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# LOCAL CONTENT PROVISIONS IN AFRICA

## WHAT FOREIGN MINING COMPANIES NEED TO KNOW

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Bertrand Montembault, Avocat au barreau de Paris, +33 1 53 57 78 37, [bertrand.montembault@hsf.com](mailto:bertrand.montembault@hsf.com)]

# OVERVIEW

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- Introduction
- Defining local content
- Implementation of local content measures
- Advantages and disadvantages
- Conclusions

# INTRODUCTION – THE BIG PICTURE

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- Africa's economic future relies on converting natural resource wealth into sustained, broad-based development: must benefit beyond economic rent
- History of African resource extraction not encouraging: 'The resource curse'  
Recent trend in mining (following oil & gas lead) towards bolstering local content commitments with a view to promoting local content
- Key ideas: develop local industries, hire and train local staff, promote social responsibility, transfer knowledge and improve infrastructure

# WHAT IS LOCAL CONTENT?

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- No standard definition among African mining codes
- In relation to mining projects, will typically include:
  - Employment quotas
  - Training and promotion obligations
  - Local procurement
  - Community development
  - Direct participation in operations
- Consequences of ‘broad’ versus ‘narrow’ definitions

# EMPLOYMENT QUOTAS

- Gabon, 2000 Mining Code

- Article 198

*“The holders of a mining agreement attached to a mining title, as well as the enterprises working on their behalf, shall give priority to a Gabonese citizen with the same qualifications and experience when recruiting personnel.”*

- Mali, 1999 Mining Code

- Article 126

*“The holders of mining titles and their subcontractors shall give preference to Malian personnel provided they have the same qualifications [as expatriates]”*

# EMPLOYMENT QUOTAS

- Republic of Guinea, 2011 Mining Code

- Article 108 – Employment of personnel (1/3)

*“The holder of a mining title shall give priority to Guineans with the requisite competences when employing managers. [...]*

*The holder of a mining or quarry right, as well as the enterprises working on its behalf, shall recruit by priority people from surrounding local communities, and in all cases exclusively Guineans for unskilled jobs.*

*Subject to the applicable law, the company may employ a reasonable proportion of expatriates.*

# EMPLOYMENT QUOTAS

- Article 108 – Employment of personnel (2/3)

*“The minimum percentage of Guinean employees per category for each evolution stage of the project is defined in the table below:*

Job positions	Exploration	Development	Exploitation periods		
			1 <sup>st</sup> – 5 <sup>th</sup> year	6 <sup>th</sup> – 10 <sup>th</sup> year	11 <sup>th</sup> – 15 <sup>th</sup> year
Executives	33%	20%	60%	80%	90%
Management staff	50%	30%	80%	90%	100%
Skilled workers	66%	40%	80%	95%	100%
Unskilled workers	100%	100%	100%	100%	100%

# EMPLOYMENT QUOTAS

- Article 108 – Employment of personnel (3/3)
- Relates to management positions

*“Upon setting up of the exploitation company, the Deputy General Manager shall be Guinean.*

*After a period of five (5) years from the exploitation commencement date, the General Manager of the company shall be a Guinean who has the requisite competences to occupy such a position.*

*Any holder of mining titles shall provide annually to the Ministry in charge of Employment and the Ministry in charge of Mines with a report on employment of Guineans, detailing the progress made by the title holder to achieve the quota requirements set out by this article as well as its activities towards job creation and the reinforcement of Guinean capacities. Such report is published in the Official Journal and on the website of the Ministry of Mines.”*



# TRAINING AND PROMOTION OBLIGATIONS

- Guinea, 2011 Mining Code

- Article 109 of the Guinean Mining Code, Republic of Guinea
- *“Any holder of a mining or quarry right as well as enterprises working on its behalf shall design and submit for the approval of the National Authority for Training and Professional Perfectioning (ONFPP) a training and perfectioning program enabling as much as possible the transfer of technology and technical competence in favor of Guinean companies and personnel; as well as a guineaisation program in accordance with the minimum percentage set out in (article 108).*
- *The training and perfectioning program shall in particular:*
  - *provide six (6) months internships to graduates from universities and professional schools and two (2) months internships to undergraduates;*
  - *enable the participation of Guinean employees to training sessions and/or internships organized in Guinea or abroad.*

*The Guinean Agency for Employment Promotion (AGUIPE) may request the investor to complete the training of Guinean employees through operations performed abroad to provide them with the expertise in different sectors of the mining activity”.*

# TRAINING AND PROMOTION OBLIGATIONS

- Guinea, 2011 Mining Code

- Article 108 of the Guinean Mining Code, Republic of Guinea

*“Any holder of an exploitation permit or a mining concession shall design during the development phase, and present to the Ministry in charge of Professional Training and to the Mining Administration, a training plan for Guinean managers enabling them to develop the requisite knowledge and skills in order to take management positions in the first five years as from the starting date of commercial production.”*

- Central African Republic, 2009 Mining Code

- Article 52 of the Central African Mining Code, Central Africa

- “The following provisions shall be included in the mining convention:

