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## REGULATORY ENVIRONMENT

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### PRC REGULATORY ENVIRONMENT

We engage in the exploitation and processing of mines in the PRC, and all the laws and regulations related to the administration of mines and resources are applicable to us. We have selected and summarized certain of such laws and regulations in this prospectus. In addition, certain of our subsidiaries are foreign invested companies in the PRC, and all the laws and regulations related to the administration of foreign invested companies are applicable to us. We have summarized the Catalogue for the Guidance of Foreign Investment Industries (外商投資產業指導目錄 2007) amended in 2007 with respect to the manganese business in this prospectus. Furthermore, we have also selected and summarized some of the general laws and regulations related to the land use right, environmental protection, forest protection, tax and labor in this prospectus.

Our PRC legal advisers have advised us that we have obtained all necessary licenses, permits and certificates to conduct our business operations in the PRC, except for those disclosed in the section headed “Business — Regulatory Matters — PRC Operations” in this prospectus.

### Mineral Resources Law of the People’s Republic of China and its Implementation Provisions

In accordance with the Mineral Resources Law of the People’s Republic of China (中華人民共和國礦產資源法) promulgated on March 19, 1986 and revised on August 29, 1996 by the Standing Committee of the National People’s Congress and the Rules for Implementation of the Mineral Resources Law of the People’s Republic of China (中華人民共和國礦產資源法實施細則) promulgated by the State Council on March 26, 1994, mineral resources in the PRC are owned by the State, which adopts a licensing system for the exploration for and mining of mineral resources. Any party that is engaged in the exploration for and mining of mineral resources must satisfy criteria and acquire exploration and mining rights from the relevant authorities by applying for and registering such rights and paying usage fees.

The Ministry of Land and Resources is responsible for the supervision and administration of the exploration and development of mineral resources throughout the country. The departments of land and resources at the provincial level are responsible for supervising and administering the exploration for and mining of mineral resources in their jurisdictions. The PRC Government adopts a unified registration system for mineral exploration areas. The Ministry of Land and Resources is responsible for registering the exploration of mineral resources. The State Council may authorize relevant departments to be responsible for the registration of the exploration of special types of mineral resources.

Anyone who wishes to establish a mining enterprise must meet the qualifications prescribed by the State, and the department in charge of examination and approval shall, in accordance with law and relevant State regulations, examine the enterprise’s mining area, its mining design or mining plan, production and technological conditions and safety and environmental protection measures.

### Regulations of Guangxi Zhuang Autonomous Region on Administration of Mineral Resources

In accordance with the Regulations of Guangxi Zhuang Autonomous Region on the Administration of Mineral Resources (廣西壯族自治區礦產資源管理條例) adopted on December 2, 2000 and revised on June 3, 2004 by the Standing Committee of People’s Congress of Guangxi, any entity and individual engaging in exploration, mining and administration of mineral resources within the administrative area of Guangxi must acquire the mineral exploration and mining rights. The exploration and mining rights shall be obtained with compensation. The mineral exploration and mining rights acquired in accordance with law may be transferable in accordance with the provisions of applicable laws, administrative rules and these Regulations.

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For the exploration and survey of mineral resources, the unified regional registration system is used. To apply for rights to explore and survey areas of known minerals in a local people's government-contributed exploration, an applicant for mineral exploration rights should, in addition to the payment of the mineral exploration right use fee in accordance with law, also pay the mineral exploration right purchase price for exploration and survey confirmed after evaluation. Units engaged in geologic exploration operations must obtain the qualifications for geologic exploration according to law; if a person with mineral exploration rights is not qualified for geologic exploration, an entity with the qualification for geologic exploration should be entrusted for geologic exploration. The person with exploration rights shall carry out the exploration as per the scope of exploration areas and items specified in the exploration license and perform the construction as per the approved exploration design. When it is necessary to extend the time for the exploration work, the person with exploration rights should, 30 days prior to the expiration of the exploration license, apply for the extension registration. The extension registration may be applied for twice and the duration of each extension shall not exceed 2 years. Should any person with mineral exploration rights fail to go through the formalities of registration for extension on expiry, the exploration license shall automatically be annulled. Any person with mineral exploration rights must prepare the exploration report after completion of exploration items. The exploration reports on normal large, medium and small-sized deposits for mine construction and the underground water exploration reports for construction of medium and small-sized water sources shall be examined and approved by the department in charge of examination and approval of mineral reserves of the Guangxi Autonomous Region, which should respond within 6 months of the receipt date of exploration reports on large and medium-sized deposits, and within 3 months of the receipt date of exploration reports on small-sized deposits. Exploration reports not examined and approved shall not operate as a basis of the design of mine construction.

Except in specific cases set forth in the Regulations, anyone who wishes to explore mineral resources should go through the mining registration procedures with the competent department above county level in charge of geological and mineral resources and obtain the mining license. The mining right applicant shall, before making an application for the mining rights, apply to the department in charge of geological and mineral resources as per the authority as provided for in Article 20 of the present Regulations for delimiting the mining areas with the approved exploration reports or geologic data. The aforesaid department shall, within 40 days of the date of receipt of the application, make a decision on the approval of registration or non-registration, and notify the mining rights applicant in writing. The maximum validity of a mining license shall be subject to the size of the mine construction: 30 years for large size, 20 years for medium size and 10 years for small size. Any person with mining rights who wishes to continue the mining at expiry of a mining license must go to the original license issuing authority to go through the extension registration formalities 30 days before expiry of the mining license. The issuing authority shall complete the examination and approval within 15 days as of the date of receipt of the report. Any person with mining rights who wishes to change the limits of the mining area, main prospecting mines, type of mining and name of the mining enterprise and transfer of the mining right must, before making any change, apply to the department in charge of geological and mineral resources for registration of the changes. If any persons with mining rights exploiting large and medium-sized mineral resources fails to conduct the construction or production within 2 years of the date of issuance of the mining license, or ceases its operations or production for two full years consecutively without a good reason, then the authority issuing the mining license may be entitled to revoke its license.

### **Administrative Measures on Registration of Mineral Resources Exploitation**

In accordance with the Administrative Measures on Registration of Mineral Resources Exploitation (礦產資源開採登記管理辦法) promulgated by the State Council of the People's Republic of China on

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February 12, 1998, the validity period of a mining permit shall be determined according to the scale of the mine. The maximum validity period of the term of mining permit for a big-scale mine, medium-scale mine and small-scale mine shall be 30 years, 20 years and 10 years, respectively. Mineral exploration permits and mining permits can be renewed within 30 days prior to their expiration, upon compliance with the prescribed extension procedure. If a holder of a mineral exploration permit or mining permit fails to renew its permit, such exploration or mining permit shall be automatically annulled upon expiration. If there is any alteration of the mining areas, ore variety, mining methods, the company's name, or any transfer of mining rights, the holder of the mining permit shall apply for the renewal of the permit within the valid period. Holders of exploration permits and holders of mining permits are subject to exploration permit usage fees and mining permit usage fees, respectively. Mining permit usage fees shall be payable on an annual basis. The rate of mining right usage fee shall be RMB1,000 per sq km of mining area per year.

### **The Measures for the Administration of Transfer of Mineral Exploration Right and Mining Right**

In accordance with the Measures for the Administration of Transfer of Mineral Exploration Right and Mining Right (探礦權採礦權轉讓管理辦法) promulgated by the State Council of the People's Republic of China on February 12, 1998, any person with mineral exploration rights has the right to conduct specified exploration and survey operations within the delimited exploration and survey operations area(s) and has the right to obtain the mineral exploration rights of mineral resources within the exploration and survey operations areas on a priority basis. A person with mineral exploration rights may, upon fulfillment and approval of the prescribed minimum exploration and survey input, transfer the mineral exploration rights to another person. A mining enterprise having obtained the mining rights may, subject to approval, transfer the mining rights to another person for mining as a result of enterprise amalgamation, separation, engagement in a joint venture or cooperative venture with another person, or as a result of the sale of the enterprise assets, as well as other circumstances that change the property rights of the enterprise assets, necessitating a change in the main body of the mining rights. With respect to applicants for the transfer of mineral exploration or mining rights, the examination and approval administration organ should, within 40 days from the date of receipt of the application for transfer, make a decision on the approval or non-approval of the transfer.

### **Mine Safety Law of the People's Republic of China and Its Implementation Rules**

Pursuant to the Mine Safety Law of the People's Republic of China (中華人民共和國礦山安全法) promulgated by the Standing Committee of the National People's Congress on November 7, 1992 and the Implementation Rules for the Mine Safety Law of the People's Republic of China (中華人民共和國礦山安全法實施條例) promulgated by the Ministry of Labor on October 30, 1996, the departments responsible for labor administration and the authorities in charge of the mining enterprises supervise and administer mine safety.

Mining enterprises must establish facilities that ensure safety in production, establish satisfactory safety management systems, take effective measures to improve working conditions, and strengthen safety control in mines in order to ensure safe production. The design of mine construction projects must comply with the safety rules and technological standards for the mining industry and is subject to the approval of the authorities responsible for mining enterprises. Mine construction projects must be constructed in accordance with the designs approved by the authorities responsible for mining enterprises. The design of safety facilities in mine construction projects must be examined by the departments in charge of labor administration, and these facilities must become operational at the same time as the principal parts of the project become operational. Upon completion, the safety

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facilities in mine construction projects are subject to inspection for approval by the authorities responsible for mining enterprises and the departments in charge of labor administration. Failure to comply with the safety rules and technological standards in the mining industry would result in the rejection of any applications for approval and commencement of operations.

Mining operations must meet certain requirements to ensure safe production. Mining enterprises must observe various safety rules and adhere to various technological standards for the mining industry, depending on the type of mineral exploited. They must establish and improve a safe production responsibility system, as well as provide safety education and training to their workers and staff. Managers of mines shall be responsible for safe production of the relevant enterprises.

