

Mining in France: overview

by Jean-Nicolas Clément, Alice Bouillié and Laure Dufour, Gide Loyrette Nouel

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This article highlights some of the key legal issues commonly associated with the exploration and extraction of mineral resources in France. These issues form part of any due diligence exercise conducted by an investor proposing to acquire mining assets or an interest in a mining project.

This article looks at mining investment, the legal system applicable to mining, various mining laws, mineral ownership in, different types of mining tenements available, rights of miners to access land against landowners' rights, imposition of royalties and other taxes by the various levels of government and rules and restrictions concerning foreign investment in France.

Overview

1. What are the recent developments in the exploration and extraction of mineral resources in your jurisdiction?

There are only a few, non-energy-related, mineral resources currently extracted in France, including:

- Salt (sea salt and halite).
- Bauxite.
- Oil shale.
- Fluorite (due to re-open in 2018).
- Tin.
- Tantalum.
- Niobium.
- Gold (in Guiana).
- Nickel and cobalt (in New Caledonia).

Other resources are under investigation using exclusive exploration permits, including:

- Antimony.
- Tungsten.
- Lead.
- Zinc.
- Copper.
- Tin-tantalum.
- Silver.

- Lithium.
- Beryllium.
- Titanium.
- Molybdenum.
- Platinum.
- Chromium.
- Bismuth.
- Diamond

(Source: <https://camino.beta.gouv.fr>.)

In metropolitan France, there are about 450 valid concessions, with about 20 of these currently in operation (source: www.mineralinfo.fr/page/lactivite-miniere-en-france).

Overseas departments also have important primary mineral resources. For example, French Guiana has gold reserves and there is a lot of nickel in New Caledonia.

Mining is not an important economic sector. In 2015, the aggregated revenues from the mining industry represented EUR6.3 million, or 0.3% of the French gross domestic product (*Eurostat*).

However, investments in new projects (particularly in primary mineral resources such as antimony, tungsten and gold) have stimulated employment and economic activity.

For example, the Gold Mountain project in French Guiana was supposed to represent a EUR485 million investment and about 1,000 jobs. Following the first Ecological Defence Council on 23 May 2019,

Prime Minister Edouard Philippe and Minister of the Environment, François de Rugy, indicated that the current Gold Mountain project would be abandoned as it was considered “incompatible with environmental protection requirements”. Since then, a new significant mining project is being considered in Guiana.

Regulatory structure

Regulation

2. What is the regulatory framework for the exploration and extraction of mineral resources?

Regulatory framework

Exploration and extraction of mineral resources are regulated by the French Mining Code and its implementing texts, including:

- Decree No 2006-648 of 2 June 2006 on mining and underground storage titles.
- Decree No 2006-649 of 2 June 2006 on mining and underground storage operations and the regulations governing mining and underground storage.
- Decree No 80-331 of 7 May 1980 on general regulation of extractive industries.
- Exploration and extraction of mineral resources are subject to the issue of both:
 - A mining title (for exploration, an exclusive exploration licence is needed and for extraction, a mining concession or an extraction permit in overseas departments is required).
 - An operation permit (the authorisation or declaration will depend on the nature and importance of the works).

Onshore and offshore exploration and extraction in overseas departments (particularly in French Guiana) are also subject to specific requirements that are not detailed above.

Most drillings and other exploration and extraction operations must be subject to an environmental impact assessment and a public enquiry. These procedures are governed by the French Environmental Code.

Finally, mention should be made of Act No 2017-1839 of 30 December 2017 (Hydrocarbons Act). This Act puts a direct stop to the exploration, and introduces a progressive stop to the extraction of hydrocarbons and coal in France. Although the Hydrocarbons Act mainly concerns oil and gas, it affects mining in France by limiting the issuance of mining titles for the exploration and the extraction of these materials.

Regulatory authorities

The Minister of the Economy, together with the Minister of the Environment for energetic materials, is responsible for:

- Examining exploration and extraction title applications.
- Issuing mining titles.

The *Préfet* (representative of the State in the department) is responsible for:

- Examining operation authorisation applications and declarations.
- Issuing operation permits.
- The administrative monitoring and the mining police in its department (under the authority of the Minister responsible for mines).

Ownership

3. How are rights to the mineral resources held, and who holds those rights?

The rights to the mineral resources are held by the holder of the mining title (who is not necessarily the owner of the property). Holding the mining title and holding the property right are separable because the mining title creates a property right distinct from the property right over the surface.