- *the right of the investor to recruit and dismiss local personnel and expatriates necessary to efficiently conduct mining operations, and its commitment to train local personnel in view of the progressive replacement of qualified expatriate personnel by nationals who developed the requisite knowledge and skill set during their employment period (...)*”

# LOCAL PROCUREMENT

- Guinea, 2011 Mining Code

- Article 107 - (1/2)

*“The holder of a mining title, as well as the enterprises working on its behalf, shall, whenever possible, give preference to the Guinean companies of its choice for any contract, provided that they are equivalent in terms of price, volume, quality and delivery conditions.*

*Minimum percentage of small and medium businesses, and businesses owned or controller by Guineans in the provision of goods and services to mining companies:*

Exploration	Development	Exploitation periods		
		1 <sup>st</sup> – 5 <sup>th</sup> year	6 <sup>th</sup> – 10 <sup>th</sup> year	11 <sup>th</sup> – 15 <sup>th</sup> year
10%	20%	15%	25%	30%

# LOCAL PROCUREMENT

- Article 107 - (2/2)

*For the purpose of promoting the development of the private sector, holders of exploitation permits of concessions, as well as the enterprises working on their behalf, shall implement the support plan for capacity building and reinforcement of SMBs, SMIs and businesses owned or controlled by Guineans for the procurement of goods and services widely used for their activities.*

*Any holder of a mining title shall provide annually to the Ministry in charge of Mines with a report on the use of SMBs, SMIs and businesses owned or controlled by Guineans, and detailing the progress of the title holder to achieve the minimum participation of such Guinean businesses and the activities towards capacity building and reinforcement of SMBs, SMIs and businesses owned or controlled by Guineans. Such report is published in the Official Journal and on the website of the Ministry of Mines.”*

# LOCAL PROCUREMENT

- Gabon, 2000 Mining Code
  - *“Holders of a mining agreement attached to a mining title, as well as enterprises working on their behalf, shall give preference to Gabonese companies for all construction, supply or services contracts, provided that they are equivalent in terms of volume, price, delivery and payment conditions.”*
- DRC, 2002 Mining Code
  - Article 273
    - “The State guarantees to the holders of mining and quarry titles:*
      - (f) the freedom to import goods, services as well as the necessary funds for their activities, provided they give preference to Congolese companies for any contract in relation with the mining project, on conditions equivalent in terms of volume, quality, price and delivery and payment timings.”*

# LOCAL COMMUNITIES DEVELOPMENT

- Guinea, 2011 Mining Code

- Article 130

*“Any holder of an exploitation title shall enter into a Development Agreement with the local community residing on or in the immediate vicinity of its exploitation title or its mining concession. (...).*

*The purpose of this convention is to create the conditions enabling an efficient and transparent management of the financial contribution to local development made by the holder of an exploitation title, and which takes into account local communities capacity to plan and implement the community development program.*

*Such convention addresses the training of local communities and Guineas in general, the measures to be taken in respect of issues relating to environment protection, the health of the populations, and the processes for the development of social programs. [...]*

*Any holder of mining rights shall pay a financial contribution corresponding to 0.5% to 1% of its revenues. [...]*”

# LOCAL COMMUNITIES DEVELOPMENT

- Mali, 1999 Mining Code

- Article 125

*“The holders of mining rights shall contribute to the construction or the improvement of sanitary and school infrastructures meeting the basic needs of workers and their families.”*

- Central African Republic, 2009 Model Mining Convention

- Article 17

*“The company undertakes that the Company and/or the Exploitation Company gives a specific attention to harmonious integration of the project in the Central African Republic. For this purpose, the Exploitation Company will share its principles and experience of sustainable development and territorial integration, by giving a priority to actions towards health, environment, youth and sport, arts and culture, habitat, road infrastructures and towards a permanent dialogue with the local communities and the State.*

# DIRECT PARTICIPATION IN OPERATIONS

- Guinea, 2011 Mining Code

- Article 121

*“The construction of infrastructure required for the mining activity shall be subject to a public-private partnership, in which the State is involved directly or through any entity it owns or controls. (...)*

*Regardless of the means of funding, transport infrastructure (railways, roads, bridges, ports, airports, waterways, electric transmission lines) as well as all permanent assets, except for production tools, that have been developed within the framework of the operation of a mining right shall be transferred to the State within a maximum time period of twenty (20) years.”*

- Gabon, 2000 Mining Code

- Article 18

*“The State may participate, directly or through a public company, in association with the holder of a mining title, in all or part of certain mining operations in accordance with the modalities set out by the Parties.”*



# DIRECT PARTICIPATION IN OPERATIONS

Examples of direct participation of African States in mining companies

	State's Participation	Option
<b>Central Africa</b>	At least 15%	
<b>Mali</b>	10%	Up to 10%
<b>Burkina Faso</b>	10%	
<b>Niger</b>	10%	Up to 30%
<b>Republic of Guinea</b> (allocation will depend on type of ore considered)	15%	Up to 20%

# DIRECT PARTICIPATION: OPERATIONS / INVESTORS

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- Central African Republic, 2009 Mining Code