### **Measures for Implementation of Safety Production Licensing for Non-Coal Mine Enterprises**

Pursuant to the Measures for Implementation of Safety Production Licensing for Non-Coal Mine Enterprises (非煤礦山企業安全生產許可證實施辦法) promulgated by the State Administration of Work Safety on June 8, 2009 and the Regulations on Safety Production License (安全生產許可條例) promulgated by the State Council on January 13, 2004, non-coal mine enterprises must obtain safety production licenses pursuant to relevant regulations. Companies without safety production licenses cannot conduct any production activities. The State Administration of Work Safety is responsible for guiding and supervising safety production licenses for non-coal mine enterprises throughout the country. It is also responsible for issuing safety production licenses for non-coal mine enterprises under the central government's management (comprising group companies, corporations and listed companies) as well as off-shore petroleum and natural gas enterprises. The departments of work safety at the provincial level are responsible for the issuance and administration of safety production licenses for non-coal mine enterprises other than those mentioned above, as well as other non-mining enterprises which own non-coal mines or tailings facilities.

In order to obtain a safety production license, a non-coal mine enterprise must satisfy certain production safety requirements. The safety production license issuance and administration authorities issue safety production licenses to enterprises that meet the production safety requirements pursuant to the relevant provisions. For metal and non-metal enterprises, safety production licenses are issued to an enterprise in respect of its individual production systems. Safety production licenses are required to be renewed every three years through application to the safety production license issuance and administration authorities no later than three months before the expiration date.

In case the mining permit expires within the valid period of safety production license, non-coal mine enterprises shall report to the issuing authority of safety production license within 15 days prior to the expiry of the mining permit, and return the original and duplicate of safety production license.

### **Measures for the Administration of the Use Fee and Purchase Price for Mineral Exploration and Mining Rights**

In accordance with the Measures for the Administration of the Use Fee and Purchase Price of Mineral Exploration and Mining Rights (探礦權採礦權使用費和價款管理辦法) promulgated by the Ministry of Finance and the Ministry of Land and Resources on June 7, 1999, entities carrying out mineral resources exploration and mining within China shall pay the use fee and purchase price for mineral exploration and mining rights. The mineral exploration rights use fee shall be calculated according to the exploration and survey year and paid every year as per the area of the block, i.e. a payment of RMB 100 per square kilometer a year shall be effected from the first exploration and survey year to the third exploration and survey year. An additional RMB100 per square kilometer

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shall be paid from the fourth exploration and survey year; however, the maximum amount per square kilometer shall not exceed RMB500 a year. The mining right use fee shall be payable each year based on the mining areas, RMB1,000 per square kilometer a year. With respect to the rates of mineral exploration and mining rights, the purchase price is based on the valuation price, as determined by such department of the State Council as is in charge of geological and mineral resources and shall be paid in lump-sum or by installments; however, the time limit for payment of the exploration right purchase price shall not exceed 2 years at the maximum and that of the mining right purchase price shall not exceed 6 years at the maximum. The use fee and purchase price for mineral exploration and mining rights shall be payable during the time of the exploration, mining registration or annual inspection procedures, by the person with mineral exploration and mining rights. When going through the said procedures, said person shall, at the rates determined by the registration administration organ, directly deposit the aforesaid use fee and purchase price into the “special account of use fee and purchase price for mineral exploration and mining rights” opened by the financial department at the same level.

### **Circular on Strengthening Reform of the System for Obtaining Mineral Exploration Rights and Mining Rights for Value and Supplementary Rules**

In accordance with the Circular on Strengthening Reform of the System for Obtaining Mineral Exploration Rights and Mining Rights for Value (財政部、國土資源部關於深化探礦權採礦權有償取得制度改革有關問題的通知) promulgated by the Ministry of Finance and the Ministry of Land and Resources on October 25, 2006 and the Supplementary Rules for Reform of the System for Obtaining Mineral Exploration Rights and Mining Rights for Value (財政部、國土資源部關於探礦權採礦權有償取得制度改革有關問題的補充通知) promulgated by the Ministry of Finance and the Ministry of Land and Resources on February 28, 2008, the mineral exploration rights and the mining rights must be granted on the non-gratuitous basis, and any owners that hold any mining rights or exploration rights with proven mineral resources without compensation shall pay the purchase price of such mining right to the State. Except for otherwise permitted, all the mineral exploration rights and the mining rights must be granted by way of public bidding, auction or listing. The mineral exploration rights and the mining rights owners shall pay the relevant fees on time and in full.

In case of difficulties in paying off fees for mineral exploration rights or mining rights in a lump-sum, upon being approved by the approval and registration authority of mineral exploration rights and mining rights, such fees may be paid in installments within the valid period of the rights, among which, fees for mineral exploration rights may be paid within 2 years, with the proportion of the first year’s payment be no lower than 60%, and fees for mining rights may be paid within 10 years, with the proportion of the first year’s payment being no lower than 20%. The owners of mineral exploration rights and mining rights, who pay fees in installments, shall bear the cost for use of funds at a rate no lower than the bank lending rate within the same period.

### **Provisions on the Administration of Collection of the Mineral Resources Compensation Fee**

Pursuant to the Provisions on the Administration of Collection of the Mineral Resources Compensation Fee (礦產資源補償費徵收管理規定) promulgated on February 27, 1994 and revised on July 3, 1997 by the State Council, the mineral resources compensation fee is calculated on the basis of a ratio of the sales income from mineral products. The mineral resources compensation fee is treated as an administration cost of the enterprise and is calculated using the following formula:

Resources compensation fee = Sales income of mineral products x Compensation fee rate x Coefficient of mining recovery rate



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Any adjustment to the rate of a mineral resources compensation fee is determined by the Ministry of Finance, the Ministry of Land and Resources and the State Development and Reform Commission, and is subject to the approval of the State Council. Mineral resources compensation fees are collected by the departments of land and resources together with the departments of finance. Mineral resources compensation fee for the first half of each year is payable on or before July 31 of the same year, and the fee for the second half of the year is payable on or before January 31 of the following year. Pursuant to the “Reply Letter in respect of problems in collecting mineral resources compensation fee” (October 5, 1998, Guo Tu Zi Han No. 259) issued by the Ministry of Land and Resources, a mineral resources compensation fee with a fee rate of 2% should be paid, as required by the State, for any mining activities of mineral resources within the territory of the PRC and other territorial waters under its administration, regardless of any purposes.

In specific circumstances, certain parties may be partly or fully exempted from paying mineral resources compensation fees upon joint approval by the department of land and resources and the department of finance at the provincial level. Approval from the provincial people’s government is required if the mineral resources compensation fee is reduced by more than 50% of the amount payable. Any approval for the reduction of the mineral resources compensation fee must be reported to both the Ministry of Land and Resources and the Ministry of Finance.

### **Provisional Measures on Financial Management of Safety Production Fees of High Risk Enterprises**

On December 8, 2006, the Ministry of Finance and the State Safety Production Supervision Bureau promulgated the Provisional Measures on Financial Management of Safety Production Fees of High Risk Enterprises (高危行業企業安全生產費用財務管理暫行辦法). Safety production fees mean the funds specifically used for the improvement in production conditions of the enterprise in accordance with the required standard. Enterprises engaging in mining business in the PRC should provide for safety production fees. The standard provision for metal mines is RMB4 per tonne (surface mine) and RMB8 per tonne (underground mine). The standard provision can be raised by not more than 50% upon joint approvals from the safety production supervision bureau at the provincial level and the finance bureau for coal and coal-related non-metal mines, water underground mines, mines with self-ignition possibility, underground mines with protected buildings and railways above and other mines with special safety production requirements.

### **Taxation**

The application income tax laws, regulations, notices and decisions (collectively referred to as “Applicable Foreign Enterprises Tax Law”) related to FIEs and their investors include, among other things, the following:-

- Enterprise Income Tax Law of the PRC (中華人民共和國企業所得稅法) adopted by the NPC on March 16, 2007 which came into effect on January 1, 2008;
- Implementing Rules of the Enterprise Income Tax Law of PRC (中華人民共和國企業所得稅法實施細則) promulgated by the State Council on December 6, 2007 which came into effect on January 1, 2008;
- Notice on Implementing Preference Policy of Enterprise Income Tax in Transition Period (國務院關於實施企業所得稅過渡優惠政策的通知) promulgated by the State Council on December 26, 2007 which came into effect on the same date;

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- Notice Relating to Taxes Applicable to Foreign Investment Enterprises/Foreign Enterprises and Foreign Nationals in Relation to Dividends and Gains obtained from Holding and Transferring of Shares (國家稅務總局關於外商投資企業、外國企業和外籍個人取得股票(股權)轉讓收益和股息所得稅收問題的通知) promulgated by State Tax Bureau on July 21, 1993;
- Income Tax Law Applicable to Individuals of PRC (中華人民共和國個人所得稅法) was promulgated by Standing Committee of NPC on September 10, 1980 and amended on December 29, 2007 lately and came into effect on March 1, 2008; and
- Notice on Relevant Policies Concerning Individual Income Tax (財政部國家稅務總局關於個人所得稅若干政策問題的通知) issued by Ministry of Finance and the State Tax Bureau on May 13, 1994.

### **Enterprise Income Tax**

#### (a) Taxpayer

The taxpayer of the income tax of the Foreign Investment Enterprise and Foreign Enterprise refers to Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises that are established in the PRC.

#### (b) Rate of Tax

In accordance with the Enterprise Income Tax Law (企業所得稅法) which was adopted by the NPC on March 16, 2007 and came into effect on January 1, 2008, a unified Enterprise Income Tax rate of 25.0% and unified tax deduction standards will be applied equally to both domestic-invested enterprises and foreign-invested enterprises. In accordance with the Notice on Implementing Preference Policy of Enterprise Income Tax in Transition Period issued by the State Council of the PRC on December 26, 2007, the Enterprise Income Tax rate applicable to foreign-invested enterprises which are currently subject to a deducted rate will be gradually increased up to 25.0% within five years commencing January 1, 2008.