The operator must obtain the consent of the landlord to occupy the surface. If the landlord refuses, the *Préfet* can establish easements to authorise the operator to occupy the land.

There is no need to register mineral rights. Publicity is ensured by publication in the Official Journal (concessions and exclusive exploration permits) or in the collection of administrative acts of the *Préfecture* (operation permits).

In France, all current mining titles (and title applications) are held by private companies.

Authorisation

4. What are the key features of the leases, licences or concessions that are issued under the regulatory regime? Can these rights be leased by the right-holder?

Exclusive exploration licences and mining concessions confer an exclusive right to explore or extract the minerals within the perimeter of the licence/concession and to dispose of them.

These rights can be transferred or leased by their holder on the condition that the transfer or the lease is authorised beforehand by the Minister of the Economy.

Lease/licence/concession term

Exclusive exploration licences have a maximum initial length of five years. They can be extended twice, for five years each time.

Mining concessions have a maximum initial length of 50 years. They can be extended several times, for a maximum of 25 years each time.

An application for extension is examined by the Minister of the Economy. It is not subject to a competitive procedure or public enquiry. It is rejected in the absence of an answer within 15 months (exploration permits) or 24 months (concessions).

The Hydrocarbons Act introduced certain provisions regarding the delivery and renewal of exclusive exploration licences and mining concessions for coal, liquid or gaseous hydrocarbons (with mine gas, as defined in Article L.111-5 of the French Mining Code, being excepted). Under these provisions:

- Except in specific cases, exclusive exploration licences and new mining concessions can no longer be issued.
- Mining concessions cannot be extended beyond 2040 for the said materials.

Fees

The holder of a mining concession must pay the following fees to the owner of the surface:

- A subsurface allowance set by the concession title.
- If necessary, an occupancy allowance to compensate for the easements established on the surface.

When the discovering party (the person who found the mineral deposit) does not secure the mining concession, the concession title sets the compensation due by the holder of the concession.

When the mine includes waste management facilities, the operator must offer financial guarantees before starting the exploration or extraction operations in the case an operation failure causes a major accident.

Liability

The operator, or in the absence of an operator, the holder of the mining title, is liable for any damages caused by its activities, without limitation to the perimeter and length of the title. If the responsible person disappears or becomes insolvent, the State will ensure compensation for the damage.

Restrictions

The applicant can be a public or a private person and a foreign national, but must be a trading company under French law or the law of another EU member state and establish its head office or have its main establishment in France or in the EU.

The applicant must prove its financial capacity. Consequently, the title will not be issued to an insolvent company.

5. How are such leases, licences or concessions awarded?

Exclusive exploration licences and mining concessions are awarded by the Minister of the Economy. The application must contain, notably:

- A technical file.
- A justification of the technical and financial capacities of the applicant.
- An environmental impact assessment.

Applications must be examined by the administrative services, go through a competitive procedure and a public enquiry (for concessions).

Operational authorisations are awarded by the *Préfet*. An application must contain technical information and an environmental impact study. The file is examined by the administrative services and subject to a public enquiry. Operation declarations are examined by the *Préfet*, but are not subject to a public enquiry.

Environment

6. What are the main ongoing requirements for environmental protection?

An application for a mining title must contain an impact report indicating the potential environmental consequences of any future operations and the conditions under which the project takes into account environmental issues.

For coal, liquid, or gaseous hydrocarbons, if justified by environmental protection, public safety, public health or the current or projected use(s) of soil and subsoil, the authority responsible for delivering mining titles for the exploration or extraction or its extension (Ministry of the Economy et Finance) will issue specifications applicable to the permit holder.

An operation permit will then be issued on the basis of a complete environmental impact assessment. This

assessment analyses the emissions and consequences of the project (potential contamination of water, air, soil and subsoil, noise, vibrations, light, heat, radiation and waste) and provides appropriate measures to avoid, reduce or compensate for the identified impacts. The content of the environmental impact assessment is proportionate to the environment's sensitivity. The application is subject to a public enquiry governed by the Environmental Code.

In this respect, in February 2019, the administrative tribunal of Guiana cancelled an authorisation to open gold mining operations in French Guiana, considering notably that the impact assessment should have taken into account the Gold Mountain mining project, in order to provide the authorities with a precise and coherent view of the issues and effects of the entire project (*Administrative tribunal of Guiana, 11 February 2019, No 1800145/1800149*).

