

MINING

East Timor



Mining

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Quick reference guide enabling side-by-side comparison of local insights into mining industry issues, including industry overview; basis of legal, regulatory and resource/reserve reporting system; ownership and acquisition of mining rights and title; restrictions on foreign parties; state participation, expropriation and compensation mechanisms; duties, royalties and taxes, including stabilisation mechanisms; business structures; financing sources and security regime; restrictions on movement of goods, services, people and capital in connection with mining activities; environmental, closure and remediation, health and safety, labour, social and community, and international law issues; anti-bribery and corrupt practices; and recent trends.

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MINING INDUSTRY

Standing

What is the nature and importance of the mining industry in your country?

The mining industry in East Timor is not yet developed to an industrial and commercial scale. Historically, some traditional mining activities have been carried out, consisting of extracting and transforming metallic minerals into commodities for the creation of traditional tools and ornaments for traditional purposes.

The extraction activities have been disregarded due to continuous conflict throughout the country's history.

Nonetheless, the government has sought to develop this sector, with the recent approval of the Mining Code (Law No. 12 /2021 of 30 June), which is the main legal reference in the sector.

The mining industry is regarded as highly important to the development of the economy of East Timor, and is expected to be responsible for the creation of jobs and improvement of the living conditions of the population, as well as ensuring part of the country's tax revenues.

The development of the mining industry in East Timor will also allow the diversification of the economy to reduce the dependency on the oil and gas industry.

Law stated - 20 April 2022

Target minerals

What are the target minerals?

The majority of East Timor's mineral resources remain unexplored.

In accordance with the Atlas of Mineral Resources of the ESCAP Region, published in 2003 by the United Nations Economic and Social Commission for Asia and the Pacific, the target minerals in the country are

chromite, copper, copper-gold, gold and silver manganese, as well as some non-metallic minerals such as bentonite, limestone, marble and phosphate.

Interest in battery minerals has increased in relation to the country's reserves, particularly in respect of chromium, cobalt and nickel.

Law stated - 20 April 2022

Regions

Which regions are most active?

The districts most likely to contain deposits of metallic minerals and precious stones are the districts of Baucau, Bobonaro, Lautem, Manatutu, Manufahi and Viqueque.

Law stated - 20 April 2022

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

Is the legal system civil or common law-based?

East Timor's legal system is civil law-based.

Law stated - 20 April 2022

Regulation

How is the mining industry regulated?

The mining industry is regulated at the state level by the Timorese Constitution, with the Mining Code as its main regulatory legislation.

The Timorese mineral regime may be described as a contractual system, with operational and economic terms and conditions found under the mineral agreements executed for the exercise of mineral rights.

Law stated - 20 April 2022

What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The Mining Code, approved in 2021, is the main legal regulatory instrument for the mining industry in East Timor overseen by the National Authority of Petroleum and Minerals, which is the principal regulatory body for minerals (under the supervision of the Ministry of Petroleum and Mineral Resources).

Law stated - 20 April 2022

Classification system

What classification system does the mining industry use for reporting mineral resources and mineral reserves?

Not applicable.

Law stated - 20 April 2022

MINING RIGHTS AND TITLE

State control over mining rights

To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

According to the Timorese Constitution and the Mining Code (Law No. 12 /2021 of 30 June), the state is the owner of all mineral resources, with the terms and conditions for the award and exercise of exploration and mining rights to and by private parties being set forth in the Mining Code.

The Mining Code expressly states that minerals extracted and produced in accordance with the Mining Code are owned by the holder of the mining rights.

If mineral resources are found in privately held areas, the state may acquire the area through direct negotiation with the owner, pursuant to the provisions of the Mining Code. If the acquisition procedure is not successful, the state may resort to expropriation mechanisms for public interest purposes as foreseen in the applicable law.

Mineral rights may be granted to private entities as well as to the National Mining Company (still pending to be created).

The state is entitled to participate in mining activities through the National Mining Company, either in cooperation with private entities, up to a maximum of 30 per cent participating interest, or acting on its own, whenever deemed as strategic by the Council of Ministers (further to a recommendation from the National Authority of Petroleum and Minerals (ANPM)).

Law stated - 20 April 2022

Publicly available information and data

What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency, or securities commission regulating public companies, which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

In accordance with the Mining Code, all data and information relating to exploration and mining activities belong to Timorese State (through the ANPM) and the owner of mineral rights. This data and information are not available for public consultation, with the exception of the authorisations granted by the state for the exercise of mineral activities (and any amendments related therein) and any exemptions (and amendments or suspensions related therein) of the terms and conditions established for the exercise of mineral rights, which are made available to the public through publication in the Timorese Official Gazette and the Official Website of the Timorese Government or the Official ANPM Website.