#### (c) Preferential Treatment

The income tax on enterprises with foreign investment established in Special Economic Zones, foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on enterprises with foreign investment of a production nature in Economic and Technological Development Zones, shall be levied at the reduced rate of 15.0%.

The income tax on enterprises with foreign investment of a production nature established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of 24.0%.

The income tax on enterprises with foreign investment in coastal economic open zones, in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located or in other regions defined by the State Council, within the scope of energy, communications, harbour, wharf or other projects encouraged by the State, may be levied at the reduced rate of 15.0%.

Any enterprise with foreign investment engaged in production scheduled to operate for a period of not less than 10 years shall, from the year it begins to make profit, be entitled to be exempted

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from income tax in the first and second years and a 50.0% reduction in the third to fifth years. However, the exemption from or reduction of income tax for enterprises with foreign investment engaged in the exploitation of resources such as petroleum, natural gas, rare metals, and precious metals shall be regulated separately by the State Council. Enterprises with foreign investment which have operated for a period of less than 10 years shall repay the amount of income tax that has been exempted or reduced. Any enterprise with foreign investment which is engaged in agriculture, forestry or animal husbandry and any other enterprise with foreign investment which is established in remote underdeveloped areas may, upon approval by the competent department for tax affairs under the State Council will be allowed a 15.0% to 30.0% reduction on the amount of income tax payable for a period of another 10 years following the expiration of the period for tax exemption or reduction as provided for in the preceding two paragraphs.

Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in the PRC by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax years. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the further subsequent year, and so on, over a period not exceeding five years.

Any enterprise with foreign investment shall be allowed, when filing a consolidated income tax return, to deduct from the amount of tax payable the foreign income tax already paid abroad in respect of the income derived from sources outside the PRC. The deductible amount shall, however, not exceed the amount of income tax otherwise payable under this Law in respect of the income derived from sources outside the PRC.

With the Enterprise Income Tax Law coming into effect on January 1, 2008, the “Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises” (中華人民共和國外商投資企業和外國企業所得稅法) and the Implementation Rules of the Income Tax Law of the PRC for Enterprises with Foreign Investment and Foreign Enterprises have been abolished, and the rate of enterprise income tax applicable to all resident enterprises, including foreign investment enterprises and domestic companies in the PRC is now at a uniform rate of 25.0%. According to the Enterprise Income Tax Law, any enterprise established prior to the promulgation of the Enterprise Income Tax Law and is currently enjoying tax incentives, shall be entitled to continue to enjoy such incentives till the date of expiry. In the case of an enterprise that has been established before the Enterprise Income Tax Law, but has not declared its first profitable year, the term of any entitlement to tax incentives shall commence from January 1, 2008 for a transition period of five years.

According to Notice on Implementing Preference Policy of Enterprise Income Tax in Transition Period (國務院關於實施企業所得稅過渡優惠政策的通知) which was promulgated by the State Council and came into effect on December 26, 2007, as of January 1, 2008, enterprises that previously enjoyed the preferential policies of low tax rates shall be gradually transitioned to enjoy the statutory tax rate within 5 years after the implementation of the EITL. Among them, the enterprises that enjoy the enterprise income tax rate of 15% shall be subject to the enterprise income tax rate of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012. The enterprises that previously enjoyed the tax rate of 24% shall be subject to the tax rate of 25% as of 2008. As of January 1, 2008, the enterprises that previously enjoyed “2-year exemption and 3-year half payment”, “5-year exemption and 5-year half payment” of the enterprise income tax and other preferential treatments in the form of periodic tax deductions and exemptions may, after the implementation of the New EIT Law, continue to enjoy the relevant preferential treatments under the preferential measures and the time period prescribed in the former tax law, administrative regulations and relevant documents until the expiration of



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the said time period. However, if such an enterprise has not enjoyed the preferential treatments yet because of its failure to make profits, its preferential time period shall be calculated from 2008. The expression “enterprises enjoying the preferential policies” as mentioned above refers to the enterprises established and registered with the Industrial and Commercial Administrative Department and with other registration administrative departments prior to March 16, 2007.

### **Value Added Tax**

The Amended Provisional Regulations of the People’s Republic of China Concerning Value Added Tax (中華人民共和國增值稅暫行條例) (the “VAT Regulations”) was promulgated by the State Council on November 10, 2008 and came into effect on January 1, 2009. Under the VAT Regulations, value added tax is imposed on goods sold in or imported into the PRC and on processing, repair and replacement services provided within the PRC.

The value-added tax rates shall be as follows:

1. The tax rate for goods sold or imported by taxpayers other than the goods set forth in Items 2 and 3 below shall be 17.0%.
2. The tax rate for sale or import of the following goods by taxpayers shall be 13.0%:
  - (a) grain, edible vegetable oil;
  - (b) tap water, central heating, air-conditioning, hot water, coal gas, liquid petroleum gas, natural gas, methane, and coal products for use by residents;
  - (c) books, newspapers, magazines;
  - (d) feed, chemical fertilizer, agrochemicals, agricultural machinery, agricultural film; and
  - (e) other goods specified by the State Council.
3. The tax rate for goods exported by taxpayers shall be zero, except where otherwise determined by the State Council.
4. The tax rate for processing and repair and replacement services provided by taxpayers shall be 17.0%.

A simplified tax calculation method will be applied to small-scale taxpayers (qualification of which subject to regulations of the State Council and tax authorities) who engaged in the sales of goods or taxable services. The amount of tax payable shall be calculated according to the total sales and the applicable tax rate. Small-scale taxpayers are not entitled to input tax credit. The applicable tax rate for the small-scale taxpayers shall be 3%.

### **Business Tax**

The Provisional Regulations of the People’s Republic of China Concerning Business Tax (中華人民共和國營業稅暫行條例) (the “Business Tax Regulations”) was promulgated by the State Council on November 10, 2008 and came into effect on January 1, 2009. Under the Business Tax Regulations, businesses that provide services (including entertainment business), assign intangible assets or sell immovable property are liable to business tax at a rate ranging from 3.0% to 20.0%,

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of the charges of the services provided, intangible assets assigned or immovable property sold, as the case may be. The formula for calculation of the amount of tax payable is set forth below:

Amount of tax payable = business income × tax rate

The business income shall be calculated in RMB. Taxpayers that settle their amounts of business income in currency other than RMB shall convert the amounts into RMB.

### ***PRC Customs Duties***

According to the Customs Law of the PRC (中華人民共和國海關法), the consignee of the imports, the consignor of exports and the owner of the imports and the exports are the persons obligated to pay customs duties (generally speaking, exports are not subject to customs duties). The Customs is the authorities in charge of the collection of customs duties.

The customs duties in the PRC mainly fall under ad valorem duties, i.e. the price of import/export commodities is the basis for the calculation of the duties. When calculating the customs duties, import/export commodities shall be classified under appropriate tax items in accordance with the category provisions of the Customs Import and Export Tariff and shall be subject to tax levies pursuant to relevant tax rates.

Under the laws of the PRC, raw materials, supplementary materials, parts, components, accessories and packing materials imported for processing and assembling finished products for foreign parties or for manufacturing products for export shall be exempt from import duties pursuant to the actual amount of goods processed for export or import duties may be levied upfront on import materials and parts and subsequently refunded pursuant to the actual amount of goods processed for export.

To encourage the introduction of foreign investment, as of 1992, the PRC exercised exemption and reduction of customs duties on the import of machinery, equipment, parts and other materials within the total investment of foreign investment companies. But after the adjustment of policies as of April 1, 1996, such exemption and reduction has been terminated, while the foreign investment companies incorporated before then can still continue to enjoy such preferential treatment within the grace period.

As from January 1, 1998, according to the Notice of the State Council regarding the Adjustment of Taxation Policy of Import Equipment (國務院關於調整進口設備稅收政策的通知), in respect of the foreign investment projects that fall under Encouraging Category and Restricted B Category of the Industrial Guidance Catalogue of Foreign Investment and also involve the transfer of technology, the equipment imported for its own use within the total investment can be exempt from the customs duties, except for the commodities listed in the Catalogue of the Non-tax-exemption Import Commodity of Foreign Investment Projects.

### ***Tax on dividends from PRC Enterprise with foreign investment***

According to the Circular of Ministry of Finance and the State Taxation Administration on Several Preferential Policies Relevant to Enterprise Income Tax (財政部、國家稅務總局關於企業所得稅若干優惠政策的通知), the undistributed profits earned by foreign investment enterprises prior to January 1, 2008 and distributed to foreign investors later shall be exempt from PRC withholding tax, whereas the profits earned and distributed after January 1, 2008 shall be subject to PRC withholding tax pursuant to the new Enterprise Tax Law.

The new Enterprise Tax Law prescribes a standard withholding tax rate of 20% on dividends and other China-sourced passive income of non-resident enterprises. The Implementation Regulations reduced the rate from 20% to 10% which was effective from January 1, 2008. The PRC and Hong

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Kong signed Arrangement between the Mainland of the PRC and Hong Kong for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (中國內地和香港特別行政區關於對所得稅避免雙重徵稅和防止偷漏稅的安排) on August 21, 2006. According to the arrangement, no more than 5% withholding tax rate applies to dividends paid by a PRC company to a Hong Kong tax resident, provided that the recipient is a company that holds at least 25% of the capital of the PRC company in any time for the past 12 months before the dividend distribution. The 10% withholding tax rate applies to dividends paid by a PRC company to a Hong Kong resident if the recipient is a company that holds less than 25% of the capital of the PRC company.