The operation permit lays down technical requirements for monitoring the impact of the activity and, if necessary, preventing the impact. During the operation of the mine, the *Préfet* can impose any additional requirements justified by environmental protection.

At the end of the mining operations, the operator sends a declaration to the *Préfet* and proposes measures to preserve the environment and prevent any environmental harm or damage caused by the activities.

The *Préfet* must formally acknowledge that both the proposed and prescribed measures have been implemented.

After the expiry date of the mining title, the *Préfet* can no longer impose additional requirements based on the mining regulations.

At the end of validity period of the mining title, transfer of the mining risks (such as land subsidence or accumulation of dangerous gases) passes to the State, provided that the operator has:

- Regularly transferred to the State the required equipment.
- Provided an amount corresponding to the estimated cost of the first ten years of prevention and monitoring of the mining risks.

Directive 2006/21/EC on the management of waste from extractive industries (Waste Management Directive) was transposed into French law. It sets out rules to prevent and reduce as far as possible any adverse effects on the environment and risks to human health caused by the management of waste from extractive industries. Waste management facilities for extractive activities closed on 1 May 2008 and are expressly excluded from the scope of the majority of the rules set out by the Waste Management Directive.

The operator or the holder of the mining title remains liable to third parties for the damage (within the meaning of the Mining Code) caused by its activity, unless it presents evidence of an external cause. In the event of the operator's default or disappearance, the State will guarantee the compensation for damage.

Health and safety

7. What are the main ongoing requirements for compliance with health and safety regulations?

The general provisions of the Labour Code apply to mining activities. The rules on safety and health are supplemented by specific provisions set out in the Mining Code and its implementing texts, including the following:

- Working time in the mine is limited.
- The operator must establish and update a health and safety document specifying the measures taken to ensure proper working conditions.
- Miners' delegates are elected. The mission of these delegates is to control the safety of working conditions.

The general regulation on extractive industries (Decree No 80-331 of 7 May 1980) sets out specific provisions on the health and safety of mine workers. These provisions depend on the relevant operating conditions, including:

- Underground work.
- Protective equipment.
- Ventilation.
- Heat.
- Electrical safety.
- Protection from radiation (*see also Decree No 2018-434 of 4 June 2018*).

The operation permit granted by the *Préfet* can also impose requirements on the health and safety of workers.

Foreign ownership

8. Are there any restrictions concerning the foreign investment in and ownership of companies engaged in the exploration and extraction of mineral resources?

Foreign investments (including acquisition of control or of a business line in a French company) in activities that

are considered essential to national interests are subject to prior authorisation from the Minister of the Economy under the French Monetary and Financial Code. These activities include:

- The integrity, security and continuity of electricity, gas or oil.
- Supply of other energy sources.

Restrictions only apply to investments from:

- Foreign companies established outside the EU or a member state of the European Economic Area (EEA) that have concluded an agreement with France.
- Natural persons.

Processing and sale of mineral resources

9. Are there any restrictions or limitations on the processing of extracted mineral resources?

If requested, the holder of a mining concession must make substances useful to atomic energy available to the Atomic Energy Commission (*Commissariat à l'énergie atomique et aux énergies alternatives*) in exchange for payment.

Imports of industrial machinery and personal protective equipment may be subject to customs restrictions if they do not comply with technical requirements under French law, such as:

- The technical documentation.
- EC certificate of conformity.
- Noise level.

Imports from non-EU member states and intra-Community transfers of explosive materials must be authorised by the Minister of the Economy.

10. Are there any restrictions or limitations on the sale, export or import of extracted or processed minerals?

Some construction products, such as aggregate for concrete or mortars and cement, must bear a CE marking to certify their compliance with European requirements (in particular regarding health and safety).

Imports of some steel products from outside the EU (except Norway, Iceland and Liechtenstein) must have a surveillance document issued by a member state if their net weight exceeds 2,500 kilogrammes.

Tax

11. What payments, such as taxes or royalties, are payable by interest holders to the government?

Holders of a mining concession for liquid or gaseous hydrocarbons or of a mining concession for an offshore field (other than liquid or gaseous hydrocarbons) must pay an annual fee based on production to the State. The French constitutional court considered that this progressive scale is in accordance with the French Constitution (*Constitutional Council, 29 March 2019, No 2019-771 QPC*).

Special taxes are also due to the State from holders of a mining concession for liquid or gaseous hydrocarbons off St-Pierre-et-Miquelon and on the French Southern and Antarctic Territories.