The entity responsible for the collection of assessment reports is the ANPM, with private entities being obliged to elaborate, properly maintain and deliver to the regulatory body regular reports and records with regard to their mineral activities (and any significant developments).

The regulatory body may conduct geoscience analysis and publish it on the website, but no official databases in that regard have been created yet.

Law stated - 20 April 2022

Acquisition of rights by private parties

What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence or more senior tenure? What are the requirements to convert to a mining licence?

Mineral rights can be awarded by means of competitive bidding or by direct award on a first come, first served basis.

The Mining Code divides mining activities into the following four stages:

- reconnaissance (optional phase);
- exploration and appraisal;
- operation or mining; and
- marketing.

The rights and obligations of the holders of mining rights are set out by the Mining Code and further elaborated in the relevant mineral contracts (where applicable).

To develop exploration and appraisal activities, a natural or legal person is required to apply for an exploration and appraisal licence. While transiting to the mining stage, the relevant holder of exploration rights must obtain a mining licence.

The holder of a reconnaissance authorisation has a preferential right to acquire an exploration and appraisal licence, as does the holder of an exploration and appraisal licence in relation to the award of a mining licence. Only in the case of manifest technical and financial incapacity or by decision of the holder of exploration and appraisal rights, the mining rights are not granted to the entity that carried out the exploration works.

The negotiation and execution of a mining contract, and subsequent issuance of a mining licence, are subject to the preparation and approval of a technical, economic and financial feasibility study.

Mineral resources may be classified as 'strategic' by the Council of Ministers. Such classification must be made through the approval of a Decree-Law and in accordance with criteria regarding:

- economic importance;
- energy security;
- balance of the country's commercial trade;
- rarity;
- national defence and security; and
- growth support of the domestic manufacturing industries.

Law stated - 20 April 2022

Renewal and transfer of mineral licences

What is the regime for the renewal and transfer of mineral licences?

As a rule, any natural or legal person may apply for exploration and appraisal rights, with a maximum duration of four years, which may be extended by successive two-year periods up to a maximum of an additional six years (different rules apply to artisanal mining and exploration and mining of construction materials). The holder of the exploration and appraisal rights must, for the granting of the renewal, submit the renewal request at least 120 days before the expiry date. The extension is only granted if the applicant is not in breach of its legal and contractual obligations.

After the execution of a mining contract, which must foresee the expiry date of the awarded mining rights, including the relevant conditions for possible renewals, the regulatory body, authorised by the Ministry of Petroleum and Mineral Resources, must issue the corresponding mining licence.

According to the Mining Code, the mining phase has a maximum duration of 25 years, which may be extended by successive five-year periods up to a maximum of an additional 25 years (different rules apply to artisanal mining and the exploration and mining of construction materials).

Assignment, sale or any type of transfer of a mining right is subject to written consent by the Ministry of Petroleum and Mineral Resources or by the ANPM, as applicable. Transfer of a dominant interest or participation in a company that

holds mining rights is also subject to written consent by the Ministry of Petroleum and Mineral Resources or by the ANPM, as applicable

Law stated - 20 April 2022

Duration of mining rights

What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

An exploration and appraisal licence has a maximum duration of four years, but it may be extended by successive two-year periods up to a maximum of an additional six years (different rules apply to artisanal mining and the exploration and mining of construction materials). The holder of the exploration and appraisal licence must, for the granting of the renewal, submit the renewal request at least 120 days before the expiry date. The extension is only granted if:

- the applicant is not in breach of its legal and contractual obligations;
- the work budget and programme for the renewal period are compliant with the mining industry's good practices and the applicable law; and
- the licence holder complied with the work budget and the previously approved programme.

According to the Mining Code, mining rights can be awarded for a maximum of 25 years, which may be extended by successive five-year periods up to a maximum of an additional 25 years (different rules apply to artisanal mining and the exploration and mining of construction materials).

Mining rights may be early terminated when:

- a serious breach by the holder of mineral rights occurs of legal or contractual obligations arising from the mineral contract;
- the holder of mineral rights fails to comply with the statutory requirements related to the award of the relevant licence;
- a series of environmental damages as a result of mining activities occurs and such damages are attributable to intent or gross negligence by the holder of mineral rights;
- the holder of mineral rights fails to comply with the obligation of restoring an area impacted by mining activities in breach of the applicable environmental quality standards;
- there is proof of tax debts for two consecutive fiscal years during the mining phase;
- the holder of mineral rights intentionally provides false information to any government entity or the ANPM;
- the holder of mineral rights fails to comply with the obligation of relocating or indemnifying local communities for damages caused by mining activities;
- an illegal transfer of the mineral right occurs;
- an illegal transfer of a dominating interest or participation occurs;
- the mineral activities are suspended for 120 consecutive days, save if such suspension is approved by the ANPM, if it was caused by any act or omission of the state or one of its representatives or if it is caused by a force majeure event.