In accordance with the circular issued by the State Administration of Taxation in relation to How to Understand and Determine “Beneficial Owners” under Tax Conventions (國家稅務總局關於如何理解和認定稅收協定中“收益所有人”的通知), a beneficial owner is a person who has both ownership and right of control over the income or the assets or rights generating the income and generally must be engaged in substantive business. A Hong Kong resident entity also needs to be a beneficial owner so as to enjoy the preferential tax treatment.

### ***Provisional Regulations of the People’s Republic of China on Resource Tax***

In accordance with the Provisional Regulations of the People’s Republic of China on Resource Tax (中華人民共和國資源稅暫行條例) promulgated by the State Council on December 25, 1993, all organizations and individuals exploiting mineral products within the territory of China shall pay the resource tax. The taxable items and tax amounts of resource tax shall be determined in accordance with the Resource Tax Taxable Items and Tax Amount Range Table attached to these Regulations as well as the relevant stipulations of the Ministry of Finance. Any adjustments to taxable items and tax amount range shall be determined by the State Council. The tax amount range of ferrous metal ores ranges RMB2 to RMB30 per tonne.

According to the Notice on Adjusting the Policy of Resource Tax on Molybdenum Ore (財政部、國家稅務總局關於調整鉬礦石等品目資源稅政策的通知) issued by the Ministry of Finance and the State Administration of Taxation of the PRC on December 12, 2005, the resource tax rate for manganese ore has increased from RMB2 to RMB6 per tonne.

In addition, according to the Regulations on the Reform of Resource Tax on Oil and Gas (財政部、國家稅務總局關於新疆原油天然氣資源稅改革若干問題的規定) in Xinjiang Autonomous Region issued by the Ministry of Finance and the State Administration of Taxation of the PRC on June 1, 2010, the calculation method for resources tax imposed on oil and gas extracted from Xinjiang Autonomous Region has been reformed.

### **Conditions for Accessing the EMM Industry**

The State Development and Reform Commission issued the conditions for Accessing the EMM Industry in (電解金屬錳行業准入條件) 2006 and implemented it March 1, 2008. In accordance with these conditions, the newly-constructed, reconstructed and expanded projects of EMM must comply with the standards in terms of process and equipment, energy and resource consumption, environmental protection, investment management, land use and loan facility must be based on these conditions. The environmental impact evaluation statements for newly-constructed, reconstructed and expanded projects of EMM must be submitted to the environmental protection department above the provincial level for examination and approval. The existing EMM producers shall also reach the access conditions in aspects of environmental protection, energy and resource consumption, safety production, through technological innovation. The administrative departments

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at all levels in charge of development and reform (economy and trade) and environmental protection shall supervise and review the implementation of these conditions by EMM producers. CFLA and the National Manganese Industry Technology Committee shall assist relevant government department in supervising and managing the implementation of these conditions. With respect to newly-constructed, reconstructed and expanded projects of EMM not conforming to the conditions, financial institutions shall not provide credit support. The electricity regulatory body shall supervise the electric power enterprises to suspend the power supply in accordance with law and the environmental protection authority shall refuse to carry out the environmental protection examination and approval procedures. If an enterprise is legally revoked or ordered to close down by a local people's government or relevant competent departments, the administrative authority for industry and commerce shall order it to change its registration or cancel the registration in accordance with law. The present conditions are also applicable to EMD producers who wish to switch to the manufacture of metal manganese.

### Conditions for Accessing the Ferroalloy Industry

The State Development and Reform Commission issued the conditions for Accessing the Ferroalloy Industry (鐵合金行業准入條件) in 2004 and implemented it starting March 1, 2008. In accordance with these Conditions, the newly-constructed, reconstructed and expanded iron alloy projects must comply with the standards in terms of process and equipment, energy and resource consumption as well as environmental protection; their investment management, land use and loan facility must be based on these conditions. The existing Ferroalloy producers shall also reach the access conditions in aspects of environmental protection, energy and resource consumption, safety production and so on through technological innovation. Administrative departments at all levels in charge of ferroalloy industry and relevant law-enforcement authorities shall be held responsible for supervising and reviewing the implementation of these conditions by local producers. CFLA shall assist relevant state departments in supervision and management. financial institutions shall not provide credit support with respect to newly-constructed, reconstructed and expanded iron alloy projects not conforming to the conditions. The electricity regulatory body shall supervise the electric power enterprises to suspend the power supply in accordance with law, and the environmental protection authority shall refuse to carry out the environmental protection examination and approval procedures. If an enterprise is legally decided to be canceled or ordered to close down by a local people's government or relevant competent departments, the administrative authority for industry and commerce shall order it to change its registration or cancel the registration in accordance with law. If a calcium carbide furnace or phosphor furnace is required to smelt iron alloys, or in case of conversion smelting between iron alloys of different types, the present conditions also apply.

### Foreign Investment

Upon approval of the State Council, the Catalogue for the Guidance of Foreign Investment Industries (amended in 2007) (外商投資產業指導目錄 2007) was promulgated by the State Development and Reform Commission and the Ministry of Commerce and implemented starting December 1, 2007. In accordance with this Catalogue, the exploration, mining and dressing of iron and manganese minerals fall within the range of encouraged foreign investment industries.

According to the Notice of the State Administration of Foreign Exchange on Relevant Issues concerning Foreign Exchange Administration for Domestic Residents to Engage in Financing and in Return Investment via Overseas Special Purpose Companies (國家外匯管理局關於境內居民通過境外特殊目的公司融資及返程投資外匯管理有關問題的通知), a domestic resident shall, before establishing or controlling an overseas special purpose company (the "SPC"), bring the prescriptive materials to the local branch of SAFE (the "SAFE Branch") to apply for going through the procedures for foreign

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exchange registration of overseas investments, SAFE Branch shall, after examining and checking the materials to be inerrant, affix the special seal for foreign exchange business for capital account transactions on the “Certificate of Foreign Exchange Registration of Overseas Investments” or the “Form of Foreign Exchange Registration of Overseas Investments of the Domestic Individual Resident”. Where a domestic resident contributes the assets or stock rights of a domestic enterprise it owns into a SPC, or engages in stock right financing abroad after contributing assets or stock rights into a SPC, it shall go through the procedures for modification of foreign exchange registration of overseas investments with regard to the net asset equities of the SPC it holds. After a SPC accomplishes overseas financing, the domestic resident may, according to the plan on use of funds as stated in the business plans or the prospectus, transfer the funds which ought to be arranged for use inside PRC into PRC. A domestic resident may, after accomplishing the procedures for foreign exchange registration of overseas investments or for modification thereof in accordance with the legal provisions, pay the profits, dividends, liquidation expenses, stock right assignment expenses, capital decrease expenses, etc. to the SPC. Where a SPC meets with a major capital modification event such as capital increase or decrease, stock right assignment or exchange, merger or division, investment with long-term stock rights or credits, provision of guaranty to a foreign party, etc., and is not involved in return investment (the “Major Events”), the domestic resident shall, within 30 days as of the major event, apply to the SAFE Branch for going through the procedures for modification or filing of the foreign exchange registration of the overseas investment.

On August 29, 2008, SAFE issued the Circular of the SAFE on Relevant Business Operations Issues Concerning Improving the Administration of Payment and Settlement of Foreign Exchange Capital of Foreign-funded Enterprises (國家外匯管理局關於完善外商投資企業外匯資金支付結匯管理有關業務操作問題的通知) (Circular 142). According to Circular 142, a foreign-invested enterprise shall authorize an accounting firm to conduct capital verification before applying for the settlement of the foreign exchange capital. The settled foreign exchange capital shall be merely used for purposes within the business scope approved by the related authorities and shall not be used for equity investment unless specifically provided for otherwise. It is also prohibited to use the settled foreign exchange capital for purchasing domestic real estate for any purpose other than its own use, unless the enterprise is a foreign-fund real estate enterprise. In addition, the use of such settlement of foreign exchange under capital account of foreign investment enterprises may not be changed without approval from SAFE, and may not be used to repay Renminbi loans if the proceeds of such loans have not yet been used.

### **Administrative Measures on Commodity Export Permit License**

In accordance with the Administrative Measures on Commodity Export Permit License (貨物出口許可證管理辦法) promulgated by the Ministry of Commerce in 2004 and amended on June 7, 2008, the State applies a uniform system of license for the export of goods. The State shall apply export license administration to the export goods under restriction. The Ministry of Commerce shall be the department of centralized administration of export license of the whole country, and shall be responsible for formulating the rules and regulations on the administration of export license, supervising and inspecting the implementation of the measures for the administration of export license and punishing the rule-breaking acts. The Ministry of Commerce shall, together with the General Administration of Customs, formulate, adjust, and promulgate the annual Catalogue for Goods Subject to the Administration of Export License. The Ministry of Commerce shall be responsible for formulating, adjusting and promulgating the annual Catalogue for Graded License Issuance of Goods Subject to the Administration of Export License. The administration of export license shall apply the system of “one license for one customs house” (一證一關制), “one batch, one license” (一批一證制) and “non-one batch, one license” (非一批一證制).



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### Environmental Protection

In accordance with Environmental Protection Law of the People's Republic of China (中華人民共和國環境保護法), the competent department of environmental protection administration under the State Council shall evaluate national standards for environmental quality and the country's economic and technological conditions, and establish the national standards for the discharge of pollutants. The people's governments of provinces, autonomous regions and municipalities directly under the Central Government may establish their local standards for the discharge of pollutants for items not specified in the national standards; with regard to items already specified in the national standards for the discharge of pollutants, they may set local standards which are more stringent than the national standards. The local standards of the discharge of pollutants must be reported to the State Environmental Protection Administration. All enterprises that discharge pollutants in areas where the local standards for the discharge of pollutants have been established shall observe such local standards.

