCO Conventions.

## **TITLE V: TAX AND CUSTOMS PROVISIONS**

### **Article 82 (new): FIXED FEES**

Any individual or legal entity applying for the issuance, renewal, expansion, extension, assignment, transfer, sublease, conversion, merging or division of mine or quarry titles, exploration licenses, artisanal mining licenses or trading license in connection with substances extracted from artisanal mines, is liable to the payment of fixed fees at rates determined in the Budget Act on a yearly basis. These fees shall be calculated and collected by the Ministry of Mines for the Ministry of Finance.

### **Article 83 (new): AREA TAXES**

Any individual or legal entity applying for exploration licenses, prospecting permits, mining permits, artisanal mining licenses, quarry opening and development licenses shall be liable to the payment of an annual area tax at the following rates:

<b>Exploration licenses</b>	CFA F/km <sup>2</sup> /year
Issuance or renewal	100
 <b>Mine prospecting permits</b>	 CFA F/km <sup>2</sup> /year
First validity period	1,000
First renewal	2,000
Second renewal	3,000
Extension	5,000
 <b>Small scale mining permits</b>	 CFA F/km <sup>2</sup> /year
First validity period	5,000
First renewal	10,000
Second renewal	2,000
Third renewal	13,000

Extension	15,000	
<b>Large scale mining permits</b>	CFA F/km <sup>2</sup> /year	
First validity period	5,000,000	
First renewal	7,500,000	
Second renewal	10,000,000	
Extension	20,000,000	
<b>Artisanal mining licenses</b>	CFA F/are/year	
Throughout period of validity	1,000	
<b>Quarry opening and development licenses</b>	CFA F/ha/year	
Permanent quarries		1,000
Temporary quarries		1,500

Area taxes shall be calculated and collected by the Ministry of Mines for the Ministry of Finance.

**Article 84 (new): MINING ROYALTIES**

Any individuals or legal entities conducting mining operations shall be liable to the payment of mining royalties, the tax base of which is the market value of the extracted product. Mining royalties shall be calculated when substances are removed from stocks for sale.

When shipping tradable goods, mining companies are required to make an advance payment on the mining royalties at the rate of 5.5%. The balance, if any, shall be paid up after the annual financial statement of the company. Such taxes are deductible in calculating taxable profits.

Samples meant for assays, analyses or other tests are exempted from payment of mining royalties. Quantities to be used for assays shall be determined by a decree issue by the Council of Ministers.

Mining royalties shall be calculated according to a specific formula presented below:

A = Mining products

B = Operating income

C = B/A (%)

- 1) If C is lower than or equal to 20%, the mining royalty rate is 5,5%;
- 2) If C is higher than 20% and lower than 50%, the mining royalty rate is 9%;
- 3) If C is equal to 50% or above, the mining royalty rate is 12%.

A and B are calculated in accordance with the accounting system of Niger.

Mining royalties shall be calculated by the Ministry of Mines and collected by the Ministry of Finance.

**Article 85 (new): ARTISANAL MINING AND EXTRACTION TAXES**

**ARTISANAL MINING TAXES**

Artisanal mining license holders shall be liable to the payment of mining taxes at a rate of 2.5% of the product value.

Individuals or legal entities authorized to trade mine substances extracted from artisanal mines shall pay an artisanal mining tax at rate of 3% of the product value.

“Product value” means the value of the product when sold by the producer.

Artisanal mining taxes payable by holders of trading licenses shall be calculated by the relevant deconcentrated services of the Ministry of Mines.

They shall be recovered by the relevant deconcentrated services of the Ministry of Finance.

Artisanal mining taxes payable by artisanal mining title holders shall be assessed by the relevant deconcentrated services of the Ministry of Mines.

They shall be collected by the relevant deconcentrated services of the Ministry of Finance.

Taxes payable by holders of artisanal mining licenses shall be calculated by the deconcentrated services of the Ministry of Mines and collected by the deconcentrated services of the Ministry of Finance.

### **EXTRACTION TAXES**

Quarry substances development and collection shall be subject to payment of extraction taxes at the rate of CFA F 250/m<sup>3</sup> of extracted materials.

Taxes payable for extracting and collecting quarry substances shall be calculated by the relevant deconcentrated services of the Ministry of Mines, except for public quarries.

Taxes payable for extracting and collecting quarry substances shall be collected by the relevant local governments.

### **Article 86 (new): COMMUNITY LEVY (PC), COMMUNITY SOLIDARITY LEVY (PCS) AND STATISTICAL TAXES (RS)**

During the prospecting phase, capital goods, materials, spare parts as well as fuel and lubricants needed for the operation of machines, equipment and industrial vehicles used for prospecting operations are exempted from duties and taxes due when they are imported, except for the Community Levy [*Prélèvement Communautaire-PC*] Solidarity Community Levy [*Prélèvement Communautaire de Solidarité - PCS*] and Statistical fees [*Redevance statistique – RS*].

### **Article 87 (new): ACCOUNTS OF TITLE HOLDERS AND THE RIGHTS OF THE STATE IN RELATION TO AUDITS**

The Minister of Mines shall have access to all documents, records of measurements, interpretations, studies, financial statements and supporting documents, as well as all sample collected by holders of prospecting and mining permits or quarry opening and development licenses, during their operations. Such documents may be used by the State for its own benefits.

Holders of prospecting and mining permits or quarry opening and development licenses are required to regularly forward to the relevant administration any information relating to fund movements on the national territory and abroad, amounts received or disbursed from their foreign accounts to finance their mining and quarry operations.

The Ministry of Mines or any other duly authorized agencies shall be entitled to audit accounts of holders of prospecting and mining permits or quarry opening and development licenses under

conditions and procedures provided for in the Mining Agreement and document granting such permits or licenses.

**Article 88 (new): TAXES ON BUSINESS PROFITS AND INCOME**

Holders of mine substance mining titles, legal entities holding quarry opening and mining licenses and cooperatives or economic interest groupings with mine substance mining titles shall be subject to payment of schedular business profits taxes (IC/BIC).

Mining or quarry enterprise shareholders shall be subject to payment of dividend taxes based on dividends, percentages, Director's fees and other products to them distributed.

**Article 88 (new) a: REGISTRATION AND STAMP DUTIES**

The relevant companies shall, in addition, be subject to payment of registration and stamp duties as well as rights publication fees in accordance with provisions of the Registration and Stamp Code.

However they shall be exempted from payment of any interests and other proceeds accruing from amounts borrowed for equipment or operations.

**Article 92 (new): EXEMPTIONS DURING PROSPECTING PHASE**

During prospecting phase, holders of mine and quarry title shall be granted the following tax and customs advantages:

(a) Particularly in connection with their prospecting activities, mine or quarry prospecting title holders shall be exempted from payment of the following taxes:

- Value added tax (VAT);
- Income tax;
- Minimum flat tax or its equivalent;
- Apprenticeship tax;
- Occupational tax;
- Land tax;
- Registration duties on contributions made at the time of incorporation or capital increase.

(b) In connection with their prospecting activities, holders of mine or quarry prospecting title shall be granted the following customs advantages:

- Capital goods, materials, spare parts as well as fuel and lubricants needed for the operation of machines, equipment and industrial vehicles used for prospecting operations are exempted from duties and taxes due when they are imported, except for the Community Levy [*Prélèvement communautaire-PC*] Solidarity Community Levy [*Prélèvement Communautaire de Solidarité – PC*] and Statistical fees [*Redevance statistique - RS*];
- Normal temporary admission of imported capital goods to be used for prospecting operations.

**Article 93 (new): EXEMPTIONS DURING MINING PHASE**

During mining phase, holders of mining and quarry titles shall be granted the following customs and tax advantages:

(a) In connection with their mining activities, mine or quarry prospecting title holders shall be exempted from payment of the following taxes:

- Value added tax (VAT) for a period ending on the date of First Production;
- Occupational tax, for three (3) months starting from the date of First Production;
- Apprenticeship tax, for three months starting from the date of First Production;
- Income tax for three months, starting from the date of First Production;
- Land tax, throughout the mining phase;
- Minimum flat tax or its equivalent, throughout the mining phase;
- All taxes and duties on any interests and other proceeds accruing from amounts borrowed by the company for equipment or operations;
- Holders of mining permits may benefit from the system of accelerated depreciation.

(b) In connection with their mining activities, holders of mining permits shall be granted the following customs advantages:

- Total exemption, throughout the period of validity of mining titles, from customs tax and duties, except for the Statistic fees [*Redevance Statistiques – RS*], payable when importing petroleum products for power generation, extraction, transport and ore processing as well as for the operation and maintenance of social and health infrastructures;
- Exemption from all export duties and taxes usually payable when re-exporting capital goods that have been used for mining operations;
- Exemption, for a period that ends on the date of First Production, from duties and taxes payable when importing equipment, spare parts, except for those used for private vehicles or any other similar vehicles, materials and machinery to be eventually used for the works. Such duties and taxes shall not include Community Solidarity Levy, Community Levy and Statistical;
- Total exemption, throughout the validity period of the title, from entry duties and taxes on chemicals, reagents, oils and greases for capital goods;
- Possible application of systems of accelerated depreciation;
- Temporary admission of imported capital goods used to conduct mining operations, for a period extending to the end of the third year, starting from the date of First Production.



As at the end of this exemption period, and for the residual terms of mining titles in exploitation phase, the holders of such titles shall be subject to payment of duties and taxes payable on the capital goods on the mining list, in accordance with the provisions of the Customs Code.

From the end of this period and throughout the remaining period of validity of the mining title issued for the mining phase, holders of such titles shall pay taxes and duties payable on capital goods which are on the Niger mining list, in accordance with customs regulations.

Such duties and taxes shall be collected based on the residual value of capital goods to which the temporary admission system was applied.

Pursuant to Customs Regulations, foreign workers, residing in Niger and employed by holders of prospecting or mining titles in connection with prospecting or mining operations, shall be exempted from duties and taxes when importing their personal effects and belongings.

Notwithstanding the above-mentioned duties, taxes, fees and advantages, holders of mine or quarry prospecting or development permits shall comply with general tax and customs regulations in force in Niger.

**Article 94 (new): ASSIGNMENT AND REALLOCATION OF ITEMS UNDER TEMPORARY ADMISSION REGIME**

In case items under temporary admission regime are assigned or reallocated, holders of mining title shall be liable to the payment of all duties and taxes due on the residual value of goods as at the date of the introduction of the request for disposal.

**Article 95 (new): COMMISSIONS AND UTILIZATION OF MINING PROCEEDS**

- A 10% commission shall be granted to employees of the Ministry of Mines on fixed fees and area taxes that they have calculated and collected;
- A 1% commission shall be granted to employees of the Ministry of Mines on mining royalties they have calculated;
- A 50% commission shall be granted to employees of the Ministry of Mines on the penalties they calculated and collected;
- Commissions shall be calculated and collected under the same procedures as duties, taxes or royalties.

**UTILIZATION OF MINING PROCEEDS**

**Mining income, made up of mining royalties, area taxes, fixed fees, proceeds from artisanal mining taxes and sales of artisanal miners' cards, after deduction of commissions granted to employees of the Ministry of Mines, shall be allocated as follows:**

- national budget: 85%;
- budget of the municipalities of relevant regions: 15% to finance local development.

**The sharing formula of the share of mining income accruing to municipalities of relevant regions shall be specified by a decree issued by the Council of Ministers.**

**Article 96 (new): EXEMPTION CERTIFICATE**

To be entitled to exemption from taxes, fees and duties referred to in the aforementioned articles, companies which are not subcontractors are required to file an exemption certificate signed by the Minister of Mines.

Company enjoying the above-mentioned customs regimes shall be liable to all control and supervision measures prescribed by the Customs Administration, in accordance with the regulations in force and must comply with all rules of procedure.

**Article 97 (new): STABILITY OF THE TAX SYSTEM**

Throughout the period of validity of this Mining Agreement, fixed fees, taxes, royalties and advantages provided for in this Law shall remain unchanged for prospecting and mining companies as at the date of signature of the said agreement. The same applies to holders of permanent quarry opening and development license during the period of validity of the said licenses.

During this period, the rates, assessment and collection rules of the above-mentioned taxes and duties shall remain as they stood on the effective date of the mining agreement or permanent quarry opening and mining licenses, unless the rates have been reduced in the meantime. In such a case, holders of such titles shall be entitled to the new rates.

During that period, rates, regulations regarding the above-mentioned tax base and tax collection shall remain as they were at the effective date of the mining agreement or permanent quarry opening and development licenses, unless these rates are reduced in the meantime, in which case the title holder shall enjoy these new rates.

**TITLE VI: RIGHTS AND OBLIGATIONS RELATING TO MINE OR QUARRY OPERATIONS**

**Article 99 (new): MINE OR QUARRY SUBSTANCES MINING AND THE ENVIRONMENT**

Mine or quarry substance development operations are considered as commercial activities.

They must comply with laws and regulations regarding rational use of national resources and environmental protection.

To that end, companies must conduct their activities using techniques accepted in the mining sector and take the necessary steps to protect the environment, treat wastes and preserve forests and water resources.

Holders of prospecting and mining permits or quarry opening and development licenses are required to submit, to the mining administration, an annual report on general safety issues.

Holders of radioactive substance mining permits must also submit semi-annual and annual reports on protection against radiation.

**Article 105 (new): CURRENCY REGULATIONS**

Mine or quarry title holders shall be subject to currency regulations in force in the Republic of Niger.

To that end, during the validity period of the Mining Agreement or quarry development licenses and provided they have met their obligations, holders of mine or quarry titles must:

- have several bank accounts in Niger for the purpose of repatriating their sale proceeds;
- receive in Niger all funds acquired or borrowed abroad, including proceeds from sales of their production;

- transfer abroad dividends and proceeds from capital invested as well as proceeds from liquidation or capitalization of their assets;
- pay foreign suppliers of goods and services required to conduct mining operations.

Mineral substances shall be sold in \$ US.

The State shall guarantee holders of mine or quarry title who are foreign nationals, a free convertibility of the national currency with convertible foreign currencies, which is governed by international treaties establishing the CFA monetary zone and West African Monetary Union.

Foreign staff residing in Niger and employed by mine or quarry title holders shall be free to convert and transfer to their countries of origin, in whole or in part, their income, provided they have paid their taxes and contributions according to the regulation in force in Niger.

**Article 136 ( new): TRANSITIONAL PROVISIONS**

During the period extending from the effective date of this law to the effective date of the 2007 Budget law, the rates of the fixed fees referred to in Article 82 (new) shall be as follows:

<b>Prospecting licenses</b>	<b>CFA Francs</b>
Issuance/ Renewal	100,000
<b>Exploration permits</b>	<b>CFA Francs</b>
Issuance	1,000,000
First renewal	1,000,000
Second renewal	1,000,000
Transfer	1,500,000
Extension	2,000,000
<b>Small scale mining permits</b>	<b>CFA Francs</b>
Issuance	700,000
First renewal	700,000
Second renewal	700,000
Transfer or conversion	1, 000,000
<b>Large scale mining permits</b>	<b>CFA Franc</b>
Issuance	5,000,000
First renewal	10,000,000
Second renewal	10,000,000
Transfer	20,000,000
<b>Artisanal mining licenses</b>	<b>CFA Franc/Plot</b>
Issuance	20,000
Renewal	20,000
<b>Individual cards</b>	
Issuance / renewal	2,000
<b>Trading licenses</b>	
<b>Gold</b>	
Issuance	1,000,000
First renewal	1,000,000

Second renewal 1,000,000

**Gypsum**

Issuance 30,000

First renewal 30,000

Second renewal 30,000

**Cassiterite and related minerals**

Issuance 5,000

First renewal 5,000

Second renewal 5,000

**Precious and semi-precious stones**

Issuance 100,000

First renewal 100,000

Second renewal 100,000

**Quarry opening and development licenses**

Permanent quarry 50,000

Temporary quarry 40,000

The Ministry of Mines shall be responsible for calculating and collecting fixed fees for the Ministry of Finance.