A fee is payable for extracting mineral substances from the seabed if it is part of the public domain.

Two new taxes were created by the Amending Finance Act for 2017: holders of exclusive exploration licences for liquid or gaseous hydrocarbons and/or for high temperature geothermal deposits must pay an annual tax, proportional to the surface area of their licences. The tax on the exploration of high-temperature geothermal deposits was repealed by the Finance Act for 2019 due to poor performance.

The following other taxes are payable to the territorial communities:

- Holders of a mining title must pay property tax for occupying the land (to the municipality).
- A royalty on each tonne of extracted product (to both the municipality and the department).

12. Does the government derive any other economic benefits from the exploration and extraction of the mineral resources?

The general tax on pollutant activities is levied on delivery of extraction materials to the domestic market, or on the first use of extraction materials from all origins (either in their natural form or obtained from crushed or fragmented rocks).

This tax applies to materials for construction and civil engineering.

13. What taxes and duties apply on the import and export of mineral resources?

France applies the combined nomenclature classification in accordance with EU customs regulations.

Reform

14. Are there any plans for changes to the legal and regulatory framework?

A reform of the Mining Code has been considered for many years but has not been completed yet.

The main objectives of the reform are to:

- Standardise the mining titles.
- Improve environmental and socio-economic assessments and public information.
- Create a High Council of Mines and national politics on mining resources and uses.
- Establish new recourses.
- Strengthen the liability of parent and grandparent companies.
- Create a national solidarity mission for the compensation of post-mine damages.

Law No 2018-727 of 10 August 2018 has empowered the government to take measures (through the uses of ordinances) to reform the provisions of the Mining Code in relation to the granting and extension of titles for the exploration and operation of geothermal energy. The objective of this scheme is to simplify the applicable rules in order to improve the development of renewable energy activities.

A presentation of the reform project to the Council of Ministers had been announced for February 2020 but the timing of this reform was impacted by the 2019 novel coronavirus disease (COVID-19) health crisis.

In a Ministerial reply published on 2 July 2020, the Ministry of Ecological and Solidarity Transition gave an outline of the project in preparation: *“the main objectives of this reform are to provide concrete answers to stakeholders on the obsolescence of mining procedures and to improve the consideration of environmental and social-economic issues throughout the life of the projects”*.

Therefore, several legislative changes may be made to the current mining risk prevention system, including:

- Adding health risk considerations to the Mining Code.
- Integrating mining work into environmental authorisation.
- Extending financial guarantees of mining operations to include the rehabilitation of the site after closure.
- Integrating in the Mining Code provisions making it possible for the parent company to be held liable if its subsidiary becomes insolvent.

- Extending for a period of 30 years the conditions for exercising the residual mining policy once work has been stopped, so that the State can hold operators liable for new disorders.
- A Bill of Law was finally presented at the end of October 2020.
- In September 2020, some deputies also tabled a law proposal on post-mining and compensation for damages and losses.

Contributor profiles

Jean-Nicolas Clément, Partner

Gide Loyrette Nouel

T +33 (0)1 40 75 22 44

E jean-nicolas.clement@gide.com

W www.gide.com

Professional qualifications. Paris Bar, 1990; postgraduate degree (DEA) in Political Studies, University of Paris II - Panthéon-Assas, Institute of Paris, 1985

Areas of practice. Litigation; industrial environmental law; nuclear and energy law; mining law.

Alice Bouillié, Associate

Gide Loyrette Nouel

T +33 (0)1 40 75 22 85

E alice.bouillie@gide.com

W www.gide.com

Professional qualifications. Paris Bar, 2002; postgraduate degree (DEA), Paris I – Panthéon-Sorbonne and Paris II – Panthéon-Assas Universities, 1997; diploma, Business Law Institute of Paris II – Panthéon-Assas University, 1996

Areas of practice. Litigation; industrial environmental law; nuclear and energy law; mining law.

Languages. French, English

Laure Dufour, Associate

Gide Loyrette Nouel

T +33 (0)1 40 75 29 61

E laure.dufour@gide.com

W www.gide.com

Professional qualifications. Paris Bar, 2012; postgraduate degree (Master 2) in Private Law (Paris II – Panthéon-Assas University), 2006; postgraduate degree (Master 2) in Environmental Law (Paris I – Panthéon-Sorbonne and Paris II – Panthéon-Assas Universities), 2009

Areas of practice. Litigation; industrial environmental law; nuclear and energy law; mining law.

Languages. French, English

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