Units that cause environmental pollution and other public hazards shall incorporate the work of environmental protection into their plans and establish a responsibility system for environmental protection, and must adopt effective measures to prevent and control the pollution and harms caused to the environment by waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation generated in the course of production, construction or other activities.

Before constructing a new production facility or undergoing major expansion or reconstruction for existing production facilities, the enterprises must register with, submit the environmental impact evaluation report to and obtain the approval of local environmental protection departments. Installations for the prevention and control of pollution in a construction project must be designed, built and commissioned together with the principal part of the project. No permission shall be given for a construction project to be commissioned or used until its installations for the prevention and control of pollution are examined and considered up to the standards set by the competent administration in charge of environmental protection that examined and approved the environmental impact statement.

In accordance with the Regulations on Administration of Collection and Use of Pollutant Discharge Fees (排污費徵收使用管理條例) promulgated by the State Council on January 2, 2003 and effective as of July 1, 2003, as well as Administrative Measures for Pollutant Discharge Fee Imposition Standards (排污費徵收標準管理辦法), the Measures for the Administration of the Collection, Payment and Use of Pollutant Discharge Fees (排污費徵收使用管理條例) (effective as of July 1, 2003) jointly promulgated by the State Development and Commission, SEPA, the Ministry of Finance and other relevant government departments, any unit which directly discharges the pollutants to the environment shall pay a fee for discharge in accordance with law. Types and amounts of discharge fees shall be verified by the environmental protection administration of the local people's government above county level as per the verification authority specified by SEPA, and shall be communicated to the units discharging the pollutants.

The units discharging pollutants shall pay the fee for pollutant discharge in accordance with the provisions of applicable laws and regulations on environmental protection, including the Law on the Prevention and Control of Atmospheric Pollution (中華人民共和國大氣污染防治法), the Marine Environmental Protection Law (中華人民共和國海洋環境保護法), the Law on the Prevention and Control of Water Pollution (中華人民共和國水污染防治法), the Law on the Prevention and Control of Environmental Pollution by Solid Wastes (中華人民共和國固體廢物污染環境防治法) and the Law on the Prevention and Control of Environmental Noise Pollution (中華人民共和國環境噪聲污染防治法).

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The administrative punishments under the Environmental Protection Law of China comprise various environmental protection rules and regulations including warnings, imposing a fine, confiscating illegal gains, requesting a halt of production and use and revoking licenses or other certificates of license nature. In case an enterprise commits an act resulting in heavy environmental pollution leading to significant loss of public or private property, or personal injuries or deaths, its responsible person may be prosecuted for criminal responsibility.

### ***Land***

Under the PRC Law of Land Administration (中華人民共和國土地管理法), promulgated on June 25, 1986, and amended on December 29, 1988, August 29, 1998 and August 28, 2004, and the Land Rehabilitation Regulations (土地復墾規定), promulgated by the State Council on November 8, 1988 and effective January 1, 1989, if mining activities result in damage to arable land, grassland or forest, the mining operator must take measures to restore the land to a usable state within a prescribed time frame. The rehabilitated land must meet the rehabilitation standards, as required by law, and may only be reused upon attaining satisfactory examination results following inspection by the land authorities and relevant industry administration authorities. Any entity or individual that fails to fulfill its rehabilitation obligations may be fined, required to pay rehabilitation fees and/or have its application for construction land use rights dismissed by the local bureau of land and resources.

### ***Forest***

Pursuant to the PRC Forest Law (中華人民共和國森林法) and the Implementation Measures of the Forest Law (中華人民共和國森林法實施條例) and the Temporary Measures Regarding Payment of Reforestation Fees (森林植被恢復費徵收使用管理暫行辦法), the occupation, requisition or temporary occupation of forest areas for the purposes of exploration and mining of mineral resources is subject to consent or approval of the forestry administration department above the county level. The relevant grantees are required to prepay reforestation fees to the forestry administration department above the county level. The reforestation fees are determined according to the investigation, planning, forestation and cultivation costs of the reforestation of land not less than the area being occupied or requisitioned.

### ***Labor Law***

We are subject to the Labor Law of the PRC (中華人民共和國勞動法), pursuant to which companies must enter into employment contracts with their employees, based on the principles of equality, consent and agreement through consultation. Companies must establish and effectively implement a system of ensuring occupational safety and health, educate employees on occupational safety and health, preventing work-related accidents and reducing occupational hazards. Companies must also pay for their employees' social insurance premium.

The principal regulations governing the employment contract is the PRC Employment Contracts Law (中華人民共和國勞動合同法) (the Employment Contracts Law), which was promulgated by the Standing Committee of the NPC on June 29, 2007 and came into effect on January 1, 2008. Pursuant to the Employment Contracts Law, employers shall establish employment relationship with employees on the date that they start employing the employees. To establish employment, a written employment contract shall be concluded, or employers will be liable for the illegal actions. Furthermore, the probation period and liquidated damages shall be restricted by the law to safeguard employees' rights and interests.

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As CICMHZ, a company in which we indirectly own a 51% equity interest, intends to extract minerals for use as raw materials for industrial purposes, CICMHZ's business falls under the jurisdiction of the Gabon Mining Code and other Gabonese laws and regulations relating to the development and administration of a mine and its resources. Accordingly, the major applicable laws and regulations relating to mine development and administration and resource administration have been summarized and disclosed in this section of the prospectus.

In addition, some general laws and regulations relating to land and ancillary infrastructure, foreign investment, the environment, labor, immigration, tax, exchange controls and customs have been selected and summarized.

Our Gabon legal advisors have advised us that CICMHZ has obtained and is in compliance with all necessary licenses, consents, authorizations, approvals, orders, certificates, franchises, concessions and permits of and from, and have made all declarations and filings with, all Gabonese governmental authorities, under the regional and local environmental laws and regulations of Gabon and is not subject to any penalties, fines, orders or sanctions for any environmental non-compliance in relation to its operations in Gabon, including but not limited to CICMHZ's compliance with the employment laws, tax laws and other relevant regulations in Gabon.

### THE GABON MINING CODE

Mineral resources in Gabon are the property of the State of Gabon. The entity in charge of the mining sector in Gabon is the Ministry of Mines, also called the Administration in charge of Mines, or the "Administration". The mining sector is regulated pursuant to the Gabon Mining Code, which includes the following core regulations:

- Law No. 005/2000, dated October 12, 2000, which established a mining code regulating exploration and mining operations in Gabon, called the Gabon Mining Code, that abrogated contrary provisions of the former mining code, namely Law No. 15/62 dated June 2, 1962;
- Ordinance No. 003/2001, dated August 14, 2001, which modifies and completes the Gabon Mining Code;
- Ordinance No. 003/2002/PR, dated February 26, 2002, which modifies the Gabon Mining Code;
- Law No. 007/2002, dated August 22, 2002, which modifies and ratifies Ordinance No. 003/2002;
- Law No. 08/05, dated 2005, which sets the fee and tax rates of the Gabon Mining Code; and
- Decree No. 001085/PR/MMEPRH, dated December 17, 2002, which implements the Gabon Mining Code.

The Gabon Mining Code provides for, among other things, legal, tax, customs and exchange control regimes, certain environmental provisions governing exploration and mining operations in Gabon, and provisions relating to land issues, such as State ownership, land ownership and expropriation. In addition, minerals which the Gabon Mining Code identifies as precious substances, such as gold, silver or platinum, are subject to specific rules.

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Under the Gabon Mining Code, mineral deposits are considered as being extracted from either mines or quarries. Minerals extracted for use as raw materials for industrial purposes, or as a source of power, are considered as having been extracted from mines. Minerals extracted for use as construction materials are considered as having been extracted from quarries. This section focuses on the Gabon Mining Code's regulations relating to mines.

The Gabon Mining Code regulations pertaining to mines include prospecting authorizations, exploration permits, and mining permits, each of which is discussed in more detail below.

### **Prospecting authorizations**

A prospecting authorization is granted by the Minister of Mines and it permits the holder to carry out operations, including the investigation or geological reconnaissance of surface or sub-surface materials, in order to discover designated substances within the area defined in the relevant authorization. Prospecting authorizations are granted for a maximum and non-renewable period of two years, and can be granted in regard to the prospecting for one or several minerals. The rights granted are limited to superficial investigation and are not transferable.

The holder of a prospecting authorization has bi-annual reporting obligations as well as tax obligations. The holder of a prospecting authorization does not have any specific working or expenditure obligations provided by the Mining Code.

The holder of a prospecting authorization has a prior right to receive an exploration permit above any third party filing for an application for an exploration permit within the perimeter of the prospecting authorization, provided the holder acts on this right within three months upon receiving notification by the mining administration of the third party's filing for such exploration permit.

### **Permits**

Exploration permits and mining permits are granted under the Gabon Mining Code to entities which can demonstrate financial and technical capabilities necessary to perform exploration and mining operations in Gabon.

An exploration permit grants the right to carry out on an exclusive basis research, exploration and certain other activities to identify deposits of mineral(s) within the area for which the relevant permit has been granted. An exploration permit is granted by decree of the Minister of Mines. This decree is normally published in the Gabon Legal Gazette entitled *Journal Officiel de la République du Gabon*.

A mining permit (or a concession) grants the right to carry out mining and exploitation activities with respect to minerals within the area defined in the mining permit. A mining permit is granted by decree of the Minister of Mines and is normally published in the *Journal Officiel de la République du Gabon*.

Under the Gabon Mining Code, the State has a right to participate in exploration and mining operations either directly, or indirectly through a national company, by way of share capital in the permit holder, through the exploration or mining permit or through the mining convention.

Where permits are held jointly, the co-holders are jointly and severally liable and contracts entered into between such holders, for the purpose of exploration operations and mining operations, must be submitted to the Minister of Mines for approval.