**Mine or quarry titles that are valid as at the effective date of this law Act shall remain so for the term and for substances they have been issued for and shall remain unchanged for the entire period of validity.**

Renewal of exploration prospecting and permanent quarry development licenses, artisanal mining licenses, extensions, re-issuance of valid mine or quarry titles shall be issued in conformity with the provisions of this Law.

The advantages granted, under agreements in force prior to the effective date of this law, to companies conducting mine or quarry substance exploration, prospecting and mining operations in Niger shall apply until the end of the validity of such titles.

However, holders of valid mine prospecting or mining permits or permanent quarry opening and development licenses may, at their request, be governed by the provisions of this Ordinance, without any exception.

**Article 2: This law shall be published in the Official Gazette of the Republic of Niger and have force of Law.**

Done in Niamey, this 9 August 2006

**The Prime Minister**  
HAMA AMADOU

*Signed:* President of the Republic  
MAMADOU TANDJA

**Copy :**

Chief Secretary of the Government  
LAOUEL KADER MAHAMADOU

Minister of Mines and Energy  
MOHAMED ABDOULAH

REPUBLIC OF NIGER  
PRESIDENCY OF THE REPUBLIC  
MINISTRY OF MINES AND ENERGY

DECREE No 2006-265/PRN/MME

August 18<sup>th</sup>, 2006

Determining details for implementing the  
Mining Law.

**THE PRESIDENT OF THE REPUBLIC OF NIGER**

Considering the Constitution of August 9<sup>th</sup>, 1999;

Considering Ordinance No 93-16 dated March 2<sup>nd</sup>, 1993 on the Mining Law amended by Ordinance No 99-48 dated November 5<sup>th</sup>, 1999 and Law 2006-026 of August 9<sup>th</sup>, 2006;

Considering Decree No 2004-403/PRN dated December 24<sup>th</sup>, 2004 appointing the Prime Minister;

Considering Decree No 2004-404/PRN dated December 30<sup>th</sup>, 2004 appointing members of the Government amended by Decree No 2006-200/PRN dated June 27<sup>th</sup>, 2006;

Considering Decree No 2005-043/PRN/MME dated February 18<sup>th</sup>, 2005 determining the responsibilities of the Minister of Mines and Energy;

Considering Decree No 2005-092/PRN/MME dated April 22<sup>nd</sup>, 2005 organizing the Ministry of Mines and Energy;

On a report by the Minister of Mines and Energy;

The Council of Ministers heard:

**ENACTS:**

**Article 1:** This decree determines details for implementing Ordinance No 93-016 dated March 2<sup>nd</sup>, 1993 on the Mining Law of the Republic of Niger and its subsequent amendments.

**TITLE 1**  
**GENERAL PROVISIONS**

**Article 2:** Applicants, holders of mine titles, prospecting license, quarry opening and development license, lessees shall reside in the Republic of Niger and notify the Minister of Mines. Administrative notifications regarding the implementation of the Mining law shall validly be sent to the elected domicile.

**Article 3:** Applications, with attachments if any, filed with the Minister of Mines in accordance with the Mining Law must be presented in three original copies, except in case of artisanal mining.

Prospecting or mining permits are subject to a separate mining convention negotiated between the Minister in charge of Mines and the applicant. A sample mining agreement is attached to this decree.

Issuance of any mine title shall be subject to an application written in French.

**Article 4:** Applications filed under the Mining Law must provide the following information on the persons for whom they have been submitted.

For individuals:

- surname, first names, profession, nationality and place of residence
- certified copy of identity card or passport
- certificate of police record issued less than six (6) months ago or, for foreigner, any document serving the same purpose in the country of origin.

For legal entities:

\* Commercial corporation:

Head office, its capital; surnames and first names, profession, nationality and place of residence of people in senior positions within the company: president, managers, members of the Board of Directors or *Directoire* or Board of Trustees, Directors who are authorized to sign on behalf of the corporation; auditors; by-laws, the financial statement and balance sheet of previous fiscal year.

\* Cooperatives or associations:

- Name, surnames, profession, nationality and place of residence of the office staff
- Headquarters
- By-laws
- Business registration number

\*Other institutions:

The type, address and head office, and name and surnames of peoples in charge of operations.

Applications made on behalf of companies or groups of people must be introduced, together with a certified copy of the by-laws of the company or a certificate mentioning the powers of the signatory of the said application, in case of a group of people.

**Article 5:** Companies holding a mine title must notify the Minister in charge of Mines of any change affecting the by-laws and capital as well as any change regarding people referred to in Article 4 above.

**Article 6:** The Director of Mines keeps special registers and maps with information regarding:

- 1) issuance and renewal of exploration licenses, prospecting and mining permits, artisanal mining licenses, quarry substance prospecting licenses, quarry opening and development licenses;
- 2) records and comments on any change, surrender, transfer, assignment, merging, sub-leases, divisions, or civil or legal documents concerning mine titles.

A map of the Republic of Niger, indicating the perimeters of all existing mine titles as well as their registration numbers in the register provided for above, is also updated by the Director of Mines.

The registers and maps shall be made available to applicants and may not be taken away.

**Article 7:** The Minister of the Interior is kept informed of any development regarding artisanal prospecting or mining licenses, quarry substances prospecting licenses, quarry opening and development license and of their renewals.

## **TITLE II** **MINE TITLES**

### **CHAPTER 1** **EXPLORATION LICENSES**

**Article 8:** Applications for exploration licenses or prospector cards for mine substances as well as supporting documents shall be submitted to the Minister of Mines. Such applications must comply with the provisions of Articles 3 and 4 of this decree and shall include:

- a) for individuals :
  - purpose of exploration operations;
  - overall work plan;
  - commitment to submit to the Director of Mines a half-yearly report on the work performed;
  - receipt of the payment of fixed fees;
  - certified copy of the memorandum of understanding or articles of association, in case such applications are introduced by several individuals.
  
- b) for commercial corporations and other institutions:
  - identity of individuals participating in field work,
  - purpose of exploration activities, i.e. scientific or commercial,
  - overall work plan,
  - commitment to submit to the Director of Mines a semi-annual report on the work undertaken,
  - receipt of the payment of fixed fees;
  - a certified copy of the memorandum of understanding or articles of association binding on the parties, in case such applications are introduced by several individuals.

Exploration licenses shall be issued by the Director of Mines and sent to applicants by registered mail within a month from the date of receipt of applications.

Prospectors' cards, with one year validity, shall be issued by the Director of Mines to each authorized prospector in lieu of exploration license.

**Article 9:** Applications for the renewal of exploration licenses must be introduced at least a month before the end of their expiry date. They shall be sent to the Director of Mines and, notwithstanding the provisions of Article 4 above mentioned, should be supported by the following documents:

- report of the works already conducted, with the relevant costs and results;
- overall program of additional works;
- receipt of the payment of fixed fees.

Exploration licenses or prospector cards shall be renewed by the Director of Mines.



**Article 10:** If the activities of holders of exploration licenses or prospectors' cards are detrimental to public interests or if works undertaken are not limited to exploration operations, then relevant exploration licenses may be restricted or cancelled.

This restriction or cancellation may only be decided following a formal notice given by the Director of Mine. Such restriction or withdrawal shall be decided under the same conditions as the ones governing issuance of exploration licenses or prospectors' cards.

**Article 11:** Holders of exploration licenses or prospectors cards may surrender them at any time and shall inform the Director of mine of their decision. In case of surrender, the relevant licenses or cards are cancelled.

## **CHAPTER II** **PROSPECTING PERMITS**

### **Section 1**

#### **Granting a prospecting permit and its extension**

**Article 12:** Legal entities holding or not prospecting licenses may apply for prospecting permits. The mine administration shall provide them with a map indicating available perimeters they may choose from.

**Article 13:** Applications for prospecting permits shall be forwarded to the Minister of Mines. Such applications must comply with the provisions of Articles 3 and 4 of this decree, and include:

- mining substance(s) for which the permit is requested;
- boundaries of the perimeter applied for;
- area of the perimeter delineated and the relevant administrative units;
- period of validity of the permit applied for;
- technical and financial resources of the applicant;
- amount that the applicant undertakes to invest;
- a certified copy of the memorandum of understanding or articles of association binding on the parties, in case such applications are introduced by several legal entities.
- location of the area for which the permit is applied, with vertexes and boundaries of the perimeter as well as geographic landmarks used to determine them on a map extract on a scale of 1/200,000;
- overall program and work schedule that the applicant intends to implement during the first term of the permit;
- receipt of the payment of fixed fees;
- mining agreement passed between the State and the applicant of the permit;
- commitment to submit to the Director of Mines: the work schedule for the rest of the year, within a period of one (1) month following the issuance of the permit; the work program of the following year, before December 31<sup>st</sup> of each year and a quarterly report of the prospecting operations conducted.

**Article 14:** The Minister of Mines shall notify applicants of his/her decision in relation to prospecting permits within a period of three (3) months after receipt of such applications.

The order granting such permits or the letter rejecting the application is sent to the applicants by registered letter.

**Article 15:** Applications to expand the scope of prospecting permits so as to cover other substances than those mentioned in such permits are sent to the Minister of Mines by registered mail. These applications, notwithstanding Article 4 above mentioned, should include the following:

- references of the prospecting permit for which the expansion of scope to one or several substances is requested;
- substance(s) for which such expansion is requested;
- receipt of payment of fixed fees.

The expansion of the scope of the prospecting permit is granted under the same conditions as the ones governing the issuance of the initial permit.

**Article 16:** Prospecting permits can only be granted for areas that are available. Are considered as such:

- areas which are not covered by any mine title, except for exploration licenses and subject to the rights conferred by Article 15 of the Mining Law;
- areas that not located in closed zones as per Article 62 of the Mining Law.

## Section II Renewal of prospecting permits

**Article 17:** Holders of prospecting permits, wishing to renew such permits, shall indicate areas they wish to keep in accordance with Article 25 of the Mining Law.

**Article 18:** Applications for renewal of prospecting permits shall be submitted at least four (4) months before the expiry date of such permits.

They shall be sent to the Minister in charge of Mines in three (3) original copies and include the following:

- references of the prospecting permit for which renewal is requested;
- substance(s) for which such renewal is requested;
- term of the renewal;
- boundaries of permit applied for;
- amount that the applicant undertakes to invest;
- a general report on the prospecting operations undertaken during the period of validity which is about to expire, including results of operations, soundings and analyses as well as necessary plans, drawings and sections;
- location of the area the permit is applied for on a map of Niger on a scale of 1/200,000;
- overall program and work schedule that the applicant intends to implement during the validity of the renewed permit.
- receipt of the payment of fixed fees;
- commitment to present to the Director in charge of Mines, in the month following the granting of the permit, the works program for the rest of the current year and, before December 31<sup>st</sup> of each year, the works program of the following year as well as the quarterly report of the prospecting works performed;
- commitment to submit to the Director of Mines: the work schedule for the rest of the year, within a period of one (1) month following the issuance of the permit; the work program of

the following year, before December 31<sup>st</sup> of each year; and a quarterly report of the prospecting operations conducted.

***Article 19:*** *The Minister of Mines shall notify applicants of his/her decision in relation to prospecting permits renewal within a period of four (4) months after receipt of such applications.* The order granting such renewal of permits or the letter rejecting the application is sent to the applicants by registered letter.

### Section III Extension

**Article 20:** Holders of prospecting permits having proved the occurrence of marginal deposits on their perimeters are entitled to apply for an extension of their permit. Such applications shall be sent, in three (3) original copies, to the Minister of Mines, with the following:

- references of the prospecting permit;
- feasibility study;
- receipt of the payment of fixed fees.

The extension is issued by order of the Minister of Mines and sent to applicants by registered letter. Holders of prospecting permits are entitled to an extension of their permit as long as conditions do not favor profitable operations.

Permits shall be extended for two (2) years, renewable without limitation, as long as the feasibility study, to be updated every two years, shows that mining is not profitable.

**Article 21:** Holders of prospecting permits, who may no longer apply for renewal of their permits as per the Mining Law, are entitled to the extension of the validity of such permits, if they have conducted or are about to conduct feasibility studies.

Applications for extension of the validity of prospecting permits shall be submitted to the Minister of Mines in triplicate and include the following:

- the references of the prospecting permit;
- reports on work performed including analyses conducted and, if any, feasibility study progress report;
- the work schedule;
- the receipt of the payment of fixed fees.

### Section IV Investments

**Article 22:** If holders of prospecting permits invest, during the period of validity of their prospecting permits, an amount that is higher than the amount they committed to invest in a year, the surplus thus invested may be carried forward to the following year, and is deductible from the amount they are supposed to invest.

### Section V Disposition of prospecting permits

**Article 23:** Prospecting permits are reputed to be disposed of when there is a change of ownership.

**Article 24:** Applications for assignment or transfer of prospecting permits must comply with the provisions of Articles 3 and 4 of this decree. They must be jointly signed by the two (2) parties, and the deed of transfer or assignment may only be executed provided the license is suspended beforehand. They shall include:

- permit file;
- technical and financial resources of the new holder;
- receipt of the payment of fixed fees;
- a copy of the transfer or assignment deed signed by the two (2) parties;
- a certified copy of all contracts and agreements signed between parties who, after assignment or transfer, shall become the owners of prospecting permits;
- overall work program and schedule that the new permit holder intends to undertake during the period of validity;
- commitment to submit to the Director of Mines : the work schedule for the rest of the year, within a period of one (1) month following the issuance of the permit; the work program of the following year, before December 31<sup>st</sup> of each year; and a quarterly report of the prospecting operations conducted.

Applications must give the reasons justifying the assignment or transfer as well as the financial effort the new holder undertakes to make.

The order authorizing the assignment or transfer is sent to applicants by registered letter at most three (3) months as from the date the Minister of Mines receives the application.

## Section VI

### **Withdrawal - Surrender of prospecting permits**

**Article 25:** Non-compliance with the provisions of Article 59 of the Mining Law may result in the withdrawal of prospecting permits. In case of violation of the law, the Minister of Mines shall send to holders of permits concerned a formal notice requiring them to meet their obligations within the timeframe set forth in Article 59 of the Mining Law.

If, at the end of this period, the obligations stated in the formal notice have not been met, the Minister of Mines shall revoke, by order, the permits concerned, without prejudice to penalties provided for in the Mining Law.

**Article 26:** Notwithstanding the provisions of Article 4 of this decree, applications to total or partial surrender of prospecting permits shall include:

- the head office and name of the company;
- prospecting permit file;
- a detailed note presenting works already conducted and corresponding results, and specifying the extent to which goals included in the initial application have been achieved or amended;
- technical or financial reasons justifying the application.

**Article 27:** Total or partial surrender is decided by an order issued by the Minister of Mines.

The order accepting total or partial surrender shall be notified to title holders by registered mail.