Law stated - 20 April 2022

Acquisition by domestic parties versus acquisition by foreign parties

Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

There are no restrictions in that respect save for artisanal mining and exploration and mining of construction materials where access to mineral rights is restricted by local content provisions.

Law stated - 20 April 2022

Protection of mining rights

How are mining rights protected? Are foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

The Mining Code also sets out the judicial courts of East Timor and arbitration courts as the proper mechanisms to resolve any disputes arising in connection with the Mining Activities or related to other issues regulated in the Mining Code, in accordance with the titles that granted the corresponding Mining Rights.

East Timor adhered, on 17 March 2021, to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 and, as such, international arbitral awards are recognised and enforceable in Angola, without prejudice to the reservation made by the Timorese State, which limit the applicability of the Convention to:

- the recognition and enforcement of arbitral awards handed down in another contracting state; and
- disputes arising from legal relationships, whether contractual or not, of commercial nature.

It is not clear whether the deposit of the ratification instrument with the Secretary-General of the United Nations has already occurred.

It is also noteworthy that the East Timor parliament approved Law No. 6/2021 of 31 March 2021, which establishes the legal regime of voluntary arbitration and allows recognition and enforcement by East Timor's competent judicial courts of arbitration sentences.

Law stated - 20 April 2022

Surface rights

What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests or does the holder of the mineral tenure have priority over surface rights use?

Holders of mineral rights do not acquire surface rights over the concession areas, as the award of a mineral right only entails the exclusive right to access and conduct mineral activities within the mining area.

If mineral resources are found in privately held areas, the state may acquire the area through direct negotiation with the owner or resort to expropriation mechanisms for public interest purposes as foreseen in the applicable law.

Law stated - 20 April 2022

Participation of government and state agencies

Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

The state is entitled to participate in mining activities through the National Mining Company (either in cooperation with private parties) up to a maximum of 30 per cent of a participating interest (as defined by the Council of Ministers).

There are no local listing requirements for the project company.

Law stated - 20 April 2022

Government expropriation of licences

Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

The Mining Code foresees the applicability of the expropriation mechanism in the case of properly justified public interest, the expropriation having to be carried out in a non-discriminatory manner and subject to the payment of fair compensation, which must be calculated pursuant to the applicable laws.

Law No. 8/2017 of 26 April, which establishes the Timorese expropriation legal regime, sets out that the compensation may be defined either by agreement between the parties or, if the negotiation is not successful, by an arbitration court created for that effect, and must take into account the financial costs resulting from the expropriation, as well other factors, without patrimonial value.

The compensation must be calculated on the basis of:

- the market value of the immovable assets, calculated at the date of the public interest declaration;
- the value of the area; and
- the cost of the eventual replacement of constructions or farmsteads.

Law stated - 20 April 2022

Protected areas

Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

According to the Mining Code, an area may be declared as an excluded area for mining activities when justified by national interest, national security, the well-being of the nearby community, environmental, cultural or religious issues or when such mining activities are incompatible with activities projected or being carried out in the target area. The establishment of an excluded area must be declared by the Council of Ministers, under a proposal by the Ministry of Petroleum and Mineral Resources.

Additional off-limits areas to mineral activities are those:

- reserved for graveyards;
- containing significant archaeological and cultural heritage;
- where national monuments are located;
- containing religious sites;

- within 250 metres of dams or reservoirs;
- within 100 metres of state buildings;
- used for national defence or occupied by national defence entities, including a 100-metre surrounding area;
- within 100 metres of an airport;
- reserved for railway, aqueduct, oil or gas pipelines or construction projects;
- reserved for tree plantation or forestry projects;
- in or within 250 metres of villages, towns, municipalities or cities;
- on streets, roads, bridges and other public infrastructure, including a 100-metre surrounding zone on each side; and
- within national parks.

In this respect, the Mining Code also establishes that if the economic value or other benefits associated with the mineral activities clearly surpass the value and importance of the archaeological and cultural heritage, national monuments or religious sites or any other legally imposed off-limits areas, the Council of Ministers may approve, if proposed by the Ministry of Petroleum and Mineral Resources, the development of mineral activities in such area, subject to consultation with the relevant municipal entities and governmental bodies.

Law stated - 20 April 2022

DUTIES, ROYALTIES AND TAXES

Duties, royalties and taxes payable by private parties

What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

The Mining Code (Law No. 12 /2021 of 30 June) sets out a special tax regime for holders of mineral rights (without prejudice to the general tax regime that applies to any entity in East Timor, namely, corporate income tax).