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### ***Exploration Permits***

An exploration permit is granted by decree for a maximum period of three years and may be renewed twice for a period of three years. A renewal is automatically granted if the works program provided in the mining convention was fully performed and if all legal, regulatory and contractual obligations were duly fulfilled during the preceding period.

The holder of an exploration permit has exclusivity with regards to exploration activities for the substances for which the permit has been granted in the area defined in the permit and has a priority right to file an application for a mining permit in the event of a commercial discovery. Furthermore, the exploration permit holder may freely dispose of minerals extracted in doing exploration activities unless such extraction constitutes mining operations. All or part of the exploration permit is transferable by the holder, subject to prior approval from the Minister of Mines, who follows recommendations from the Administration regarding the financial and technical capabilities of the transferee. Approval is granted by decree of the Minister of Mines, and is usually published in the *Journal Officiel de la République du Gabon*. The mining convention between the State of Gabon and the initial holder remains in force until at least the expiration of the exploration permit.

The mining convention specifies the minimum works program and minimum budget the exploration permit holder is obliged to perform. If not met, an application to renew may be refused, the surface area may be reduced or the exploration permit may be cancelled.

Within two months following the award of the exploration permit, a works program must be submitted to the Administration for the remainder of the current year. The permit holder must also submit (i) the works program and budget for the following year, submitted before December 1 of each year; and (ii) a report pertaining to the works actually performed and expenses incurred during the previous year, submitted at the beginning of each year.

An exploration permit may be withdrawn should the holder suspend its performance or significantly reduce its performance for no legitimate reason, or where the holder does not comply with its obligations set out in the mining convention. On expiry of the exploration permit, the surface area granted under it reverts back to the State of Gabon, save for the surface area(s) for which a mining permit has been filed and/or granted.

### ***Mining Permits***

Mining permits are awarded on the filing of an application that includes, among other things: (i) a development and mining plan setting out general works plans for the minerals discovered in commercial quantities; (ii) a feasibility study demonstrating that the relevant discovery is commercial, based on anticipated sale proceeds and expenses; and (iii) an environmental impact study which includes an environmental impact assessment before the start of mining operations, details of the mining works to be carried out, an environmental management plan pertaining to the environment and local population and an environmental rehabilitation plan.

The State of Gabon may refuse to award a mining permit if the development and mining plan does not demonstrate that the exploration permit holder has the financial and technical capabilities to perform exploration and mining operations, the feasibility study does not establish that relevant discovery is commercial or the environmental impact study is not deemed to address environmental conservation issues adequately vis-à-vis the intended mining operations and/or if it is considered that the mining operations will excessively damage the environment.



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A mining permit is granted by decree for a ten-year period and is renewable indefinitely for further five-year periods, after public enquiries and environmental impact studies are completed. A concession is granted by decree of the President of the State of Gabon on proposal from the Minister of Mines and after the completion of a public enquiry and survey assessing the impact of the mining operations on the environment and local populations. A concession is granted for a twenty-five year period and may be renewed indefinitely for ten-year periods. A concession is a real estate right, and the holder has a right, distinct from the ownership of the soil and the sub-soil, over both public and private land, and such right may be mortgaged.

Both mining permits and concessions are transferable, subject to the prior approval of the Minister of Mines, on recommendation of the Administration regarding the financial and technical capabilities of the transferee. Approval is granted by decree of the Minister of Mines and is normally published in the *Journal Officiel de la République du Gabon*.

A mining permit or a concession entitles the holder to conduct exploration operations and mining operations within the area for the mineral substances defined in the relevant permit on an exclusive basis and freely dispose of the minerals extracted during mining operations. However, the exportation of minerals designated as “precious” under the Gabon Mining Code, such as gold, silver and platinum, must be declared to the Administration and authorized by the Minister of Mines.

Mining permit or concession holders must perform exploration and mining operations according to the rules in force in the industry aimed at optimizing the recovery of reserves and environmental protection. The Administration must be kept informed of exploration and mining operations performed, and of proved and/or estimated reserves.

The mining permit or concession may be withdrawn, should the holder materially breach the Gabon Mining Code or the mining convention, and such breach is not due to economic or technical reasons. On expiry of the mining permit or the concession, and after rehabilitation of the perimeter, the surface area they relate to shall revert back to the State of Gabon.

### MINING CONVENTION

The Gabon Mining Code provides that the award of an exploration permit must be supplemented by a mining convention entered into between the State of Gabon and the entity to whom the exploration permit is granted.

An application for an exploration permit should include a draft of the mining convention which follows the model agreement provided by the Administration. However, the Gabon Mining Code does not specify when a mining convention should be entered into and it is common practice until now in Gabon that no mining convention is entered into during the exploration period.

The Gabon Mining Code requires that an application for a mining permit or a concession include the mining convention, amended to include provisions which shall govern the mining operations, before the award of a mining permit. Therefore, it is required by the Gabon Mining Code that the amendment to the mining convention occur before the award of the mining permit or concession. Since, currently, it is common practice in Gabon that no mining convention is entered into during the exploration period, it is assumed that, in practice, this mining convention is in fact entered into (instead of being amended) and executed before the award of the mining permit or concession.

At present there is no established practice of mining conventions in Gabon. It is common practice in Gabon that no mining convention is completed during the exploration period, although one other

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company has recently entered into a mining convention concurrently on the award of the mining permit.

A mining convention sets out the rights and obligations of each party to the convention, namely the State and the permit holder. It governs the progression of the operations by setting out the general legal, financial, fiscal, economic, administrative, customs, social and environmental conditions pertaining to the performance of exploration operations and mining operations in Gabon by the permit holder, within the surface area of the permit.

Mining conventions must strictly conform to the Gabon Mining Code and address certain obligations expressly listed, including but not limited to: warranties given by the permit holder; obligations following a commercially viable discovery; financial, tax and customs provisions applicable to the exploration period; training and employment of nationals; environment, health and safety; transfer of the rights and obligations; State participation; customs regime for imported equipment; disputes settlement; budget, documentation and reporting requirements; powers and authority of the Administration; and the cancellation and/or withdrawal of the permits.

### **LAND AND ANCILLARY INFRASTRUCTURES**

Exploration permits and mining permits allow the holder the right to use all lands for the purpose of the exploration and mining operations within or outside the surface area covered by the permit. For example, the permit holder may use the land for ancillary and supporting activities such as housing of employees, administrative offices or workshops, or build and install infrastructure necessary for transportation of equipment and material or for the exploration, mining and transportation of the produced minerals. Furthermore, the permit holder may extract and quarry construction material, cut wood, build and operate a power plant if deemed necessary for exploration and mining operations.

#### **Land ownership regime**

Permit holders must use land in Gabon in accordance with Gabon laws pertaining to land and its ownership regime. According to Law No. 14/63 dated May 8, 1963, establishing the regime pertaining to State land, there are two forms of land ownership regimes, namely State ownership and private ownership.

#### ***State ownership***

The State owns State public land and State private land. State public land is used for collective purposes and title to it can not be assigned to private entities, although certain usage rights may be granted. State private lands are used for purposes other than collective purposes. Land in Gabon is either registered land, meaning the plot of land has been mapped and registered with the Land Registry in Libreville, or unregistered land. Any unregistered land falls automatically under the ownership of the State of Gabon.

The performance of exploration and mining operations within a radius of 100 meters from public facilities, either artificial or natural, requires an order from both the Minister of Mines and the Minister responsible for such facilities. Similarly, the same distance is required from sepulchers, sacred locations or religious buildings, although no consent from the relevant authority is needed.

Further prohibitions and limitations sometimes apply in specified protected areas further to specific laws in Gabon for the protection of the National Parks and international conventions, such as the World Heritage Convention or the Ramsar Convention.

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### ***Private ownership***

The Constitution of Gabon protects private ownership, which no one may be deprived of except further to a legally acknowledged public purpose, along with fair and prior compensation. Private ownership is evidenced by a land title registered at the Land Registry.

Exploration and mining operations within a radius of 100 meters around private habitations, cemeteries, religious buildings require the landowner's authority and also the *bona fide* occupants.

The Minister of Mines can grant an order authorizing the right to occupy land, where an entity requires access to private land, for a temporary basis not exceeding six months for the purpose of carrying out exploration and mining operations. For a period exceeding six months a decree granting authority is necessary.

Should an entity require privately owned land on a permanent basis, the State can take possession of the land by way of a compulsory purchase order. Under Law No. 6/61, dated May 10, 1961, expropriation requires a declaration of public interest to be pronounced by decree following a public enquiry delimiting the private land and identifying the land owners and interested people including persons with customary rights. Under the Gabon Mining Code, the granting of concession permits automatically carry a declaration of public interest, preceded by a public enquiry, for all works to be performed in relation to the exploration and mining operations. The expropriation procedure allows a permit holder to compulsory purchase privately owned lands or lands under customary rights where no transactional outcome is reached with relevant landowners or representative authorities. Notwithstanding, tenants, lessees or other occupants must be compensated fairly under the expropriation procedure.

### **FOREIGN INVESTMENT**

The Investment Code of Gabon, established under Law No. 15/98, dated July 23, 1998 and additional international and regional laws, guarantees investors judicial and financial security and stability, and encourages investment in Gabon. The Agency for the Promotion of Private Investment promotes investment in Gabon.

The Investment Code sets out certain principles relating to investment in Gabon as well as rights and guarantees granted to investors. The Investment Code recognizes the freedom to set-up and manage business in Gabon, the right to private ownership and the right for local and foreign investors to be treated equally and to be governed by the same regulations, without discrimination on grounds of nationality. The Investment Code provisions include: value added tax exemptions, corporate tax exemptions for the first three years of activity, reduced tax for businesses operating in rural areas, and customs advantages, although they apply only if they are provided by the corresponding codes. Furthermore, some provisions in the Investment Code relating to exploration and mining activities, have been incorporated into the Gabon Mining Code.