**Article 28:** Holders of prospecting permits which have been withdrawn and have expired without being renewed or permits whose surrender has been accepted, may acquire, partially, directly or indirectly, rights over the same perimeter only after six (6) months following the notification of the order related to the withdrawal or surrender.

**CHAPTER III**  
**MINING PERMIT**

Section I

**Granting a mining permit**

**Article 29:** Applications for small or large-scale mining permits are forwarded in three (3) original copies to the Minister of Mines who shall acknowledge receipt of it. Such applications must be introduced at least four (4) months before the expiry date of the prospecting permits for which they have been introduced.

They shall comply with the provisions of Articles 3 and 4 of this decree, and include:

- references of the prospecting permit for which the application is introduced;
- coordinates and area of the perimeter applied for;
- substance(s) for which the permit is requested;
- location of the perimeter applied for on a map of the region on a scale of 1/200,000;
- a detailed plan on an adequate scale where the coordinates of the vertexes of the perimeter are materialized by clear, well defined and constant landmarks;
- a note presenting the results of the prospecting works performed under the permit;
- a feasibility study;
- a plan for the development and mining of the deposit;
- an environmental impact study, including an environmental protection program and a site rehabilitation plan;
- an environmental compliance certificate;
- receipt of payment of fixed fees;
- commitment to submit to the Director of Mines : the work schedule for the current year, within a period of one (1) month following the issuance of the mining permit; the work program of the following year, before December 31<sup>st</sup> of each year; and a monthly report on extracted substances and mining operations;
- memorandum of understanding or articles of association in case of association of members.

**Article 30:** If some of the documents of applications are missing, the Minister of Mines shall send applicants a letter inviting him/her to provide them within a month.

**If at the end of this period, the applicant fails to provide the documents requested, the Minister of Mines shall notify him/her of the rejection of the application.**

The rejection of an application for mining permit does not give rise to any indemnification or compensation.

In case of small-scale mining operations, the Minister of Mines shall issue the mining permit, by order and within a period of four (4) months maximum, from the date of the receipt of the application.

Concerning large-scale mining operations, the Minister of Mines forwards the file with his/her suggestions, within a period of four (4) months maximum, to the Council of Ministers. The decree

for large-scale mining operations or the order for small-scale mining operations granting the mining permit is notified to applicants by registered mail.

## Section II

### **Expansion of the scope of a mining permit**

**Article 31:** Applications for the expansion of the scope of mining permit to cover one or several substances are submitted to the Minister of Mines and **include the following:**

- references of the mining permit;
- substance(s) for which the extension is applied for;
- precise name and geographic location of the deposit discovered within the perimeter of the permit for which the extension is requested;
- receipt of payment of fixed fees;
- a note presenting the results of operations conducted since the date the mining permit has been issued, regarding exploration and delineation of the deposit for which the extension is requested;
- overall mining program during the period of validity the permit, including the expansion requested.

**Article 32:** Authorizations to expand the scope of mining permits to other substances are issued under the same conditions as those provided for in article 30 above.

## Section III

### **Renewal of mining permits**

**Article 33:** Applications for renewal of mining permits and the draft agreement must be submitted to the Minister of Mines at least one year before the expiry date of the current permit.

Such applications comply with the provisions of Articles 3 and 4 of this decree and include the following information and documents:

- references of the mining permit;
- substance(s) for which the renewal is applied for
- precise name and geographic location of the deposit(s) for which the renewal applied for;
- receipt of payment of fixed fees;
- a note presenting the results of operations conducted since the date the mining permit has been issued;
- overall mining program planned;
- location of the perimeter applied for on a map of the region on a scale of 1/200,000, with vertexes and boundaries of the perimeter of the mining permit;
- commitment to submit to the Director of Mines : periodic reports on the results of mining operations in accordance with Article 123 of the Mining Law and the work program of the following year, before December 31<sup>st</sup> of each year
- the memorandum of understanding or articles of association in case of associations involving several members.

## Section IV

### **Disposition of mining permits**

**Article 34:** Mining permits are reputed to be disposed of when there is a change of ownership.

Applications for assignment transfer or sub-lease of permits must comply with the provisions of Articles 3 and 4 of this decree and sent to the Minister of Mines. They must be jointly signed by the two (2) parties, and the deed of transfer, assignment or sub-lease may be executed, provided the previous authorization is suspended. They shall include:

- receipt of the payment of fixed fees;
- initial documents of the mining permit in case of assignment or transfer;
- a copy of the deed of assignment, transfer or sub-lease signed by the two (2) parties;
- a certified copy of all contracts or agreements signed between parties who will become, after the assignment, transfer or sub-lease is passed, owners of the mining permit;
- technical and financial resources of the new holder;
- overall development and mining program that permit holder intends to carry out during the current period of validity;
- commitment to submit to the Director of Mines : periodic reports on the results of mining operations and the work program for the following year, before December 31<sup>st</sup> of each year.

**Article 35:** Orders for small-scale mining or decrees for the large-scale mining authorizing assignment or transfer are notified to the new holder by registered letter within a period of three (3) months from the date the Minister of Mines receives the application.

Orders for small-scale operations or the decree for the large-scale operations authorizing sub-lease, are also notified to the sub-lessee by registered mail within a period of three (3) months.

The Director of Mines shall mention such a transfer on the mine title.

#### Section V

#### **Withdrawal and surrender**

**Article 36:** In case mining permits are subject to conditions that could lead to withdrawal, the Minister of Mines shall send the permit holders a formal notice inviting them to comply with their obligations in accordance with the timeframe stipulated in Article 59 of the Mining Law.

If at the end of this period, the obligations stated in the formal notice have not been met, the Minister of Mines shall decide, in case of a small-scale mine, to withdraw the permit by order, or in case of a large-scale mine, propose, if applicable, the withdrawal of the permit and forward the file to the Council of Ministers.

Decrees for a large-scale mine or orders for small-scale mine shall be notified to the concerned parties by registered letter.

**Article 37:** Applications for surrender referred to in Article 41 of the Mining Law shall be submitted to mining permit holders.

Notwithstanding the provisions of Article 4 above, companies only need to indicate their name and head office.

They shall also provide the references of the mining permit and the reasons justifying for such surrender.

**Article 38:** Decrees for large-scale mines or orders for small-scale mines, authorizing surrender, shall be notified to the concerned parties by registered letter.

### **CHAPTER IV** **ARTISANAL MINING**

**Article 39:** The order issued by the Minister of Mines, determining zones where the artisanal operations may be conducted, is issued after consultation with the relevant regional or municipal administrative authorities.

This order specifies:

- substances which may be mined;
- conditions under which these substances shall be extracted and concentrated;
- conditions of land occupancy;
- obligations of artisanal miners in terms of mining rehabilitation sites.

**Article 40:** May be authorized to undertake artisanal mining operation:

- any individual who is at least eighteen (18) years old;
- any legal entity constituted under the Nigerien Law;
- any registered economic interest grouping or cooperative constituted in accordance with the regulation in force in Niger.

**Article 41:** Applications for artisanal mining license shall be submitted to the Minister of Mines who shall acknowledge receipt thereof. Such applications include:

- a) For individuals:
  - information on the financial resources applicants;
  - receipt of payment of fixed fees;
  - surnames, first names, place of residence and qualifications of individuals in charge of conducting operations;
  - location of the plot applied for;
  - substance for which licenses is requested;
  - mining method (wells, digging or slopes);
  - commitment to submit to the Director in charge of small-scale mining operations and quarries, quarterly progress reports.
  
- b) For economic interest groupings or mining cooperatives:
  - a copy of the order authorizing the economic interest grouping or cooperative to engage in business in Niger;
  - surname, first names and qualifications of the members of economic interest grouping or cooperative;
  - receipt of payment of fixed fees;
  - location of the plot requested;
  - operating method (wells, digging or slopes);
  - substance for which the authorization is requested;
  - business registration number for economic interest groupings, number in the register for professions, and occupations for cooperatives.

**Article 42:** No one may undertake or take part in artisanal mining operations if he/she does not hold an individual artisanal operation card issued by the regional administration in charge of mines. Such cards are issued upon presentation of a national identity card and after payment of related fees.

**Article 43:** The administration in charge of mines divides the zones reserved for artisanal operations into plots of 100 m<sup>2</sup> each.



**Article 44:** Any individual or legal entity authorized to conduct artisanal mining activities must, as mining operations progress, fill up the excavations and pledge to the restore of the mined sites.

**Article 45:** The Minister of Mines shall regulate, by order, the use of explosive substances for blasting and chemical products for ore processing.

**Article 46:** Each regional administration shall supervise a multidisciplinary team mandated to:

- issue individual cards;
- maintain a register licenses and cards issued;
- supervise and control artisanal operations;
- sensitize artisanal miners to risks they face, health and safety rules and the need to protect the environment;
- assist and train artisanal miners in artisanal techniques and efficient processing methods used in this sector;
- draft progress reports on sites operations.

Conditions under which the administration supervision of artisanal operation sites may be conducted shall be determined by order of the Minister of Mines.

**Article 47:** An advisory committee commissioned to give their opinion on the development of artisanal operations, shall be established by order of the Minister of Mines.

**Article 48:** Artisanal mining license shall be issued by order of the Minister of Mines.

**Article 49:** Any individual or legal entity constituted under Nigerien Law and holding a trading license may purchase, sale and export mining substances extracted from artisanal mines.

Marketing of artisanal mining products is regulated by joint order of the Minister of Mines and the Minister of Commerce.

**CHAPTER V**  
**PROVISIONS SPECIFIC TO THE MINERAL SUBSTANCES CLASSIFIED AS QUARRY PRODUCTS**

**Article 50:** Applications for quarry substances prospecting licenses are submitted, in three (3) original copies, to the Director of Mines or to the relevant department level Director. They shall include:

- for individuals, business corporations and other institutions, information provided for in Article 4 above;
- identity of individuals taking part prospecting operations in the field;
- nature of prospecting operations - scientific or commercial;
- commitment to submit to the Director of Mines or relevant district level Director the results of investigations.

**Article 51:** Application for permanent quarry opening and development licenses shall be sent in three (3) original copies to the Minister of Mines who shall acknowledge receipt thereof. They must comply with the provisions of Articles 3 and 4 of this decree and include:

- precise site of the quarry as well as its location in relation to the nearest dwelling areas, buildings, communication routes, engineer structures, identifiable landmarks;
- type of materials to be extracted, the thickness and type of soil cover, operating modes (opencast or underground galleries) as well as development methods (slopes, stope and pillars, etc.);
- determination of quarry perimeter and area requested;
- location of the quarry on a map on a scale of 1/50,000;
- plan or detailed drawings on a scale of 1/2,000 showing the perimeter of the requested quarry as well as the boundaries of neighboring quarries;
- a technical note on the nature and characteristics of the deposit as well as the planned development pace;
- commitment to submit quarterly reports to the Director in charge of small-scale mines and quarries or to the relevant deconcentrated services of the Ministry of Mines;
- receipt of payment of fixed fees;
- agreements signed with land owners and countersigned by local authorities, if applicable.

**Article 52:** During the processing of the application, the Minister of Mines may order a reconnaissance in the field of the vertexes of the perimeter of the quarry requested.

The report of such an operation shall be drafted in the presence of the applicant and the concerned neighbors who are duly summoned.

If, after an official notification, duly invited applicants refuse or fail to take part in this operation or if it is not possible, after an adversary recognition, to locate on the site the vertexes of the perimeter, the application for quarry opening and development may be rejected.

**Article 53:** Applications for temporary quarry opening and development licenses are submitted in three (3) original copies to the Minister of Mines. Such application shall include:

- identity of the applicant (surname, first names, occupation, nationality, head office or residence);
- location of the quarry;
- type and quantity of materials for which the extraction license is requested;
- duration of operations;
- area of land needed for extraction and related activities;
- location of the quarry on a map on a scale of 1/50,000;
- a plan or a detailed drawings on a scale of 1/2,000, showing the perimeter where extraction and related activities shall be conducted;
- receipt of payment of fixed fees.

Temporary quarry opening and development licenses shall be granted by joint order issued by the Minister of Mines and the Minister in charge of State Property [*Ministre en charge des Domaines*], after payment of the extraction taxes and consultation with relevant local authorities.

**Article 54:** Notwithstanding Article 11 of Ordinance 93-016 dated March 2<sup>nd</sup>, 1993, issuance of temporary quarry opening and development licenses is not subject to the establishment of a company under Nigerien Law.

Upon approval of relevant local authorities, the temporary or permanent quarry opening and development licenses are granted by joint order issued by the Minister of Mines and the Minister in charge of State Property.

**Article 55:** Local governments shall submit their applications for opening and develop public quarries to the Minister of Mines who, in collaboration with the Minister in charge of State Properties, opens them, by joint order.

Applications shall include:

- precise site of the quarry as well as its location in relation to the nearest dwelling areas, buildings, communication routes, engineer structures, identifiable landmarks;
- type of materials to be extracted, the thickness and type of soil cover, operating modes (opencast or underground galleries) as well as development methods (slopes, stope and pillars, etc.);
- determination of quarry perimeter and area requested;
- location of the quarry on a map on a scale of 1/50,000;
- plan or detailed drawings on a scale of 1/2,000 showing the perimeter of the requested quarry as well as the boundaries of neighboring quarries;
- a technical note on the nature and characteristics of the deposit;
- commitment to submit quarterly reports to the Director in charge of small-scale mines and quarries or to the relevant deconcentrated services of the Ministry of Mines;
- receipt of payment of fixed fees;
- agreements signed with land owners and countersigned by local authorities, if applicable.

**Article 56:** Extraction or collection of soft materials from a public quarry opened, in accordance with the Mining Law, shall only be authorized if extraction taxes have been paid.

Such taxes are paid every time lorries leave the quarry and a receipt specifying their registration, quantity of material extracted, date and hour of quarry exit are given to drivers.

Local entities collecting these taxes shall draft monthly reports on quantities extracted from each quarry they supervise and forward them to the Directorate in charge of small-scale mines and quarries.

**Article 57:** Holders of quarry development are required to restore the mining sites as works progress.

Local governments are responsible for filling up public quarries under their purview.

## **CHAPTER VI** **BOUNDARY MARKING**

**Article 58:** Holders of prospecting or mining permits or artisanal mining licenses are required to mark the boundaries of their perimeters at their own expense, within a period of three (3) months from the date of issuance of such documents.

For holders of temporary or permanent quarry opening and development licenses, boundaries must be marked at their own expense, within a maximum period of a month from the date of issuance of their licenses.

**Article 59:** To this effect, the Minister of Mines may delegate an agent from the relevant Directorate to represent him/her during the boundary marking, at the expense of the license holder.

Concrete markers must be placed at each corner of the perimeter of the prospecting and mining permit and the quarry opening and development license or artisanal mining license.

Under no circumstances may the distances between two (2) boundary markers exceed, on all sides:

- ten (10) kilometers for prospecting permits;
- one (1) kilometer for mining permits;
- one hundred (100) meters for quarry opening and development licenses;
- ten (10) meters for the artisanal mining licenses.

**Article 60:** Holders of mining permits are required to fence the industrial zone, the pithead and the isolated facilities.

Holders of permanent or temporary quarry opening and development licenses are required to fence their perimeter with wire netting or ropes which are quite strong.

Local governments shall be responsible for fencing public quarries under their purview.