- Article 52

*“The following provisions shall be included in the mining agreement: (...)*

*- commitment of the Company to grant 5% of the shares of the company to Central African private investors wishing to take part in the operations of the said Company.”*

# IMPLEMENTING LOCAL CONTENT MEASURES

- **Legislation and supporting regulation applicable**
  - Defined scope
  - Minimum requirements
- **Derogations to local content rules possible?**
- **Application of stabilisation clauses?**
  - Beyond pure legal considerations...
  - Voluntary integration of policies in operations
- **Application of bilateral investment treaties**
  - Might call local content into question (fair, equitable and non-discriminatory treatment)
  - Reservations
- **Creeping expropriation/nationalisation**
  - Potential remedies

# IMPLEMENTING LOCAL CONTENT MEASURES

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- **‘Soft-law principles’**
  - Hard sanctions ?
- **Security of tenure**
  - Withdrawal of title
  - Breach of the law / the mining agreement
- **Language and communication**
  - Critical

# ADVANTAGES

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- Reliable local help can potentially be less expensive in the long-term
- Shareholder satisfaction by demonstrating corporate social responsibility
- Safety of projects and prevention of military action through social stability and improvement in national morale

# DISADVANTAGES

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- Heavy investment and costs
- Restrictions on competition
- Loss of control/equity
- Creation of “fictitious structures”
- Wealth is channelled into the hand of a few often well-connected individuals
- Lack of comparable goods and services
- Inefficiencies (e.g. doubling up of jobs)

# HOW TO APPROACH LOCAL CONTENT

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- Contesting application e.g. by enforcing stabilisation clause, BITs
- Do your homework – understand what the host country's requirements are and how costs are treated
- Be prepared that obligations may increase
- Communicate your successes

# CONCLUSIONS

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- More countries aiming to replicate early success stories
- Balance of achieving social and economic goals without detracting investors and stifling competition
- Need for thorough due diligence on local content requirements
- Possibility of providing real advantages to mining companies
- Impact on all points in the supply chain





-  Herbert Smith Freehills office
-  Associated office
-  Group

**ABU DHABI**

Herbert Smith Freehills LLP  
T +971 2 813 5000  
F +971 2 813 5100

**BANGKOK**

Herbert Smith Freehills (Thailand) Ltd  
T +66 2657 3888  
F +66 2636 0657

**BEIJING**

Herbert Smith Freehills LLP  
T +86 10 6535 5000  
F +86 10 6535 5055

**BELFAST**

Herbert Smith Freehills LLP  
T +44 28 9025 8200  
F +44 28 9025 8201

**BRISBANE**

Herbert Smith Freehills  
T +61 7 3258 6666  
F +61 7 3258 6444

**BRUSSELS**

Herbert Smith Freehills LLP  
T +32 2 511 7450  
F +32 2 511 7772

**DAMMAM**

Al-Ghazzawi Professional Association  
Herbert Smith Freehills LLP  
associated firm  
T +966 3 8331611  
F +966 3 8331981

**DOHA**

Herbert Smith Freehills Middle East LLP  
T +974 4452 8955  
F +974 4452 8960

**DUBAI**

Herbert Smith Freehills LLP  
T +971 4 428 6300  
F +971 4 365 3171

**HONG KONG**

Herbert Smith Freehills  
T +852 2845 6639  
F +852 2845 9099

**JAKARTA**

Hiswara Bunjamin and Tandjung  
Herbert Smith Freehills LLP  
associated firm  
T +62 21 574 4010  
F +62 21 574 4670

**JEDDAH**

Al-Ghazzawi Professional Association  
Herbert Smith Freehills LLP  
associated firm  
T +966 2 6531576  
F +966 2 6532612

**LONDON**

Herbert Smith Freehills LLP  
T +44 20 7374 8000  
F +44 20 7374 0888

**MADRID**

Herbert Smith Freehills Spain LLP  
T +34 91 423 4000  
F +34 91 423 4001

**MELBOURNE**

Herbert Smith Freehills  
T +61 3 9288 1234  
F +61 3 9288 1567

**MOSCOW**

Herbert Smith Freehills CIS LLP  
T +7 495 363 6500  
F +7 495 363 6501

**NEW YORK**

Herbert Smith Freehills New York LLP  
T +1 212 519 9855  
F +1 212 519 9856

**PARIS**

Herbert Smith Freehills Paris LLP  
T +33 1 53 57 70 70  
F +33 1 53 57 70 80

**PERTH**

Herbert Smith Freehills  
T +61 8 9211 7777  
F +61 8 9211 7878

**RIYADH**

Al-Ghazzawi Professional Association  
Herbert Smith Freehills LLP  
associated firm  
T +966 1 4632374  
F +966 1 4627566

**SHANGHAI**

Herbert Smith Freehills LLP  
T +86 21 2322 2000  
F +86 21 2322 2322

**SINGAPORE**

Herbert Smith Freehills LLP  
T +65 6868 8000  
F +65 6868 8001

**SYDNEY**

Herbert Smith Freehills  
T +61 2 9225 5000  
F +61 2 9322 4000

**TOKYO**

Herbert Smith Freehills  
T +81 3 5412 5412  
F +81 3 5412 5413