The State of Gabon is a member of certain regional and international organizations which have promulgated regulations that apply in Gabon, such as *Communauté Economique et Monétaire de l'Afrique Centrale* (Economic and Monetary Community of Central Africa, or CEMAC). Gabon has ratified the following conventions, which protect foreign investors: ICSID Convention (International Center for the Settlement of Investment Disputes); Convention on the Recognition and Enforcement of Foreign Arbitral Awards; OHADA Treaty (*Organization pour l'Harmonisation du Droit des Affaires en Afrique*); COBAC (*Commission Bancaire d'Afrique Centrale*); CIMA (*Conférence*

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*Interafricaine des Marchés d'Assurance*); and CIPRES (*Conférence Interafricaine de Prévoyance Sociale*).

### ENVIRONMENT

Gabon has an extremely rich but fragile ecosystem that requires extended care and protection. Gabon remains one of the very few Central African countries that still has virgin equatorial rain forest; the northern part of Gabon has more than three millions hectares of virgin forest. To that extent, Gabon considers its forest resources with particular attention. Environmental issues are governed by domestic law in Gabon and applicable regional and international laws.

#### Gabonese law

The Environmental Law, Law No. 16/93, dated August 26, 1993, governs environmental issues in Gabon. The Environmental Law's general principles ensure the protection of the environment, including land, water, air, fauna and flora. The Gabon Mining Code also includes provisions relating to environment. Law No. 16/01, dated December 31, 2001, establishes a Forestry Code in Gabon which addresses the protection of forests. The National Parks Law No. 003/2007, dated August 27, 2007, governs the regulation of the thirteen national parks established by the State of Gabon as part of its implementation of the Yaoundé Declaration of 1999. These national parks cover approximately ten percent of Gabonese territory. Mining and hydrocarbons activities are usually restricted in the national parks areas.

The Environment Minister has the authority to implement policies to ensure protection of the environment in the mining of natural resources. Operators exploiting natural resources are required to ensure regeneration of the exploited national resource and to use methods and implement procedures that prevent environmental damage in the extraction of natural resources. The construction of facilities which could affect the environment require prior notification and/or authorization of the Environment Minister.

Mining companies must implement measures necessary to protect the stability of the soil and sub-soil and prevent damage to the environment resulting from exploration and mining operations. Environmental impact assessments must be completed and submitted for approval to the Environment Minister before the commencement of exploration or mining operations.

Failure to perform such an environmental impact study and to submit the same for approval by the Environment Ministry before commencing exploration and mining operations in Gabon is a criminal offence and is subject to fines and imprisonment. In addition, the application for the award of a mining permit or a concession must include an environmental impact study, a description of mining operations intended to be performed, a management plan pertaining to the environment and local population and an environment rehabilitation plan.

The Forestry Code was adopted in order to promote sustainable development of the forests. Exploitation of Gabonese forests on a commercial basis requires a valid forestry exploitation permit, which is awarded to individuals or companies.

#### International conventions

Gabon is a signatory member of various international conventions including, but not limited to, the Ramsar Convention on wetlands, the Algiers convention on conservation of nature and natural resources, the Convention on Trade in Endangered Species of Fauna and Flora (CITES), the

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International Convention on Tropical Woods, the United Nations Convention on Climate changes, the United Nations Convention on desertification, the UNESCO convention on world heritage conservation and the International Convention on Biological diversity.

### **LABOR LAW**

The Labor Code is set out in by Law No. 3/94, dated November 21, 1994 and Law No. 12/2000, dated October 12, 2000. The Labor Code includes provisions which aim to protect the rights and welfare of employees in the context of employment contracts.

#### **Employment contracts**

Under the Labor Code, an employment contract is a written or oral agreement between an employer and its Gabonese employee, pursuant to which the employee provides services for and under the authority of the employer, in exchange for remuneration. Expatriate employees must hold a written employment contract.

As a matter of principle, a fixed term employment contract is performed until the termination date, unless otherwise agreed between the parties. An indefinite term contract can be terminated by the employee at any time, subject to compliance with relevant legal and contractual procedures. Termination of the employment contract by the employer is strictly regulated, and must be done in compliance with specific procedures set forth in the Labor Code.

The employer and the employee may in writing agree that the employment contract will only become fully binding after the expiration of a trial period. During this period, the protective rules governing the termination of the employment do not apply and either party may unilaterally repudiate the contract. The trial period has to be written in the employment contract or in a separate document. The trial period may not exceed a particular duration depending on the type of contract that is concluded.

#### **Work time, holidays, minimum wage**

Under the Labor Code, employees shall not be compelled to work more than forty hours per week and any hours worked in excess, are paid as overtime, subject to certain conditions. Employees are entitled to two days paid holiday for each month of effective work that they performed during one year for the same employer. Decree No. 8585, dated November 9, 2006, sets out the minimum wage for employees, which is currently XAF80,000 per month (HK\$1,328).

#### **Trade unions**

Employees having a common profession have the right to create a labor union to defend their collective rights and interests. The most significant unions may be admitted to negotiations on collective labor agreements.

Companies with more than ten employees must organize professional ballots for the election of employee representatives. These representatives are elected for a renewable three year period. Companies with more than fifty employees are required to establish an economic and social committee that contributes to the protection of the terms and conditions of employment. The designation of the economic and social committee members is defined by decree.



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### Employment taxes

Both local and foreign employees are subject to personal income tax, complementary wage tax social security contributions and other related taxes, including tax vicinale TFSN, which are directly withheld at source by the employer and reported on each employee's monthly payroll.

Complementary wage tax is based on rates of 1% on amounts of XAF100,000 and less or 5.5% above XAF100,000 (HK\$1,660). The employee's portion of social security contribution amounts to 2.5% of monthly gross wages and revenues, including benefits in kind. The remainder after deduction of complementary wage tax and social security contributions is subject to personal income tax, which range from 0% to 50% of taxable income. The employer shall pay additional social security contributions and national housing fund, which amount respectively to 20.1% and 2% of the monthly gross wages and revenues, including benefits in kind, of each employee, but capped at XAF18,000,000 per year (HK\$298,800).

### Health and safety

Employers are required to define and meet standards of hygiene and safety in collaboration with the Public Health Minister and the Labor Minister. Copies of such standards must be posted in the most visible locations where employees work. In addition, companies with more than fifty employees are required to establish a health and safety committee with purpose to uphold the protection of health and safety of all employees, check compliance with legislation on these matters, analyze professional risks and working conditions and hold inspections for the prevention of work injuries. In companies with less than fifty employees, or more than fifty employees if companies have no health and safety committee, this duty is performed by the employee representatives.

### Foreign employees

The Labor Code requirements detailed above also apply to foreign employees who work in Gabon. However, foreign employees are also required to enter into a written employment contract which is duly authorized by the minister for Labor and hold a valid employment authorization. If the work contract of a foreign person is not approved or not submitted by the employer for approval, the said contract is null and void and the employee is required to be repatriated at the employer's cost, in addition to possible criminal offence for the employer.

For the purpose of authorizing a company to enter into an employment contract with a foreign citizen, this company must demonstrate that no Gabonese citizen with the required qualifications is available to carry out the work. The Labor Code also provides that employment authorization, although renewable, is only issued for a specific employee, a specific job, a specific company and a specific duration of time that cannot exceed two years. The employer must file the necessary employment authorization applications.

### IMMIGRATION LAW

Foreign employees working in Gabon must hold a valid entry visa. Entry visa applications and other formalities must be completed and approved before arrival in Gabon and for entry into Gabonese territory. Once in Gabon territory, foreign employees must file an application for a residence permit as foreign employees must hold a valid residence permit.

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### TAX REGIME

#### Regulatory

The taxation regime applicable to the permit holder is governed by the Gabon Mining Code and the general tax code applicable in Gabon, and it subjects the permit holder to both general and specific taxes. The holder may also benefit from tax exemptions or specific provisions according to the Gabon Mining Code. Moreover, some taxes, in particular the corporate tax, may be arranged in a way favorable to the permit holder as provided in the Gabon Mining Code.

#### General direct and indirect taxes

The permit holder is mainly subject to the following general direct and indirect taxes: *impôt sur le revenu des personnes physiques* (income tax); *impôt sur les sociétés* (corporate tax) (which for limited liability companies is at a rate of 35%), including *impôt minimum forfaitaire* (minimum corporate tax); *impôt sur le revenu des capitaux mobiliers* (dividend tax), the general rate of which is 20%; *contribution foncière des propriétés bâties et non bâties et taxes locales* (land and local taxes), which include property tax at a rate of 2% of the market value of land without a building and 9.38% of the rental value of land with a building; *contribution des patentes* (business license tax), the maximum annual amount of which is approximately HK\$8,500; *taxe sur la valeur ajoutée* (value added tax); and *droits frappant les actes constatant la constitution des sociétés et les augmentations de capital nécessaires à la réalisation du programme agréé et les partages, droits proportionnels ou dégressifs d'enregistrement sur les mutations de jouissance ou de propriété des biens meubles et immeubles, y compris les mutations des droits relevant autorizations et permis* (stamp duties on incorporation, contribution and assignment of real and personal property including transfer of authorizations and permits). In addition, employers and employees must make monthly contributions to: (i) the National Social Security Fund, under which employers contribute 22.6% of employees' basic pay, allowances and benefits, and (ii) the Housing National Fund, under which employers contribute 2% of employees' salaries and benefits.