## **TITLE III** **LAND OCCUPANCY**

**Article 61:** Applications for occupying lands needed for prospecting or mining operations and related industries, inside and outside the perimeter of the mining or quarry title, shall be sent by registered mail with acknowledgement of receipt to the Minister of Mines, through the head of the relevant administrative unit.

Such applications shall include:

- surname, first names, occupation, nationality and place of residence of applicants;
- information needed to identify the mine or quarry title granting rights of occupancy;
- projected date of occupancy;
- the purpose of occupancy;
- any information regarding location, area and type of land to be occupied;

- surname, first names and places of residence of land owners and successors in title as well as any document(s) testifying agreements signed with them;
- a location plan;
- any technical documents specifying the works and facilities planned as well as the terms or conditions of their implementation and development, and indicating, when applicable, the expected encroachments on the public domain of State;
- a copy of the application filed in accordance with the legislation in force, in case aforementioned documents include works or soundings aimed at supplying the staff, works and facilities with water;
- in case such works and facilities are part of a set of activities related to mine prospecting and operations or to quarry substances prospecting and development, all technical documents defining this set of activities and the conditions for their implementation and operation.

In the latter case, the occupancy declaration shall include, as much as possible, all the lands, works and facilities involved.

Copy of the occupancy declaration with supporting documents shall be sent to the Minister in charge of State Property, by the applicant.

**Article 62:** Within a month after receipt of the declaration, the Head of the administrative unit shall forward it to the Minister of Mines with his/her observations.

**Article 63:** Until the effective date of occupancy which cannot occur before the anticipated date, the Minister of Mines and the Minister of State Property may oppose to the occupation on the grounds of a reasoned decision, which shall be notified to applicants by registered mail.

**Article 64:** Within a maximum period of one month following receipt of the application for land occupancy, the Head of the relevant administrative unit shall have it posted for a month, and he/she notifies it the owners and their successors inviting them to make comments. Posting fees shall be borne by applicants.

The Head of the administrative unit records comments. Within a period of six weeks following the end of the posting period, he/she shall forward the documents to the Minister of Mines, together with his/her observations.

Where applicants and land right owners fail to reach an agreement, the Minister of Mines and the Minister in charge State Property shall initiate a land expropriation for public purposes.

The Minister of Mines and the Minister in charge of State Property shall decide at the end of the procedure, by issuing joint authorization order that shall be notified to the two (2) parties and which determines the provisional compensation accruing to owners or their successors.

The provisional compensation is deposited with the National Treasury:

- either by following customary land expropriation procedures or, for other lands, by following procedures of expropriation for public purposes;
- either by following the temporary occupation procedure for land within the public or private domain of State.

Conditions for administrative control of artisanal mining sites are determined by order of the Minister of Mines.

**Article 65:** If, before occupancy, applicants change their plans regarding the location or area of the land they intend to occupy, or if they decide to use these lands for significantly different purposes, they are required to introduce new declarations or applications.

After land occupancy, they may make major changes to the works or constructions planned or carried out only after filing a declaration with the Minister of Mines through the relevant Head of the administrative unit, at least two (2) months before the beginning of works. During this period of time, the Minister of Mines may oppose, by a reasoned decision, changes that were planned.

**Article 66:** In case works or facilities have been implemented or have undergone major changes without securing the necessary authorizations and in case no action is taken following injunctions from the Minister of Mines, the latter shall send a formal notice by registered mail with acknowledgment of receipt, to the concerned parties to conform to prescriptions within a period of time he/she shall determine and which cannot be less than three (3) months.

If no action is taken by the end of the period prescribed, the Minister of Mines and the Minister in charge of State Property may jointly, at the concerned parties own expense and risks, either systematically enforce the said prescription or have the sites restored to the initial state (i.e. before undergoing works and construction of facilities).

**Article 67:** To ensure compliance with the above mentioned provisions, the Minister of Mines and the Minister in charge of State Property may ask for the plans, documents and information on lands occupied before or after the publication of this decree.

Holders of mine or quarry titles are required to allow, at any time, these Ministers and their authorized agents access to these works and facilities to perform the appropriate controls and verifications.

TITLE IV  
**TAXATION –FEES, TAXES AND ROYALTIES COLLECTION**

**CHAPTER 1**  
**FIXED FEES**

**Article 68:** Statements of amounts payable in relation to fixed fees shall be prepared upon receipt of applications, which may only be deemed admissible on production of the payment receipt of fixed fees.

**CHAPTER II**  
**AREA TAXES**

**Article 69:** Statements of amounts payable in relation to annual area taxes for the first year of validity of titles, shall be prepared within thirty days after the date of signature of the decree granting mining permits.

Statements of amounts payable in relation to annual area taxes for the first year of validity of titles, shall be prepared within thirty days after the date of signature of the order granting the mine prospecting permits or quarry titles license.

The statement of due amounts regarding annual area tax, for the first year of validity of the title, will be drawn up within thirty days after the date of signature of the order granting the prospecting mining permits or quarry titles.

Amounts due shall be paid within fifteen (15) days after the statement has been given to title holders who shall acknowledge receipt thereof.

For subsequent years, area taxes shall be calculated and paid under the same conditions and at the same date as for the first year.

**Article 70:** For mine titles renewal, such taxes are calculated one month after the signature of legal documents granting them.

If applications for renewal are filed under the forms and timeframe prescribed in the legislation in force and if renewal is granted after the normal period of validity, initial titles remain valid. However, for the transitional period, area taxes shall be collected under the conditions stipulated in new titles.

If, on the other hand, applications for renewal are not forwarded in the forms and timeframe prescribed and if renewal is granted after the normal period of validity, initial titles remain valid. However, for the transitional period, area taxes shall be calculated according to the most unfavorable conditions for permit holders, i.e. under the conditions of either former or new titles.

### **CHAPTER III** **MINING ROYALTIES**

**Article 71:** During the year, statements of mining royalties shall be calculated by the Directorate of Mines, at a rate of 5.5%. Such calculation shall take place after permit holders have submitted the directorate a declaration prepared in conformity with the model provided by this body. Upon receipt of this declaration, the Directorate of Mines shall prepare a statement of all amounts, taking into account ninety percent (90%) of the amounts in the declaration, in case the final contents have not been determined, and the remaining ten percent (10%) once contents are determined.

In case the final contents are determined, the statement takes into account one hundred (100%) percent of the market value of the product.

At the end of the year, if the company's annual balance sheet shows a profit margin higher than 20%, annual mining royalties shall be calculated in accordance with the provisions of article 84 of the Mining Law No 2006-026 dated August 9<sup>th</sup>, 2006. The balance between these annual fees, and the mining royalties already collected, shall be calculated by the Directorate of Mines.

Once prepared, statements of royalties due shall be forwarded to the relevant departments of the Ministry of Finance for collection. The amounts due are paid to the concerned services of the Ministry of Finance within a maximum period of fifteen (15) days from the date of receipt of such statements by permit holders.

**Article 72:** Companies where the value of products that are subject to mining fees does not exceed F CFA two hundred millions (200.000.000) each year, shall enjoy a special dispensation.

To that effect, the declaration provided for in Article 71 above mentioned must be sent during the first quarter following the fiscal year under consideration, and mining royalties shall only be calculated and collected on a yearly basis.

**Article 73:** The Director of Mines or his/her representative may collect samples of extracted products, either on pithead or during transport for analyses and control.

#### **CHAPTER IV** **EXTRACTION TAXES**

**Article 74:** For temporary mining, applicants must first pay fixed fees, area taxes and extraction taxes.

Extraction taxes are calculated based on the quality of the product applicants intend to extract or collect; however there shall be adjustments at the end of mining activities.

**Article 75:** For extraction or collection of permanent quarry products, holders of a quarry opening and development licenses shall pay extraction taxes within a maximum period of fifteen (15) days from the date of receipt of the statement of amounts due.

#### **CHAPTER V** **ARTISANAL MINING TAXES**

**Article 76:** Procedures for calculating and collecting artisanal mining taxes are determined by order issued by the Minister of Mines.

#### **CHAPTER VI** **PENALTIES**

**Article 77:** In case of false representations or omissions, a fine amounting to twice the fees, taxes and royalties concerned shall be imposed.

In case of delay in payment, post-maturity interests rates amounting to 3% for the first month, and an additional 0.5% post-maturity interest per day, as at the first day of the second month, shall be payable.

#### **CHAPTER VII** **COMMISSIONS**

**Article 78:** Commissions payable to agents of the Ministry of Mines on fixed fees, area taxes and mining royalties paid by taxpayers shall be collected from the National Treasury. Procedures for calculating and collecting such commissions are determined by joint order issued by the Minister of Mines and the Minister of Finance.

### **TITLE V** **HEALTH AND SAFETY IN MINES AND QUARRIES**



**Article 79:** Under Article 121 of the Mining Law, orders issued by the Minister of Mines determine:

- general health and safety provisions governing mines or quarries as well as their accessories;
- provisions relating to exposure to ionizing radiations in mines and their accessories;
- provisions relating to silicotic risks in mines, quarries and their accessories;
- provisions regarding transport, storage and use of explosives in mines and quarries.

**Article 80:** Holders of mine or quarry titles are required to develop their own health and safety rules and submit them to the approval of the Director of Mines; the provisions of this decree provide the general framework for the development of such rules.

Holders of mine or quarry titles are required to comply with provisions of approved regulations.

**Article 81:** Technical supervision of mines or quarries as well as their accessories comes under the responsibility of either operations manager or a single site foreman whose name is forwarded by the title holder to the Director of Mines who, in turn, shall notify the Labor Inspector in charge of the concerned jurisdiction.

The operations manager or the site foreman is required to ensure compliance with the regulations governing work sites and facilities under his/her responsibility. He/she must be, in relation to staff, vested with authority to perform his/her duties.

**TITLE VI**  
**ADMINISTRATIVE CONTROL**

**Article 82:** The purpose of administrative control is to ensure preservation of deposits, safety of people and goods, protection of dwelling areas, buildings, communication routes, and protection of water points and tables.

Authorized engineers and workers of the Directorate of Mines shall be responsible for technical and administrative control of mineral substances prospecting and mining activities and those conducted in their accessories and subsidiaries. To this effect, they are vested with powers of Labor Inspectors. They report to relevant Labor Inspectors any measures taken and/or notices given. Labor Inspectors may visit, at any time and together with agents of services of Ministry of Mines, companies and sites under their technical supervision.

**Article 83:** Any opening or closing of prospecting or mining operations shall be subject to the prior authorization of the Minister of Mines.

**Article 84:** Authorized engineers and workers of the Directorate of Mines may, on each visit, request the production of documents needed to perform their duties and sign them. They may, while discharging their duties, make technical comments they deem necessary on matters under their purview.

**Article 85:** Holders of mine titles or quarrying licenses are required to inform the Minister of Mines, upon issuance of titles or licenses, of the name of the person they have empowered to receive notifications and notices and, in general, to represent them before the administration both as claimant or defendant.

Where mine titles or quarry substances prospecting or development license are held by several people or where such holders have entered into contract with third parties regarding all or part of the perimeters or facilities, they are required to provide evidence that their works are conducted under a single supervision.

**Article 86:** Holders of prospecting permits are required to submit to the Director of Mines quarterly reports, (technical and financial) completion operation reports and annual prospecting programs. Holders of mining permits or quarry opening and development licenses must submit to the Director of Mines, monthly and annual progress reports, annual reports on general safety, documents related to Boards of Directors and general meetings, and annual programs. Holders of radioactive substance mining permits must also submit semi-annual and annual reports on protection against radiation.

**Article 87:** The content of above mentioned reports is determined by order issued by the Minister of Mines.

**Article 88:** Holders of mining permits or quarry opening and development licenses shall maintain on the site and for each permit or license:

- a plan of the works at the appropriate scale;
- a work progress register where all major events recorded on a monthly basis;
- a register for the daily control of laborers working on the site;
- a register for extraction, storage, concentrations, sales and shipments;

- a register for recording incoming and outgoing explosives.

**Article 89:** Upon abandonment of works or facilities, for whatever reason, holders of mine titles or a quarry prospecting, opening and development licenses must carry out works that may be ordered by the Minister of Mines or Director of Mines, especially with regard to the safety of people and goods, preservation of deposits and aquifers and protection of the environment. Failing that, such works shall be automatically undertaken on the instructions of the Minister or Director of Mines at the expense of title holders.

**Article 90:** Every time works incumbent upon title holder are automatically carried out, expenses incurred shall be refunded by the title holder, based on statements prepared by the Directorate of Mines and made enforceable by the authority which ordered such works.

## TITLE VII VARIOUS PROVISIONS

**Article 91:** Valid mine or quarry titles are not subject to the provisions of this decree.

**Article 92:** All provisions contrary to those of this decree are repealed, including Decree No 93-044/PM/MMEI/A dated March 12<sup>th</sup>, 1993 on the details of the implementation of the Mining Law.

**Article 93:** The Minister of the Interior and Decentralization, the Minister of Justice, Keeper of the Seals, the Minister of Economy and Finance, the Senior Minister in charge of Hydraulics, Environment and Desertification Control, the Minister of Town Planning and Housing, the Minister of Civil Service and Labor, and the Minister of Mines and Energy shall be responsible for the implementation of this decree which shall be published in the Official Gazette of the Republic of Niger.

Done in Niamey, on this 18<sup>th</sup> day of August 2006

*Signed:*            *The President of the Republic*

**The Prime Minister**

MAMADOU TANDJA

HAMA AMADOU

**The Minister of Mines and Energy**

MOHAMED ABDOULAH

CC:

The General Secretary of the Government

LAOUEL KADER MAHAMADOU

REPUBLIC OF NIGER  
MINISTER OF MINE AND ENERGY

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SAMPLE MINING AGREEMENT

BETWEEN

THE REPUBLIC OF NIGER

AND

(NAME OF THE COMPANY) .....

FOR “ “ PERMIT

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**MINING AGREEMENT**

BETWEEN: THE REPUBLIC OF NIGER, represented by its Minister of Mines, duly authorized under the Mining Law;  
(Referred to hereunder as «the State» and further defined in Article 1 below),  
ON THE ONE HAND;

AND : The Company ....., represented by Mr ....., duly authorized under a resolution of its Board of Directors or any other document conforming to the legislation applicable to the company, ..... attesting to the authorization or the authority, and an original copy of which is attached to this agreement, as Annex 1,  
(Referred to hereunder as «the Company»),  
ON THE OTHER HAND;

Considering the Constitution dated 9 August 1999;  
Considering Regulation No 18/2003/CM/UEMOA dated 22 December 2003, on the adoption of the Community Mining Code;  
Considering Ordinance No 93-016 dated 2 March 1993 on the Mining Law and its implementing laws;  
Considering Ordinance No 99-48 dated 5 November 1999, supplementing Ordinance No 93-16 dated 2 March 1993, on the Mining Law and its implementing laws;  
Considering Law No 2006-026 dated 09/08/2006, Amendment Ordinance No 93-16 dated 2 March 1993 on the Mining Law, supplemented by Ordinance No 99-48 dated 5 November 1999 and its implementing laws;  
Considering the important role that the development of natural resources can play in the economic development of the country;  
Considering the State's wish to diversify mine prospecting and production in Niger;  
Considering the will of the state to create an environment conducive to the promotion and development of private investment in Niger;  
Considering the extent of investments needed to prospect for mine substances;  
Considering the presentation, by the company, of its technical and financial resources and its wish to undertake mining operations on the territory of the Republic of Niger;

IT HAS BEEN AGREED AS FOLLOWS:

**TITLE 1 – GENERAL PROVISIONS**

**ARTICLE 1 - DEFINITIONS**

For the purpose of this agreement, the terms listed below and beginning with a capital letter and that are in the singular or plural, shall have the following meanings:

“Annex” or “Annexes”: means the annex or annexes to the agreement, which form an integral part of the said agreement;

“Community Mining Code”: as defined in Regulation No 18/2003/CM/UEMOA

“Agreement”: means this agreement, including any amendments and annexes thereof;

“Date of first production”: means the date at which the mine has reached a steady level of production over a period of sixty (60) days and ninety (90%) percent of its capacity of production specified in the feasibility study, as notified to national authorities or the date of the first

commercial shipment to Niger or abroad, with the exception of operations carried out for assays purposes.

“Foreign currency”: refers to any convertible currency other than the CFA franc, the official currency of Niger.

“State”: means the State of Niger, its ministries, departments, directorates, agencies and any authority or national, regional, urban or local entities.

“Feasibility study”: means a report stating that the ore deposit within the perimeter is mineable and presenting a development plan which shall include, without limitation:

- a) assessment of the extent and quality of mineable reserves;
- b) assessment of the possibility to submit the ore to metallurgical processing;
- c) planning of mining activities;
- d) environmental impact study: i.e. a study aimed at presenting in a systematic manner the adverse or positive effects of the implementation of the activity, project, program or development plan on natural and human environment in the short, medium and long terms, as well as the formulation of measures for mitigating negative effects and amplifying positives ones;
- e) presentation of the mine construction program, including works to be carried out, equipment, facilities and supplies needed for commercial exploitation of a potential deposit as well as related cost estimates, with annual expense estimates;
- f) a socio-economic impact note of the project;
- g) preparation of a product marketing plan, including prospective outlets, clients, sales conditions and prices;
- h) complete financial projections for the period of operation;
- i) conclusions and recommendations regarding the economic feasibility and the commercial production start-up schedule, taking into account the requirements mentioned above, i.e. item a) to i) and;
- j) any other information that the party which has conducted the feasibility study deems necessary to induce any bank or financial institution to pledge to lend it the funds needed to mine the deposit.

“FOB”: means Free on board.

“Supplier(s)”: any individual or legal entity which only supplies goods and services to holders of mine titles but does not engage in any production or service provision related to the main activities undertaken by mine title holders.

“Deposit”: means natural deposits of mineral substances which are mineable under the prevailing economic situation.

“Marginal deposit”: refers to a deposit whose size and quality are known, for which a feasibility study has been conducted but which the parties deem unprofitable.

“Natural deposit”: means any natural concentration of mineral substances in a specific zone of the earth crust.

“Mining list of Niger”: refers to the list of capital goods and consumables (including, *inter alia* machinery, materials, supplies, engines and equipment, spare parts directly used for mining operations as well as petroleum products used for plant and machinery) normally used for mining activities and for which applicable taxes have been suspended or reduced. This list is regularly updated by Niger relevant administration and is attached as Annex III.

“Mining list of UEMOA” (*West African Monetary Union*): refers to the list made by UEMOA, i.e. the list of capital goods and consumables, according to the nomenclature of the Common External Tariff,



normally used in mining activities and for which import taxes and duties are suspended, reduced or exempted.

“Mines”: means:

- a) any opencast mines, wells, tunnel, openings whether underground or not, dug or constructed following the feasibility study and where ore will be extracted or has already been extracted using any process and which exceeds the quantity needed for sampling, analysis and evaluation purposes;
- b) movable and other installations for treatment, processing, storage and removal of ore and wastes, including tailings;
- c) tools, equipment, machines, buildings, installations and improvements for mining, processing, handling and transportation of ore, wastes and equipment;
- d) buildings, offices, roads, landing strips, electrical transmission line, electric power generation facilities, drying and evaporation facilities, pipelines, railways and others facilities for the aforementioned purposes.

“Ore”: refers to run-of-mine extracted from the deposit containing mineral substances.

“Ministry”: refers to the Ministry of Mines.

“Minister”: means the Minister of Mines.

“Mining operations”: means any operation related to the various stages of mining activities, including exploration, prospecting, mining, first processing, physical concentration of ore and transport of the product. The following related activities carried out within the industrial zone of the company and its accessories and subsidiaries are considered as mining operations:

- maintenance of machines and installations,
- electric power and water production, transport and supply,
- management of effluents,
- construction and maintenance of access roads,
- environmental management.

“Shareholding”: means shares held by the State in the corporate capital of the mining company under Article 15 of the agreement.

“Party”: means the State or the company.

“Parties”: means the State and the Company.

“Perimeter”: areas delineated as per the mine title and granted to a company and/or to the mining company.

“Products”: means any ore or mineral substances extracted within the perimeter for commercial purposes under the agreement.

“Project”: means all activities relating to the perimeter and carried out in connexion with the agreement.

“Customs Regulations”: means the customs codes of Niger and UEMOA.

“Mining Regulations”: means the community mining Code, Ordinance 93-016 dated 2 March 1993 on the Mining Law, subsequent amending laws as well as their implementation laws.

“Company”: refers to the entity to which the mining title is issued.

“Affiliate company” or “affiliated companies”: refers to the legal entity which directly or indirectly controls a party or is indirectly or directly controlled by a party. Here “control” should be understood as having, directly or indirectly, the authority to guide the management of the company and decision making processes or have them guide through voting.

“Mining company”: refers to the company set up by parties in accordance with Article 14 of the agreement, for the purpose of mining and marketing mineral substances mentioned in the mine title.

“Subcontractor” or “Subcontractors”: any individual or legal entity performing a task that is part of the main activities of the mine title holder.

These activities include:

- geological, geophysical, geochemical and soundings for exploration, prospecting and mining purposes;
- construction of industrial, leisure, water and electricity supply, and socio-cultural facilities: roads, factories, offices, mining towns, supermarkets, company store, schools, social and health care facilities;
- mining, transport and storage of materials and treatment of ore.

“Mineral substances”: refers to natural amorphous or crystalline, solid or gaseous natural substances as well as fossilized organic substances and geothermal deposit.

“Common External Tariff (CET)”: refers to the common customs tariff of UEMOA member states as attached to Regulation No 02/97/CM/UEMOA dated 28 November 1997.

“Third parties”: means any person or entity other than the contracting parties and their affiliated companies.

“Mining title” refers to one or several administrative authorizations granted to the company and/or the mining company in accordance with the mining regulation in force, for the purpose of exploring, prospecting and mining mineral substances.

“\$ EU” or “US dollars”: refers to the American dollar.

“UEMOA”: refers to West African Economic and Monetary Union established by the UEMOA Treaty.

## **ARTICLE 2 – PURPOSE OF THE AGREEMENT**

The main purpose of this agreement is to specify general, legal, financial, tax, economic, administrative, customs, social and environmental conditions under which the Company shall undertake prospecting activities within the perimeter defined in the mine prospecting title and under which the mining company shall carry out operations within the perimeter delineated by the operation mining title.

## **ARTICLE 3 – PROJECT DESCRIPTION**

The project includes the following:

- a) prospecting activities by the company, at its own expense and risks and under its control and management;
- b) a feasibility study on a natural deposit that has been discovered, if the company deems it necessary and development of the deposit(s) as per the provisions of Articles 14-16 hereunder, should the feasibility study be conclusive.

## **ARTICLE 4 - COOPERATION**

The State undertakes to facilitate, in accordance with the regulation in force, any prospecting activities that the company shall carry out by any means it deems appropriate. The same applies to the mining, marketing, processing and refining activities the mining company may wish to carry out.

## **ARTICLE 5 – APPLICABLE LAW**

The law applicable to the agreement is the law of the Republic of Niger.

It is expressly agreed that during the period of validity, the Agreement and the mining regulation shall govern the parties, subject to the provisions regarding public order.

**ARTICLE 6 – EFFECTIVE DATE**

This agreement shall be effective on the date of its signature by the parties.

**ARTICLE 7 - DURATION**

This agreement shall be valid for a period of ----- years, starting from the date of its effectiveness. It shall be renegotiated in accordance with the rules and regulations in force at the time of each renewal of the mining title until depletion of the deposit.

The agreement may be terminated in the following cases:

- a) written agreement by parties;
- b) total surrender of the mining titles by the company or the mining company; expiry without application for renewal or revocation of mining titles in accordance with the provisions of the mining regulation;
- c) voluntary liquidation, compulsory liquidation, disposal of assets or similar collective procedures implemented by the company or mining company.

**ARTICLE 8 – SETTLEMENT OF DISPUTES**

8.1 Parties undertake to seek amicable settlement of any dispute which may arise out of the interpretation or the application of this agreement.

8.2 Parties undertake to submit to the Court of Justice of UEMOA, in case this falls under its jurisdiction, any dispute arising out of the interpretation or the application of this agreement, should the amicable procedure fail.

8.3 Parties undertake to submit any dispute or disagreement primarily related to technical aspects and which cannot be settled through amicable procedure, to an expert, known for his/her technical expertise and jointly chosen by the parties. This expert shall not be a national of the countries of either parties and shall not have any relationship whatsoever with both parties. The expert shall make his/her decision within (60) days, starting from the date of his/her appointment and this decision shall be final and not subject to any appeal. In case parties disagree on the nature of the dispute or the conflict and on the choice of the expert, they shall have recourse to arbitration in accordance with the provisions of Articles 8.4, 8.5 and 8.6 below. Arbitration fees shall equally be shared among parties.

8.4 Disputes which are not subject to procedures provided for in Articles 8.1, 8.2 et 8.3 above shall be settled through arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which became effective on 14 December 1966 (hereunder referred to as “the Arbitration Convention”) and was ratified by the Republic of Niger on 14 November 1966.

The following has been agreed upon in case of arbitration:

- a) The arbitration shall take place in ..... (.....) and in French;
- b) The arbitration tribunal shall be made up of three (3) arbitrators;
- a) The law applicable shall be that of the Republic of Niger;
- b) Arbitration fees shall be borne by the party that fails.

For the purpose of arbitration, parties agree that the operations referred to in the Convention are investment within the meaning of Article 25, paragraph I of the Arbitration Convention.

8.5 If, for whatever reason, the International Centre for Settlement of Investment Disputes – (I.C.S.I.D) declines jurisdiction or rejects the arbitration procedure, the dispute shall then be settled once for all in accordance with Arbitration Rules of the Common Court of Justice

and Arbitration. This arbitration procedure shall be carried out by one arbitrator appointed by mutual agreement. The latter shall not be of the same nationality as the parties involved and shall have a proven experience in the area of mining. In case parties fail to agree on the choice of an arbitrator, the arbitration procedure shall be conducted by three arbitrators appointed in accordance with the Arbitration Rules of the Common Court of Justice and Arbitration. Non adversary provisions of Article 8.4 above shall apply.

8.6 Parties undertake to carry out arbitration awards without delay and to abandon any means of redress. Confirmation of the award may be requested from any tribunal of competent jurisdiction for the purpose of *exequatur*.

**TITLE II – PROSPECTING**

**ARTICLE 9 – ISSUANCE OF MINE PROSPECTING TITLE**

- 9.1 Within thirty (30) days following the effectiveness of the agreement, the State shall issue, to the company, a mine prospecting title for the perimeter defined in Annex IV, upon introduction of an application drafted in accordance with the requirements of the Mining Regulation.
- 9.2 This title shall grant to the company the rights provided for in the Mining Regulation while ensuring that the company meets its corresponding obligations.
- 9.3 Upon issuance of the mine prospecting title, the company is required to open an office in Niger to coordinate operations provided for in the agreement.  
The manager of this office shall have enough authority to make decisions on any issues related to prospecting activities, which can be considered as part of daily prospecting operations.
- 9.4 In accordance with the Mining Regulation, the company is required to start, within a period of six (6) weeks following the date of issuance of the mine prospecting title, its operations inside the perimeter, with due diligence, professionalism and according to international mining standards.

**ARTICLE 10 – WORK SCHEDULE AND PROSPECTING EXPENSES**

- 10.1 During the first period of validity of its mine title, the company undertakes to:
  - implement within the perimeter, the prospecting program outlined in Annex VI of this agreement,
  - spend a minimum amount equivalent to US \$..... to carry out operations, broken down as follows:

1 <sup>st</sup> year:	US \$ .....
2 <sup>nd</sup> year:	US \$ .....
3 <sup>rd</sup> year:	US \$ .....
- 10.2 For each subsequent period of validity, the company shall submit to the Minister, proposals for prospecting operations and expenses for each renewal of its prospecting title.
- 10.3 Analysis of samples  
The Company shall notify relevant services of the Ministry of its intention to analyze samples collected during prospecting operations. This notification shall include: the number and weight of samples as well as the references of the laboratory. The company shall keep pieces of each sample to be analyzed in Niger.  
Analyses of samples collected during prospecting operations shall be conducted in Niger, in case these services are available locally at favorable conditions in terms of prices, quality, quantity, guarantee and delivery time. Otherwise, these analyses may be conducted abroad. Export of any sample shall be subject to the prior authorization of the relevant ministerial department.

All the raw results of analyses of any sample, certified by the Company, shall be forwarded to the Ministry in digital format, with the geographic references of sampling points.

10.4 Regarding prospecting operations and in particular regarding soundings, geophysical, geochemical, geological works and analyses, the Company undertakes to use the services of local service providers if these services are available at favorable conditions in terms of price, quality, quantity, guarantee and delivery time.

10.5 Prospecting expenses shall include the following:

- Salary, wages and incidental expenditures of the staff conducting prospecting operations within the perimeter in proportion to the hours actually worked;
- Depreciation of equipment belonging to the Company and actually used for prospecting operations within the perimeter. This depreciation is equal to the difference between the initial value of such equipment upon entry and the market or sale value of the same equipment after it has been used for works within the perimeter. In case the equipment is used for several projects, the amount of this depreciation must be distributed among these different projects according to their use;
- Expenses incurred in Niger to carry out prospecting operations: service provision and consumables;
- Expenses incurred abroad to carry out prospecting operations: service provisions (assays, analyses, studies);
- Overhead costs incurred by the company abroad at a fixed rate of ten (10) percent of overhead costs incurred in Niger;
- Duties, taxes, royalties, fees and contributions (paid in Niger regarding prospecting operations within the perimeter).

For the purpose of auditing, accounts shall be organized so as to make the distinction between expenses related to prospecting operations and those related to administration.

#### **ARTICLE 11 – INFORMATION COLLECTED DURING PROSPECTING OPERATIONS**

11.1 Throughout the period of validity of the mine prospecting title or its possible extension, the company shall submit to the State any reports, maps, sounding logs, aerial surveys and raw data obtained during the prospecting period.

11.2 Reports and data referred to in Article 11.1 above shall become the property of the State upon receipt. However, the State may only share these with a third party in accordance with Mining Regulation, unless otherwise agreed by the company.

#### **ARTICLE 12 – SURRENDER OF MINE PROSPECTING TITLE**

12.1 The Company may, in accordance with the Mining Regulation, surrender its mine prospecting title, in whole or in part, following a one-month notice for justified technical reasons or in cases of *force majeure*. “Technical reason” refers to the case where prospecting results do not clearly warrant the continuation of operations within the perimeter, after completion of operations described in Annex VI, for a period of at least one year.