#### Corporate tax

Under the Gabon Mining Code, the permit holder is subject to corporate tax provisions in the tax code in force in Gabon. The Gabon Mining Code requires the holder to keep separate accounting books in order to prepare an annual profit & loss account and a balance sheet for performance of exploration and mining operations. Corporate tax is assessed on net profits resulting from the performance of exploration and mining operations. Net profits is computed by deducting certain expenses from taxable income. Taxable income includes sales proceeds, capital gains in the event of asset sales, exchange gains and other profits directly linked to mining operations. Deductible expenses mainly include, subject to specific conditions of deductibility, the mining royalty, depreciation and provisions, the costs of supply, raw material, personnel and services, general and administrative expenses, technical assistance, interests, and any other loss or expenses directly linked to mining operations in Gabon, except corporate income tax, and determined in the conditions provided by the Gabon Mining Code.

#### Mining taxes

Permit holders are subject to the following taxes and contributions: *droits fixes* (stamp duties) upon the award, renewal and transfer of exploration permits and mining permits; *redevance superficielle* (surface royalty) based on the surface area covered by the permit at the beginning of the year; and *redevance minière* (proportional mining royalty) based on the *carreau-mine* value of the production

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sold during the year. *Carreau-mine* refers to the producing mine and ancillary facilities and the value *carreau-mine* is assessed on the basis of FOB value of production, after deduction of all costs incurred in the process of operations from the mine to delivery point, including mainly tax duties, harbour fees, transportation costs, quality control costs and marketing costs. The calculation basis of the proportional mining royalty corresponds to 60% of the FOB value of the tax.

### Tax exemptions

The Gabon Mining Code exempts exploration permit holders from the payment of some general taxes during the exploration period, such as *impôt sur le revenu des personnes physiques* (income tax); *impôt sur les sociétés* (corporate tax), including *impôt minimum forfaitaire* (minimum corporate tax); *impôt sur le revenu des valeurs mobilières rémunérées par un taux d'intérêt fixe, y compris l'impôt sur le revenu des créances, dépôts, cautionnement* (distribution tax on transferable securities remunerated by a fixed interest including income tax on receivables, deposits, guarantees); *contribution foncière des propriétés bâties et non bâties*; *taxes locales* (land and local taxes); and *contribution des patentes* (business tax). Under the Gabon Mining Code, such exemptions are only valid as long as the mining convention is in force. However, although in practice there is no mining convention during exploration, it appears that the State of Gabon enforces most of such tax exemptions notwithstanding. This practice does not appear to have been challenged yet.

While the Gabon Mining Code provides for the refund of value added tax incurred by the permit holder of an exploration permit for local supply of certain goods and services necessary for the performance of the agreed programme, subject to conditions provided by order by the Minister of Finances, it appears that there has been no refunds to date. In addition, while the Gabon Mining Code provides for the refund of value added tax incurred by the permit holder of a mining permit, also subject to conditions provided by order by the Minister of Finances, it appears that there has been no refunds to date. Further, while a mining permit holder's import of depreciable assets that are not available in Gabon is exempted from value added tax, subject to an order issued jointly by the Ministries of Mines, Finance and Commerce, to date, no order has yet been issued. The Gabon Mining Code includes a provision allowing for a mining convention to include provision of favorable basis for corporate tax.

### Stabilization clause

The total amount of taxes, calculated per ton of extracted ore, shall remain the same as set out in the feasibility study pertaining to the mining of the deposit, during a five year period after the first sale. Such level may be revised twice for a maximum duration of three years.

## EXCHANGE CONTROL REGIME

### Regulatory

The holder of a mining convention attached to a permit is subject to exchange control regulations in force in Gabon. The exchange control regime applicable to the holder is governed by domestic laws and regional laws. Domestic laws mainly include the Gabon Mining Code, as subsequently amended and implemented. Regional laws mainly include the Exchange Control Code, established under Act No. 02/00/CEMAC/UMAC/CM, dated April 29, 2000, as subsequently amended and implemented, relating to the harmonization of exchange control regulations in CEMAC member countries. It harmonizes exchange control regulations including requirements and rates between CEMAC member countries and other countries. The Gabon Mining Code directly refers to the Exchange Control Code.

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Notwithstanding the foregoing, during the validity of the mining convention and in accordance with CEMAC provisions, the permit holder may, subject to justification of the purpose of operations: (i) receive in Gabon all funds acquired or borrowed abroad, including the proceeds of the sales of his or her share of the production; (ii) transfer abroad dividends and income from invested capital as well as the proceeds of the liquidation of its assets; (iii) pay, if need be in foreign currency, foreign suppliers of goods and services necessary for purposes of the mining operations; and (iv) convert Gabonese currency into convertible foreign currencies.

### **Inward direct investments**

Inward direct investments require prior declaration. Inward direct investment refer to the creation, purchase, or extension of any business entity, including a branch, but does not include the purchase of less than 10% or XAF100,000,000 (HK\$1.7 million) of the share capital of a company whose shares are not quoted. Loans obtained by Gabon entities from foreign shareholders or from a foreign enterprise within the same group also require prior authorization when they exceed XAF100,000,000 (HK\$1.7 million). The reinvestment of undistributed profits is not subject to prior declaration.

### **Bank accounts and payments**

In accordance with the Exchange Control Code, companies are deemed resident as soon as they provide or have the intent to provide business activities in CEMAC. Residents are not allowed to open local bank accounts in foreign currencies, except upon the prior authorization of the Ministry in charge of Finance and the recommendation of the *Banque des Etats d'Afrique Centrale* (Africa States Central Bank). Non-residents may freely open bank accounts in foreign currencies.

Payments to a country which is not a CEMAC member country and exceeding XAF5,000,000 (HK\$83,000) must be processed by registered intermediaries, which commissions are regulated and may be required to collect supporting documentation in order to process the payments. Such supporting documentation mainly includes a copy of the relevant invoice, contract, payroll and/or the relevant corporate decision.

### **Importations and exportations**

All importations must be declared and all importations exceeding XAF5,000,000 (HK\$83,000) must be processed by registered intermediaries. All expenses for services must be declared and all importations exceeding XAF5,000,000 (HK\$83,000) must be processed by registered intermediaries.

All transactions pertaining to exportations must be declared for statistic purpose and all importations exceeding XAF5,000,000 (HK\$83,000) must be processed by banks located in CEMAC member countries. Exportation sale proceeds shall be repatriated to CEMAC member countries within 30 days after the deadline provided for in the relevant contract.

## **CUSTOMS REGIME**

### **Regulatory**

The customs regime applicable to permit holders falls under two sets of laws and regulations, namely domestic mining laws and regional laws. Domestic laws mainly include the Gabon Mining Code, as subsequently amended and implemented as the case may be. Regional laws mainly include the Customs Code adopted under the CEMAC treaty, as subsequently amended and implemented.

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The Gabon Mining Code includes specific conditions and also directly refers to the Customs Code. The Customs Code has established harmonized customs regulations which regulate customs requirements and rates between CEMAC member countries and other countries.

All goods are classified in various customs categories that apply in each CEMAC member country. In addition, CEMAC harmonized customs duties apply for all importations from a country that is not a CEMAC member country to a CEMAC member country. Goods should be imported from a CEMAC member country to another CEMAC member country free of customs duties, although practice may be different in particular cases. The taxable basis that is subject to customs duties includes the value of the goods to be imported, assessed in the conditions provided for in the Customs Code. The customs regime depends on the nature of the goods to be imported in CEMAC member countries and the type of mining permit which shall be awarded to the holder.

### **Exploration period customs exemptions**

The following are eligible for the normal temporary admission customs regime under article 166 of the Customs Code (*Admission Temporaire Normale*): (i) materials, machines and equipment included in the agreed programme; and (ii) vehicles, except those used for the transportation of people, imported temporarily into Gabon by the permit holders or their subcontractors, and re-exported after the relevant program of works is complete. This regime provides for a suspension of customs duties during the period agreed by the customs administration before the goods in question are re-exported.

The materials, machines, tools and products directly necessary for geological and mining exploration are imported duty free pursuant to article 276 of the Customs Code. Spare parts required for these equipments are also imported tax free, not including the supply of standard spare parts. This regime is a temporary admission regime under the Custom Code. This temporary admission and duty free customs regime is awarded by the customs administration at the request of the permit holder 15 days after presentation of the following supporting documents: (i) the mining convention; (ii) a general importation programme; (iii) an itemized list of the goods with their commercial denomination and their customs tariff category duly stamped by the mines administration; and (iv) quantities and FOB and CIF values.

However, it is common practice in Gabon that no mining convention, nor necessarily an agreed programme of work, is signed during the exploration period. In practice, it appears that the State of Gabon enforces most of such customs exemptions even in the absence of mining convention. This practice does not appear to have been challenged yet.

The privileged customs regime is also subject to the conditions provided for in the Customs Code. Such conditions include notably the undertaking to re-export such goods imported under the temporary admission regime described above. Goods imported under this regime shall only be used for the intended and declared use; otherwise, the exemption may be forfeited.

### **Exploitation period customs exemptions**

Machines and equipment necessary for the realization of the investment, including transportation vehicles used for the mining work, imported by the holder of the mining permit and exportable at the end of the exploitation may benefit from the special temporary admission regime (*Admission Temporaire Spéciale ATS*) according to which customs duties are payable, pro-rata, of the time spent in Gabon compared to the amortization period of the concerned item. This regime is granted by the Customs Administration upon presentation of a certificate stamped by the Administration and

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accompanied by the mining convention. The period for the realization of the investment runs from the date of the signature of the amendment of the mining convention adapting the mining convention to the exploitation phase, to the first sale of extracted mineral products. Machines and equipment directly and definitely affected to the exploitation of the mine are subject to standard customs duties. Consumable products and materials are also subject to standard customs duties.

### **Customs List**

A holder of an exploration or mining permit can take advantage of the above mentioned temporary admission regimes on the import of goods necessary for performance of exploration and mining operations reported on the list attached to UDEAC Act # 2/98-UDEAC-1508-CD-61, dated July 21, 1998.