12.2 In case of surrender of the mine mining title for reasons other than those mentioned in the preceding paragraph, exemptions granted to the Company do not apply any longer. Amounts corresponding to all exemptions granted to the said Company, in accordance with the provisions of Mining Regulation, shall be discounted as at the date of receipt of the application for surrender. The Company shall refund the discounted amount representing such exemptions at the end of the notice period.

**ARTICLE 13 – FEASIBILITY STUDY AND MARGINAL DEPOSITS**

- 13.1 In accordance with the provisions of Article 3 above, the company shall conduct a feasibility study. If at the end of prospecting operations conducted within the perimeter, the company has discovered only a marginal deposit, the State may, in accordance with Article 29 of the Mining Regulation and at the request of the company, extend the period of validity of the mining title for the perimeter where this deposit was found and as delineated in the feasibility study.
- 13.2 However, if the State considers that the deposit is mineable or does not agree with the marginal nature of the deposit, it may request the Company to proceed to the operations phase in accordance with the provisions of Articles 14 to 16 below. If the company fails to respond within ninety (90) days, starting from the date it receives the State’s request or in case of refusal, the State reserves the right to develop the said deposit alone or in association with third parties.
- Mine prospecting expenses incurred by the Company shall be refunded during the operations phase according to mutually agreed conditions.

**TITLE III – OPERATIONS**

**ARTICLE 14 – MINING COMPANIES**

- 14.1 In case the company decides to develop a deposit, it makes arrangements to establish a mining company constituted under Nigerien Law in accordance with rules and regulations governing companies in the Republic of Niger. The objective of the mining company is to extract, process and market mining substances for which the mining title has been issued.
- 14.2 The State shall, in accordance with the Mining Regulation, issue mine titles to mining companies.
- 14.3 Parties shall give a name to the mining company at the time of its incorporation. Companies shall be headquartered in the Republic of Niger, at a place which shall be mutually agreed.

**ARTICLE 15 – STATE’S SHARES**

- 15.1 In accordance with the Mining Regulation, the State shall be granted, free of charge, ten (10) percent of the capital of the mining company.
- 15.2 In case of increase of mining company’s capital decided by an extraordinary general meeting of shareholders, ten (10) percent of the new shares shall be granted to the State so as to enable it to maintain the percentage of its initial share as per Article 15.1 above.
- 15.3 The State or any other public agency that it shall designate may subscribe, in cash or in kind, for a maximum of thirty (30) percent of the capital of the mining company, at the time of its incorporation.
- 15.4 Shares issued to the State by the mining company shall be of the same type as those issued to the principal shareholder and give rise to the same rights and obligations subject to Article 15.1 and 15.2 above.
- 15.5 Since it holds shares in the capital of the mining company pursuant to Article 15.3 above, the State is required, upon incorporation of the company, to contribute to the tune of this share, in cash or in kind, to all financial commitments, particularly to capital contributions, advances to shareholders, bank loans and other borrowings, costs, expenditures and losses.
- 15.6 The State shall be entitled to percentage of profits distributed that commensurate with its shareholding.
- 15.7 It is understood that parties shall assist each other in sourcing funds for the mining project and provide, in accordance with international practice, any information requested by financial institutions. However, this clause cannot oblige one party to guarantee borrowings other than their own.

Parties understand that whole or part of the funding for the development of any deposit(s) shall be negotiated by the mining company with a bank or any financial institutions, at the best, most reasonable and most favorable conditions.

**ARTICLE 16 – PROCESSING OF MINE PROSPECTING EXPENSES**

- 16.1.1 Mine prospecting expenses incurred by each party for prospecting activities within the perimeter of the mine title shall be discounted, from the date of issuance of the mining title. The mode of discount shall be determined by agreement between the parties.
- 16.1.2 Expenses incurred by the company for prospecting operations within the perimeter of the mine prospecting title are calculated in accordance with Article 10.5 of the agreement.
- 16.1.3 As at the date of the signature of the agreement, the amount of \$ US..... (..... \$ US) is considered as expenses incurred by the State for prospecting operations within the perimeter of the mining title before its issuance to the Company.
- 16.1.4 Prospecting expenses incurred by the State and by the company are recorded under prospecting and development expenses. These are refunded under terms and conditions agreed between the two parties.
- 16.1.5 In case the mining title is expanded so as to cover other deposits, prospecting expenses incurred shall be discounted, as at the date of this expansion.

**ARTICLE 17 – INTERRUPTION OR ABANDONMENT OF MINING OPERATIONS**

The mining company may surrender its mining title, in whole or in part, subject to a one year notice. If the mining company wishes to interrupt or abandon mining operations for whatever reason, it shall notify the Ministry by writing and provide supporting documents. Parties then meet to decide on the relevance of this measure, without interrupting mining operations. If appropriate, prospecting operations may be interrupted or abandoned in accordance with the provisions of Mining Regulations.

It is understood that for cases of *force majeure*, as specified in Article 32 below, temporary suspension may occur immediately after giving a written notice to the Minister. Authorization shall not be refused without good reasons.

**TITLE IV - RIGHTS, OBLIGATIONS AND ADMINISTRATION**

**ARTICLE 18 - LOCAL INFRASTRUCTURE AND SERVICES**

- 18.1 In case the company and/or the mining company use the Tahoua-Arlit road to carry out its mining operations, it shall undertake to contribute to the maintenance of this road so as to keep it in good condition. As such, it adheres to the maintenance agreement of the Tahoua-Arlit road, adopted by Decree No 2002-019/PRN/MEH/AT dated 15 February 2002 and any relevant future legislation.
- 18.2 The mining company undertakes to contribute to the development of municipalities in which it shall carry out its activities, by contributing to the funding of collective infrastructure.
- 18.3 The company, the mining company and their subcontractors shall use as much as possible, local services and raw materials as well as products made in Niger, provided that these are available at favorable conditions in terms of prices, quality, quantity, guarantee and delivery time.

**ARTICLE 19 – EMPLOYMENT OF NIGERIEN STAFF**

- 19.1 Throughout the term of this agreement, the company and the mining company undertake to:

- a) give preference to local workers so as to allow them to access to whatever positions commensurating with their qualifications.
- b) implement, in consultation with relevant State authorities, a training and career development program for local staff;
- c) progressively replace qualified expatriate staff by nationals who have acquired the same qualifications on the job;
- d) provide accommodation to workers residing on the site, in health and sanitation conditions in line with present or future regulations;
- e) comply with legal and sanitary regulations as provided for in present and future legislation;
- f) comply with health rules and regulations as specified in present and future legislation regarding particularly, general working conditions, wage plan, prevention and compensation of industrial accidents and occupational diseases, professional associations and workers unions;
- g) contribute to the training of Mines and Geology Administration staff by making available to the Ministry, each year, ten thousand (10,000) US dollars. The first payment shall be due thirty (30) days following the effective date of the agreement and shall be made every year on the anniversary of this date, throughout the period of validity of the mine prospecting title. This contribution shall be taken into account in prospecting expenses referred to in Article 10 above.

19.2. As at the date of issuance of the mining title, the mining company undertakes to contribute to the following:

- a) establishment, expansion or improvement of a health and school infrastructure at a reasonable distance from the deposit, and meeting the normal needs of workers and their families;
- b) set up recreation facilities for its staff, at local level.

19.3 The State undertakes to grant the mining companies, its affiliated companies and subcontractors, authorizations required to enable employees to work overtime, at night, on public holidays and non-working days, in accordance with the applicable legislation.

19.4 The State undertakes not to pass, against the company, the mining company, its affiliated companies, its subcontractors and their staff, any labor or social legislations, which may be considered as discriminatory compared to those that would be imposed to company engaged in similar activities in Niger.

#### **ARTICLE 20 –EMPLOYMENT OF EXPATRIATE STAFF**

20.1 The company, the mining company and their subcontractors, whether Niger or foreign nationals, may hire the necessary expatriate staff for their activities in Niger if the qualified Niger nationals are not available to carry out the required activities. The State shall facilitate the acquisition of licenses and permits for hiring these expatriate staff, including entry and exit visas, work and residence permits.

20.2 For the duration of this agreement, the State undertakes to neither initiate nor pass against the company, the mining company, its affiliated companies and its subcontractors any provision involving a restriction on conditions in which the present or future legislation allows:

- a) entry, residence and exit of expatriate staff of the mining company, its affiliated companies and its subcontractors, their families as well as the import or export of their personal effects;



- b) subject to Article 20.1 above, hiring and dismissal of any employee, regardless of his/her nationality or his/her professional qualifications, by the company, the mining company, its affiliated companies and their subcontractors.
- 20.3 However, the State reserves the right to deny entry or residence to citizens from countries hostile to the Republic of Niger and to individuals whose presence would jeopardize security or public order.

**ARTICLE 21 – GENERAL GUARANTEES GRANTED BY THE STATE**

- 21.1 The State assures the company and the mining company that the general, legal, administrative, economic, financial and fiscal conditions provided for in the agreement shall remain unchanged.
- During the term of the agreement, rates specified thereof, regulations regarding tax base and tax collection shall remain as they were at the date of the signature, unless these rates are reduced in the meantime, in which case the company and the mining company shall benefit from these new rates at their request.
- 21.2 The State assures the company, the mining company, its affiliated companies and their subcontractors and people they regularly employ, that they will never be subject to any legal or administrative discrimination, unfavorable in law and in fact.
- 21.3 The State ensures the company, the mining company, its affiliated company and their subcontractors that any necessary administrative authorizations and measures aimed at facilitating the conduct of prospecting and mining activities shall be granted and taken as expeditiously as possible, in accordance with applicable legal and regulatory provisions.
- 21.4 The State ensures the company, the mining company, its affiliated company and their subcontractors that all administrative authorizations shall be granted as expeditiously as possible to facilitate marketing of products. It is understood that the mining company may negotiate with a specialized company, the marketing of products. However, the mining company shall remain accountable to the State for this operation and shall submit to the State any sales contract to be passed.

**ARTICLE 22 - PROVISIONS RELATED TO TAX AND DUTIES**

**22.1 PROSPECTING PHASE**

22.1.1 The company shall pay fees, royalties, duties and taxes mentioned below:

(a) Fixed fees:

The company shall pay fixed fees for the issuance, renewal, expansion, extension, assignment and transfer of the mine prospecting titles at rates determined by the budget act.

(b) Annual area tax, denominated in CFA francs/km<sup>2</sup>:

- First period of validity	1 000
- First renewal period	2 000
- Second renewal period	3 000
- Subsequent renewals	5 000

(c) Differential tax on motor vehicles:

These are road tax disc, except for work site vehicles.

(d) Single tax on insurance contract:

This refers to the single tax on insurance contracts, except for work site vehicles.

(e) Registration fees, stamp duties, licence fees, rights publication fees.

22.1.2 Specific benefits granted during the mine prospecting phase

Notwithstanding the aforementioned provisions, the company shall enjoy the following duty and tax advantages:

- (a) The company shall be exempted from payment of:
  - o value added tax (VAT) ;
  - o income tax;
  - o minimum flat tax or its equivalent ;
  - o apprenticeship tax ;
  - o occupational taxes ;
  - o land tax;
  - o registration duties on contributions made at the time of incorporation of the company and capital increase.
- (b) Benefits granted to holders of mining titles during the prospecting phase include Normal Temporary Admission and exemptions.  
 Capital goods, materials, spare parts as well as fuel and lubricants needed for the operation of machines, equipment and industrial vehicles used for prospecting operations are exempted from duties and taxes due when they are imported, except for the Solidarity Community Levy [*Prélèvement Communautaire de Solidarité – PC*] and Statistical fee [*Redevance statistique - RS*].  
 Capital goods imported from any UEMOA member country for prospecting operations shall benefit from the Temporary Admission regime throughout the validity of the mining title, during the prospecting phase.

**22.1.3 Income tax payable by employees:**

The company's employees are subject to the payment of the income tax, except for expatriate staff whose activities are exclusively related to the purpose of this agreement. Subcontractors enjoy the same tax exemption for the expatriate staff, under the same conditions.

**22.2 OPERATIONS PHASE**

22.2.1 The mining company is subject to the payment of the following fees, royalties, duties and taxes:

(a) Fixed fees:

The mining company shall pay fixed fees in connection with issuance, renewal, expansion, assignment, transfer, sub-lease, conversion, merging and division of the mining title, at rates fixed by the budget act.

(b) Annual area tax, denominated in CFA francs/km<sup>2</sup>

(b1) Small scale mines

- First period of validity	5 000
- First renewal	10 000
- Second renewal	12 000
- Third renewal	13 000
- Subsequent renewals	15000

(b2) Large scale mines

- First period of validity	5 000 000;
- First renewal	7 500 000;
- Second renewal	10 000 000;
- Subsequent renewals	20 000 000.

(c) Mining Royalties: calculated in accordance with the Mining Regulation as follows :

$$\begin{aligned} A &= \text{mining products} \\ B &= \text{operating income} \\ C &= B/A (\%) \end{aligned}$$

- 4) If C is equal to or below 20%, the rate is 5.5%;
- 5) If C is above 20% and below 50%, the rate is 9%;
- 6) If C is above or equal to 50%, the rate is 12%.

A and B are calculated in accordance with the accounting system of Niger.

The mining royalty base is equal to the market value of the FOB delivered final product.

(d) Registration fees, stamp duties, and publication fees.

(e) Tax on classified factories.

Value added tax.

(f) Tax on industrial and commercial profits.

(g) Tax on stocks and shares.

(h) Differential tax on motor vehicle (*vignette*): this tax is payable except for mine and quarry machines and vehicles directly used for mining operations.

(i) Single tax on insurance contracts: this tax is payable on insurance contracted with companies based in Niger.

22.2.2 Interests and other income accruing from amounts that the mining company has borrowed for its equipment or operation are exempted from all duties or taxes.

22.2.3. Specific benefits granted during the operation phase:

Notwithstanding the aforementioned provisions, the mining company enjoys some tax and customs duties advantages:

(a) The mining company shall be exempted from the following:

- Value added tax (VAT), for a period ending at the date of the first production;
- For three (03) years, starting from the date of the first production:
  - occupational taxes;
  - schedular tax on industrial and commercial benefits;
  - apprenticeship tax;
- throughout the period of operation:
  - land tax;
  - minimum flat tax or its equivalent;
  - tax and duties on interests and other income accruing from monies borrowed for the purpose of acquiring equipment or for mining operations;

(b) The mining company may benefit from the system of accelerated depreciation.

(c) The mining company may make, free of income tax, a provision for diversifying its resources.

(d) Customs duties benefits granted to the mining company consist of temporary admission and exemptions.

- Throughout the period of validity of the mining title, the mining company shall be fully exempted from customs tax and duties, except for the Statistic fees [*Redevance statistiques – RS*], payable on petroleum products for power generation, extraction, transport and ore processing as well as for the operation and maintenance of social and health infrastructure.

- For a period that extends to the end of the third year, starting from the date of the first production, capital goods in Niger mining list attached as Annex III are under temporary admission. From the end of this period and throughout the remaining period of validity of the mining title issued for the mining phase, holders of such titles shall pay taxes and duties payable on capital goods which are on the Niger mining list attached as Annex III, in accordance with customs regulations.  
Taxes and duties shall be collected based on the residual value of the equipment under temporary admission regime.
- For the period ending at the date of the first production, equipment, spare parts – except those for private vehicles or any other vehicles for similar purpose – materials and machinery meant to be exclusively used for the works, are exempted from all import taxes and duties, with the exception of statistic fees, community levy and solidarity community levy.
- Throughout the period of validity of mine titles and during operation phase, holders of such titles are totally exempted from the payment of import taxes and duties on chemicals, reagents, oil and grease for capital goods.

22.2.4 When exported, products are exempted from all export taxes and duties for the entire period of validity of mine titles.

22.2.5 Employees of the mining company shall pay the income tax.

### 22.3 Provisions applicable to mine prospecting and operations phases

22.3.1 In case of disposal or reassignment of an article under temporary admission to a use other than mine prospecting or operation, the holder of a mine title shall pay all duties and taxes calculated on the basis of the residual value of this good, as at the date the sale was reported.

22.3.2 The expatriate staff, residing in Niger and employed by holders of mine titles for mine prospecting or operation activities, shall be exempted from the payment of taxes and duties when importing to Niger used personal effects and belongings, in accordance with Customs regulations.

22.3.3 Equipment used for mine prospecting and operations are exempted from all export taxes and duties payable when re-exported.

22.3.4 Exemption formalities for capital goods and consumables:

To benefit from tax exemption, the company, the mining company, their suppliers or subcontractors have to follow procedures below, as appropriate:

1) The company or the mining company shall submit an affidavit stating that the machinery, materials, supplies, engines and equipment which are purchased or imported shall be assigned to mining activities carried out by the company, the mining company or on their behalf.

This affidavit, signed by the Director of Mines in quadruplicate, shall specify the goods to be exempted as well as the references or the headings in the Mining List of Niger, attached as Annex III. In this document, the company or the mining company commits to pay taxes and penalties due in case the goods are not assigned to the use which entitles them to be exempted from taxes and duties or in case these goods are sold without paying these taxes and duties.

One copy of the document shall be kept by Directorate of mines and one by the company or the mining company as accounting document. One copy is also provided to the supplier or the subcontractor and one to the customs administration.

2) The company, the mining company, their suppliers and subcontractors should keep their accounts so as to clearly reflect the following:

- items that are exempted from taxes and duties
- items that are liable to customs taxes and duties.

3) Holders of mining titles shall keep their books in accordance with authoritative accounting procedures applicable within UEMOA, known as *Système Comptable Ouest-Africain* (SYSCOA) (West African accounting system).

4) Suppliers of capital goods may only enter in their books under “items exempted from taxes and duties”, those for which they can produce the certificate referred to in paragraph 1 above.

5) Regarding Niger Mining List, it is specified that equipment, materials and products similar in terms of price, quality, guarantee and delivery time to those manufactured in one of the UEMOA members countries may not be exempted.

22.4 Notwithstanding the above mentioned duties, taxes, fees and benefits, holders of mine prospecting and operations shall comply with tax and customs regulations generally in force in Niger.

## ARTICLE 23 - ECONOMIC PROVISIONS

23.1. Except as provided for by the agreement, the State shall, during the term of the such agreement, neither pass nor issue against the Company, the Mining Company or their subcontractors, any measure involving a restriction on the conditions provided for in the legislation in force at the time of the signature of the agreement, in relation to:

- a) free selection of suppliers, except as provided for in Article 18.3 above;
- b) free import of goods, materials, machines, equipment, spare parts and consumables subject to compliance with the Mining and Customs Regulations;
- c) free export of products;
- d) free trade with any Company in good faith;
- e) free movement, in Niger, of equipments and goods of the Company, the mining Company and their subcontractors as well as any of substance and product from prospecting and mining activities;
- f) Free movement of samples for testing and analyses purposes;  
The sale price of products shall be in US \$.

23.2. Any contract entered between the Company or the mining Company, on the one hand and an affiliate Company, on the other hand, may not be concluded at conditions which are more favorable to the affiliate Company than those of a contract negotiated with third parties.

23.3. Any subcontractor, who is not a citizen from an UEMOA member country and who has been providing services to mine title holders for more than six months, is required to establish a company in accordance with regulations in force.

However, whatever the duration of the subcontract, the subcontractor shall meet his/her tax obligations in accordance with the regulations in force.

Any subcontractor shall enjoy the same tax and customs advantages as mine title holders, no matter how long they have provided them with services

**23.4 If, during and at the end of mining operations in Niger, the mining company decides to cease activities, it may only sell its facilities, machines and equipment to third parties after granting the state a pre-emptive right to purchase them, at the appraised value at the time of such decision.**

**ARTICLE 24 – FINANCIAL PROVISIONS**

24.1 Subject to the foreign exchange regulations in force in Niger, the State shall give the company, the mining company, their suppliers and their subcontractors, the following guarantees:

- a) free conversion and transfer of funds intended for the payment of debts (principal and interests) related to mining operations in Niger, to non-Nigerien creditors;
- b) free conversion and transfer of net profits to be distributed to non-Nigerien shareholders, after payment of all duties and taxes payable.
- c) free conversion and transfer of profits and proceeds from liquidation of assets, after payment of all duties and taxes payable.

24.2 The State shall guarantee the free conversion and transfer abroad of savings of expatriate staff, the company and their subcontractors, on their salaries or on proceeds from investments from Niger or from the sale of personal belongings in Niger.

**ARTICLE 25 – LAND AND MINING GUARANTEES**

25.1. The State shall guarantee the company, the mining company, the right to occupy and use lands needed for prospecting and developing the deposit(s) for which the mine prospecting and/or development title have been issued under the agreement, both inside and outside the perimeter, in accordance with the provisions of the Mining Law.

25.2. For the purpose of the Agreement, the company or mining company may conduct any works required by its activities and related industries, construct works and facilities inside the perimeter of any prospecting or mining titles, in accordance with the provisions of Articles 64 and 114 of Ordinance No 93-016, on the Mining Law dated 2 March 1993.

**ARTICLE 26 – EXPROPRIATION**

The State undertakes not to expropriate the company and the mining company's properties or assets. Its facilities can only be expropriated under very exceptional circumstances against a compensation determined by an administrative or arbitral tribunal.

**ARTICLE 27 – PROTECTION OF INFRASTRUCTURE, ENVIRONMENT AND REHABILITATION OF MINING SITES**

Development of any new deposits shall be subject to an environmental impact study pursuant to the environment legislation in force. Such study shall be part and parcel of the Feasibility Study.

The company and mining company commit to take the necessary steps to protect the environment while conducting mining operations including:

- protection of natural sites;
- preservation of the health and safety of riparian communities as well as public sanitation, in general;
- protection of indigenous natural fauna and flora;
- protection of known natural resources.

Such measures taken must conform to requirements stipulated in the environmental legislation in force, or failing that, comply with generally accepted practice in mining industry.

Commitments made by the company and the operation company include more specifically:

- conduct mining operations in conformity with Mining Regulation and generally accepted practice;

- periodically monitor the quality of water and land resources and air in perimeters and vicinities thereof during the conduct of mining operations;
- manage in an organized way soils and rocks handled so as to guarantee stability of mining sites and ensure that this does not adversely affect surface water flow regime and quality - sedimentation, unprotected water retention works or erosion;
- avoid any discharge of solutions containing substances which are, due to their nature, likely to pollute soil, air and freshwater polluting substances;
- manage water tables to prevent their pollution outside perimeters, during and after mining operations;
- manage in a controlled and efficient manner industrial wastes generated by mining operations in active sites proposed by the company and approved by the public institution in charge of environmental protection, to avoid their dispersion in the environment;
- rehabilitate sites as mining operations progress, if possible, and at the end of such operations. “Rehabilitation” refers to the restoration of mined lands and their grading taking into account local climatic conditions to mitigate as much as possible the potential impact of natural degradation;
- establish a follow-up system to monitor the implementation and efficiency of measures taken, in conformity with the applicable environmental legislation which provides for the mitigation of residual impacts of rehabilitated sites and evolution of these impacts;
- maintain the system in place for a period of five (5) years after completion of mining operations. However, the monitoring agency may decide to lessen or abandon monitoring activities before the end of that period.

The company or the mining company shall be liable for any damage to the environment and to health and safety of riparian communities, resulting from non compliance with regulations.

#### **ARTICLE 28 – ARCHEOLOGICAL TREASURE AND EXCAVATIONS**

- 28.1 Any archaeological finds, treasure or other objects deemed valuable, discovered during mining operations shall remain the exclusive property of the State. The company or the mining company shall immediately report archaeological finds to the relevant government institution.
- 28.2 If archaeological excavations are already underway or if the perimeter is subsequently excavated, the company or the mining company shall undertake to carry out their activities without interfering with such excavations.

#### **ARTICLE 29 – ASSIGNMENT, NEW PARTIES**

- 29.1 The company or the mining company may, with a written approval of the Minister of Mines, assign to other corporate bodies all the rights and duties acquired under the agreement as well as its prospecting and mining titles, subject to the provisions of the Mining Law.  
The State shall give its approval if its interests are not at stake. In this case, the transferees shall assume all the rights and duties of the transferor arising out of the agreement as well as those derived from the prospecting and mining titles.  
Where the company or the mining company assigns all the obligations and rights acquired under agreement and/or under the prospecting and mining titles, the proceeds of the transaction shall be determined for tax purposes and taxed where relevant, according to commonly agreed financial techniques, at the time of the transaction and by virtue of the tax legislation in force in Niger.
- 29.2 For a shareholder of the company or the mining company to sell, assign or transfer to a third part, all or part of its shares of the capital; he/she must obtain the approval of the Minister of Mines. Such approval shall be granted if the interests of the State are not at stake.

Once this approval is secured, the proceeds of the transaction shall be determined for tax purposes and taxed where relevant, according to commonly accepted financial techniques, at the time of the transaction and by virtue of the tax legislation in force.

29.3 In virtue of its right of pre-emption, the State shall have the right to purchase the shares of the mining company that a shareholder wishes to dispose of, at the same price and under the same terms and conditions.

The right of pre-emption shall be exercised by the State and the transaction shall be concluded within sixty (60) days, starting from the date on which the written notice of the mining company indicating that one of the shareholder wishes to dispose of his/her shares, is received.

If, within sixty (60) days, the State does not reply or if no transaction has been concluded, the right of pre-emption of the State shall lapse for this particular transaction.

29.4 The company or mining company shall have the same pre-emptive right as the State under Article 29.3 above to acquire shares, should the State decide to sell all or part of its own shares.

Notwithstanding the provisions of the paragraph above, the State may sell or transfer its shares, without any restrictions, preferably to Niger companies in which it holds shares or to Niger national citizens or companies incorporated under the laws of Niger and controlled by Niger nationals.

#### **ARTICLE 30 – AMENDMENT**

Any clause that is not provided for in this agreement may be proposed by either party and shall be given careful consideration. Any request for amendment submitted to one of the parties shall be subject to a written answer or to a negotiation. Each party shall endeavor to reach a mutually acceptable settlement and, where relevant, the said clause shall constitute an additional protocol that will be approved by a decree issued by the Council of Ministers and attached to this agreement.

#### **ARTICLE 31 – NON-WAIVER, PARTIAL NULLITY, RESPONSIBILITIES**

##### **31.1 NON-WAIVER**

Except in case of express waiver, the fact that the State or the company or the mining company does not exercise all or part of its rights and prerogatives does not amount to a waiver of such rights and prerogatives.

##### **31.2 PARTIAL NULLITY**

If any of the provisions of the agreement is declared or deemed null and void, in whole or in part, for whatever reason, this may not cancel the agreement, which shall remain in force.

##### **31.3 RESPONSIBILITY**

The company, the mining company, their subcontractors and suppliers are required to underwrite insurance policies in accordance with the insurance scheme in force in Niger.

#### **ARTICLE 32 – FORCE MAJEURE**

32.1. If a party fails to meet any of its obligations, it shall not be held responsible if it can prove that:

- this is due to an impediment beyond its control; and
- it could not reasonably foresee such impediment and its impact on its inability to implement the agreement at the time it was passed;
- it could not reasonably have avoided or overcome such impediment or at least, the impact hereof.



32.2. Within the meaning of Article 32.1 above, the followings shall be considered as cases of *force majeure*:

- a) wars whether declared or not, civil war, riots and revolutions, act of piracy, sabotage;
- b) natural disasters, such as storms, earthquakes, tidal waves, floods, destruction caused by thunder;
- c) any explosions, fire, destruction of machines, plants and facilities;
- d) boycotts, strikes and lock-outs of any nature; zeal strikes; plant and office occupation; work stoppages by workers under the responsibility of the party requesting to be exonerated from liability;
- e) acts of public authority, whether legal or illegal, except for those a party commits, pursuant to other clauses of the agreement.

32.3. A party that requests to be exonerated from liability shall, as soon as possible and within a maximum period of thirty (30) days after realizing the impediment and its effects of its ability to fulfill its obligations, inform the other party of this impediment and its effects on its ability to perform its duties. This party shall also notify the other party when the reason for requesting an exoneration of responsibility is no longer relevant.

32.4. The exoneration of responsibility shall be effective as at the time when the impediment occurs or, from the time of notification, in case notice has been given on time. The party that fails to give such a notice shall be liable to payment of damages.

32.5. The fact of justify exoneration of responsibility as provided for in this clause shall exempt the defaulting party from payment of damages, penalties and other sanctions prescribed by the agreement, except for payments of interests on amounts due, as long as this reason prevails.

32.6. In case of impediment due to cases of *force majeure*, the time prescribed to meet obligations provided for in this agreement, shall suspend for a reasonable period, thus precluding the right of the other party to terminate or cancel the agreement. The ability of the defaulting party to perform its obligations again as well as the advantage the other party may draw from such performance in spite of delays, shall be taken into account when determining what may be considered as “reasonable time period”. Pending that the defaulting party performs its obligations, the other party may suspend performance of its own obligations.

32.7. If the reason for exoneration of responsibility exceeds a period of one year, the other party shall have the right to terminate the agreement, following notification in the form prescribed by Article 35 below.

32.8. Each party shall retain what it has gained from the performance of this agreement before its termination. Either party shall be liable to the other party for any unjust enrichment resulting from such performance. Where relevant, the final balance shall be payable as soon as possible.

### **ARTICLE 33 - ACCOUNTING, INSPECTION AND REPORTING**

33.1 For the term of the convention, the company and mining company undertake to:

- a) keep detailed accounts in accordance with the accounting system of Niger, with supporting documents attached to ascertain their accuracy. The accounts shall be

accessible for inspection by representatives of the State, especially mandated to that effect, in accordance with the legislation in force;

- b) allow duly authorized representatives of the State access to any accounts or accounting entries that are kept abroad and related to its operations in Niger.
- 33.2 The mining company shall have its annual financial statements audited, at its own expense, by a chartered accounting firm that is authorized to conduct business in Niger. It shall forward a copy of the audit report to the Minister who reserves the right to have the mining company audited, at any time, either by the Chamber of Accounts and the Administrative Chamber or a treasury officer or else a private firm.
- 33.3 The company or the mining company shall submit, at its own expense, to the Minister, reports prescribed by the Mining Law. The Minister reserves the right to require, where relevant, any changes deemed necessary in the layout of reports. These changes shall not be, in any case, required for reports that have already been submitted.
- 33.4 Only duly authorized State representatives shall be allowed to inspect, at any time, the facilities, equipment, machinery, records and documents related to mining operations, without hindering the operations of the company or the mining company.
- 33.5 The State reserves the right to request the assistance, at its own expense, of an international chartered firm to verify, without hindering the operations of the mining company, the information provided for under the agreement.
- 33.6 Metal content monitoring records shall be kept by the mining company for each shipment abroad and the Minister may have duly authorized representatives check and audit any entry in the logbook.
- 33.7 Any information provided for pursuant to this agreement shall be processed in accordance with the Mining Law.

#### **ARTICLE 34 – SANCTIONS AND PENALTIES**

In case of a breach of obligations arising out of the laws and regulations in force in Niger at the date of the signature of the agreement, insofar as these laws and regulations are applicable to the company or the mining company, sanctions and penalties provided for in these very legislative or regulatory texts shall apply, including fines, penalties, interests on arrears or any other measures and constraints provided for in the said legal texts.

#### **ARTICLE 35 – NOTIFICATIONS**

Any communications or notification provided for in the agreement shall be sent by registered mail with acknowledgement of receipt or by facsimile confirmed by a registered letter with acknowledgement of receipt:

- a) Any notification to the State shall be sent to the following address:  
MINISTERE CHARGE DES MINES  
Boîte postale 11700, Niamey, Niger Tel.: (227) 20734582;  
Fax: (227) 20732759.

- b) Any notification to the company shall be sent to the following address:

Any change of address must be notified by writing, as soon as possible, by one party to the other.

#### **ARTICLE 36 – LANGUAGE AND SYSTEM OF MEASUREMENT**

- 36.1 This convention is originally drafted in French. Any report or any other document prepared or to

be prepared under this agreement shall be in French.

36.2 The translation of this convention in any other language can be done solely to facilitate its implementation. In case a contradiction arises between the French version of the agreement and its translation, the French version shall prevail.

36.3 The system of measurement applicable is the metric system.

Done in five copies, in Niamey on this .....

FOR THE STATE  
**THE MINISTER OF MINES**

FOR THE COMPANY  
**ITS DULY AUTHORIZED REPRESENTATIVE**

## ANNEX II

### ANNUAL AMORTIZATION RATES

<b>Goods to be amortized</b>	<b>Annual amortization rate</b>
Prospecting expenditures, study and assay costs	20 %
Complementary prospecting or water supply costs (surface prospecting, soundings, pumping tests, underground prospecting through main and secondary galleries, percussion soundings, decline, raise, sumps, including related ventilation and refrigeration structures)	
Expenses related the development work preceding mining operations (initial discovery, preparation of the open-pit mine, wells, declines, crosscuts, cut-through, raises, sumps, ventilation system, shaft stations and underground silos, including material and equipment for loading points, shaft stations and decline)	20 %
Operation costs of the mining company, including vocational training costs during the deployment and preparation phase. Financial expenses during the deployment and preparation phase	20 %
Light constructions, cabins and any other fold-away and transportable camp buildings	20 %
Light constructions with concrete floors	5 %
Concrete constructions and buildings	
- for industrial use	5%
- for accommodation, offices	2%
Road network and water supply system	5%
Civil engineering (earthworks, foundations, etc.)	
- for industrial use	5%
- for accommodation, offices	2%
Interior design of workshops	10%
House and office furniture	10%
Telephone	10%
Stationary compressors	10%
Machine tools	10%

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Engines, pumps of less than 5 hp	20%
Engines, pumps of more than 5 hp	15%
Overhead traveling cranes, trestles	10%
Power operated chain hoists and winches up to 2'1'	10%
Manual handling equipment: chain hoists, winches	20%
Small equipment	20%
Measurement and control devices	20%
Static laboratory equipment	10%
Mobile laboratory equipment	20%
Fixed generators	10%
Mobile generators	20%
HV distribution equipment	
- Transformers	5%
- Cut-off and protection equipment	5%
- Power transmission lines	5%
Transformer or cell distribution stations	
- Internal type	5%
- Fixed external type	5%
- Surface mobile type	20%
- Underground mobile type	20%
HV distribution equipment	
- Surface fixed equipment	10%
- Underground fixed equipment	10%
- Surface mobile equipment	20%
- Underground mobile equipment	20%
Rigid electric cables	
- Surface fixed cables	10%
- Underground fixed cables	10%
Headlamps and portable lamps	20%
Charging rack	10%

Surface and underground light fixtures	20%
Mobile and semi-mobile facilities for physical preparation and handling of ore	20%
Materials and equipment for ore processing plant.	10%
Mobile underground refrigerating machines	20%
Underground mobile exchangers	20%
Fixed refrigerating facilities	10%
Civil engineer, loading, transport and handling materials and equipment	33.33%

Where the lifetime of the mine is shorter than the above-mentioned depreciation period, these amortization rates shall be adjusted to the lifetime of the mine as per the feasibility study.

**ANNEX III**

**LIST OF MACHINERY, MATERIALS, MACHINES AND EQUIPMENT  
THAT ARE DIRECTLY USED FOR MINING OPERATIONS AND  
THAT ARE EXEMPTED FROM ALL DUTIES, ROYALTIES AND TAXES  
EXCEPT FOR STATISTICAL TAXES**

**CHAP 25:** Salt; sulfur; earth and stones; plaster; lime and cement

-25-01; -25-03- 25-08; 25-10 – 25-13; 25-16- 25-17; 25-20 – 25-20; 25-21- 25-30

**CHAP 27:** Mineral fuels; mineral oils and their distillates; bituminous materials; mineral waxes.

The whole chapter except:

-27 – 10 – 00 – 32 – and 33	=	Gasoline
-27 – 10 – 00 – 42	=	Domestic kerosene
-27 – 10 – 00 – 51	=	Gas-oil
-27 – 10 – 00 – 61	=	Lubricating oil
-27 – 10 – 00 – 62	=	Oils for hydraulic brakes
-27 – 10 – 00 – 63	=	Greases
-27 – 10 – 00 – 69	=	Other oils
-27 – 11 – 13 – 00	=	Butane gas
-27 – 16 – 00 – 00	=	Electrical energy

Note: However, the following products will be exempted from tax under the conditions hereunder:

-27 – 10 – 00 – 42	=	Kerosene to be used for chemical processing purposes
-27 – 10 – 00 – 51	=	Gas oil

Make a distinction between road gas-oil and industrial gas-oil used in fixed plants and machinery or for vehicles and engines used exclusively for the purpose of the mine and prospecting. Thus, the use of colored gas-oil will be compulsory.

-27 – 10 – 00 – 61	=	Lubricating oil
-27- 10 -00- 62	=	For hydraulic brakes
-27 – 10 – 00 – 63	=	Grease
-27 – 10 – 00 – 69	=	Other oils

These last four products will be exempted, provided that these lubricating oils, lubricants and other oils are intended only for static facilities and non passenger vehicles.

**CHAP 28:** Inorganic chemicals; inorganic or organic compounds of precious metal, radioactive elements, rare earth metals or isotopes.

The whole chapter.

**CHAP 29:** Organic chemicals

The whole chapter.

**CHAP 31:** Fertilizers

-31 – 02 – 21 – 00 = Ammonium sulfate

-31 – 02 – 30 – 00 = Ammonium nitrate, even aqueous solutions

**CHAP 32:** Tanning or dyeing extracts; tannins and their derivatives; pigments and other coloring products; paintings and varnishes; inks.

The whole chapter, if intended for industrial purpose.

**CHAP 34:** Soaps, organic surface active agent, preparations for liquors, preparations for lubricants, artificial waxes, prepared waxes, cleaning products, candles and similar articles, modeling pastes, dental waxes and plaster based compositions for dentistry.

-34 – 02; -34 – 03

**CHAP 35:** Albuminoidal matters, starch based or modified starch products, glues, enzymes.

-35-05; 35-06

**CHAP 36:** Powders and explosives, pyrotechnics products, matches, pyrophoric alloys, flammable materials

-36 – 02; 36 – 03

**CHAP 37:** Photographic chemicals and film products

35-02; 35-06, exempted, if (\*)

**CHAP 38:** Various products for chemical industries

The whole chapter except:

-38 – 11

**CHAP 39:** Plastics and plastic works

The whole chapter, but articles intended for domestic use will not be exempted from taxes.



**CHAP 40:** Rubber and rubber products

The whole chapter, except for:

-40 – 11 and 40 – 13, exempted, if intended for exempted vehicles

**CHAP 42:** Leather products, articles of harness or saddlery, travel goods, hand bags and similar containers, girth products.

-42 – 01; 42 – 04

**CHAP 44:** Wood, charcoal and wooden products

The whole chapter except:

-44 – 01 and 44 – 20

-44 – 21 items intended for technical use will be exempted from tax

**CHAP 45:** Cork and cork products

The whole chapter

**CHAP 48:** Paper and paperboard, pulp paper, cardboard or paper articles

The whole chapter, if intended for technical use.

**CHAP 49:** Edition products, press products or other graphic arts products, hand written or typed documents and plans.

-49-05

**CHAP 59:** Impregnated textiles, coated fabrics, lined and laminated materials; technical articles made of textile materials.

-59-01 to 59 – 03 exempted from tax if intended for technical use

-59 – 09

-59 – 10 exempted from tax if intended for industrial use

-59 – 11

**CHAP 62:** Clothing and clothing accessories other than hosiery

-62 – 03 working suit intended for industrial use

**CHAP 64:** Shoes, gaiters, similar articles and parts

-64 – 01 rubber boots intended for industrial use

-64 – 02 protective footwear intended for industrial use

-64 – 03      protective footwear intended for industrial use

-64 – 06      leg protectors and gaiters intended for industrial use

**CHAP 65:** Headwear and parts of headwear

-65 – 06 to 10 – 00 safety headwear

**CHAP 68:** Products made of stone, plaster, cement, asbestos, mica or similar materials

The whole chapter except:

-68 – 01 to 68-03; 60-09; 68-15

**CHAP 69:** Clay products

The whole chapter except:

-69 – 08; -69 – 10 to 69 – 14

**CHAP 70:** Glass and glassware

The whole chapter

-70-01; -70-02; 70-09; 70-11 to 70-13; 70-15;-70-18 and 70-20

**CHAP 72:** Iron, iron cast and steel

The whole chapter, if for industrial use

**CHAP 73:** Cast, iron or steel products

The whole chapter except:

-73-16;-73-19; 73-21; 73-23

- 73 -40, exempted if intended for technical use

**CHAP 74:** Copper and copper products

The whole chapter except:

-74-13; 74-17; 74-18

-74-19, exempted from tax, if intended for technical use.

**CHAP 76:** Aluminium and aluminium products

The whole chapter except:

-76-15;

-76-16 exempted from tax if intended for technical use

**CHAP 78:** Lead and lead products

The whole chapter except:

-78-01

-78-06, exempted from tax if intended for technical use.

**CHAP 79:** Zinc and zinc products

The whole chapter except:

-79-06, exempted from tax if intended for technical use.

**CHAP 81:** Other base metals, cermets, and products made of these materials

The whole chapter if intended for technical use

**CHAP 82:** Tools and equipment, cutlery articles and cutlery and parts of these article made of base metal

The whole chapter except:

- 82-10; 82-12 to 82-15

**CHAP 83:** Various works in base metal

The whole chapter except:

-83-01; -83-02 exempted from tax if intended for industrial use

-83-04; 83-05 office supplies if intended for technical use

-83-06; 83-08, exempted from tax if intended for industrial use

-83-10; 83-11, exempted from tax if intended for industrial use

**CHAP 84:** Nuclear reactors, boilers, machines, mechanical equipment and construction machines, parts of these machines or equipment.

The whole chapter except:

-84-14-51; 84-15; 84-18 exempted from tax if intended for industrial use

-84-20

-84-21-12; 84-21-22; 84-21-91; 84-22; 84-23-40 exempted from tax if intended for industrial use

-84-32 to 84-42

- 84-43 exempted from tax if intended for industrial use
- 84-44 to 84-55
- 84-69 to 84-71 exempted from tax if intended for industrial use
- 84-74 to 84-75

Note: 1°) For item 84-09, parts and spare parts of construction machines and vehicles referred to in chapter 87 shall be exempted from payment of taxes

2°) Spare parts of engines of construction vehicles referred to in items 84-28, 84-29 and 84-30 as well as parts and spare parts of construction machines and vehicle referred to in chapter 87 shall be exempted from tax (special purpose vehicles, compressors, cranes, concrete machines and automatic concrete machines, generators, etc.)

**CHAP 85:** Machines, electric material and equipment and their parts; sound recording instruments or reproduction equipment; television sound and picture recording and reproduction equipment; parts and accessories of these equipments.

The whole chapter except:

- 85-06
- 85-09 exempted from tax if intended for industrial use
- 85-10
- 85-16 exempted from tax if intended for industrial use
- 85-17 exempted from tax if intended for industrial use
- 85-18 exempted from tax if intended for industrial use
- 85-19 radio sets, radio combination sets and their spare parts.
- 85-20
- 85-21 exempted from tax if intended for industrial use
- 85-23
- 85-24 exempted from tax if intended for industrial use
- 85-25 exempted from tax if intended for industrial use.

Note: Items mentioned under 85-19 shall be exempted from tax if they are intended for industrial purpose. However, transmitting apparatus (receivers, antennas and parts – spare parts referred to under 85-27, 85-28 and 85-29 respectively, shall be exempted from tax if they are intended for industrial purpose).

**CHAP 86:** Vehicles and material for railway tracks or similar equipment and their parts, signaling equipment, mechanical equipment (including electromechanical instruments) for transportation corridor.

The whole chapter except:

- 86-01      exempted from tax if intended for industrial use
- 86-03      exempted from tax if intended for industrial use
- 86-05

**CHAP 87:** Passenger cars, tractors, cycles and other land vehicles, their parts and accessories

The whole chapter except:

- 87-02      passenger cars for passenger carriage
- 87-03      passenger cars and other cars, exempted if (\*)
- 87-04      vehicles for goods transportation, exempted if (\*)
- 87-08      car parts and accessories referred to under 87-01 to 87-05
- 87-10
- 87-11      exempted if directly used for prospecting purposes
- 87-12; -87-13
- 87-14,      exempted if intended for vehicles for (\*)
- 87-15
- 87-16-20-00    exempted if (\*)
- 87-16-39-10; -87-16-80-10

**CHAP 90:** Optical instruments and appliances, cameras or cinematographic apparatus, measuring devices, testing and precision apparatus; medical and surgical instruments and equipment; parts and accessories of these instruments and equipment.

- 90-04,      except 90-04, 90-10 (corrective glasses)
- 90-06,      exempted if (\*)
- 90-11; 90-12; 90-14 to 90-17
- 90-20
- 90-22; 90-24 to 90-33

**CHAP 91:** Clocks and watches

-91-06; 91-07; 91-14-90-00, exempted if (\*)

**CHAP 94:** Movables, surgical and medical equipment, bedding items and related products; lighting fixtures not designated and not included elsewhere; illuminated sign and related articles, constructions

-94-02; 94-05; 94-06, exempted if (\*)

**CHAP 96:** Various objects

-96-04      manual sieves and hand riddles

-96-80      markers

-96-11      exempted if intended for technical purposes (labeling machine)

- 96-12      if intended for technical purposes (for devices)

The aforementioned list is enumerative and can therefore be modified as needed upon approval of the Director of Mines, through a simple exchange of letters.

**NB: Exempted if (\*) means exempted if the item is intended for technical purposes.**