Mining royalty

The rates applicable in connection with the mining royalty, which is calculated on the value of the mineral resources, are as follows:

- precious metals and minerals: 8 per cent, if unprocessed; 3.5 per cent, if processed;
- common metals: 7 per cent, if unprocessed; 2.5 per cent, if processed;
- gems: 8 per cent, if unprocessed; 3.5 per cent, if processed;
- radioactive minerals: 8 per cent;
- rare earth minerals: 15 per cent; and
- ornamental stones: US\$10 per tonne, if unprocessed; US\$1 per tonne if processed;

Surface fee

This fee, payable by all natural and legal persons carrying out mining activities, is levied on the concession area. The amount payable varies according to the size of the concession area, the type of mineral explored, the type of mining activity and the operation year in question and can range from US\$25 to US\$400 per square kilometres.

Law stated - 20 April 2022

Tax advantages and incentives

What tax advantages, tax credits and incentives are available to private parties carrying on exploration and mining activities?

The tax regime applicable to private parties carrying on mining activities is set out in the Mining Code, in the Tax Law and Law No. 15/2017 of 24 August, which establishes the legal regime on private investment (the Private Investment Law). The Private Investment Law foresees the possibility of celebration of a special investment agreement between investors and the Timorese state, under which tax advantages and incentives may be granted to the investor.

Law stated - 20 April 2022

Tax stabilisation

Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

There are currently no tax stabilisation agreements nor tax stabilisation legislation in place in relation to the mining sector.

Law stated - 20 April 2022

Carried interest

Is the government entitled to a carried interest, or a free carried interest in mining projects?

There are no express provisions in the Mining Code establishing a free carried interest to the benefit of the Timorese state in mining projects. State participation is subject to the Council of Ministers' decision that defines the terms and conditions of such participation.

Law stated - 20 April 2022

Transfer taxes and capital gains

Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

There are no specific transfer taxes or capital gains imposed regarding the transfer of licences. Any transfer of mineral rights shall, nevertheless, be considered for corporate income tax purposes.

Law stated - 20 April 2022

Distinction between domestic parties and foreign parties

Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

No. There is no distinction between duties, royalties and taxes payable by domestic parties and foreign parties.

Law stated - 20 April 2022

BUSINESS STRUCTURES

Principal business structures

What are the principal business structures used by private parties carrying on mining activities?

The main business structures available in East Timor for the development of mining activities are:

- locally incorporated companies; and
- subsidiaries or branches of foreign corporations.

Law stated - 20 April 2022

Local entity requirement

Is there a requirement that a local entity be a party to the transaction?

No. There are nonetheless some limitations on artisanal mining and exploration and mining of construction materials.

Law stated - 20 April 2022

Bilateral investment and tax treaties

Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

East Timor and Portugal signed an Agreement on Mutual Protection and Promotion of Investment in 2002.

Law stated - 20 April 2022

FINANCING

Principal sources of financing

What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

The main sources of funding for private parties intending to carry out mining activities are private own capital and international funding instruments.

East Timor does not have a stock market.

Law stated - 20 April 2022

Direct financing from government or major pension funds

Does the government, its agencies or major pension funds provide direct financing to mining projects?

Security interests may be created over mining rights, subject to previous approval by the National Authority of Petroleum and Minerals (ANPM). The holders of mineral rights must send a written notice of their intention to create an encumbrance over a mineral right, together with the full identity of the entity in whose favour the encumbrance is created and information about the underlying transaction under which the mineral rights or assets are encumbered.

ANPM consent is not required if the encumbrance is created as security for the financing of the mineral activities and the beneficiary entity agrees in writing, that any judicial sale related to the enforcement of the security interest is subject to consent by the Ministry of Petroleum and Mineral Resources.

The Mining Code (Law No. 12 /2021 of 30 June) sets out that the creation, modification or extinction of charges or encumbrances over mineral rights is subject to registration under the Mining Registry (still pending to be created, to be organised and managed by the ANPM).

Law stated - 20 April 2022

Security regime

Please describe the regime for taking security over mining interests.

The Mining Code (Law No. 12 /2021 of 30 June) establishes that the holders of mineral rights are entitled to import goods required in connection with mining activities.

Yet, holders of mineral rights must give preference to Timorese suppliers, except if the goods and services provided by Timorese suppliers are of identical quality to the imported goods and the price of the national goods is superior by more than 10 per cent, in which case the goods will be acquired on an open and competitive basis. Holders of mineral rights shall also seek to acquire goods from Timorese suppliers in the minimum amount of 20 per cent of their annual expenditure, save if the national goods and services are not of the same quality as foreign goods and services.

Law stated - 20 April 2022

RESTRICTIONS

Importation restrictions

What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

The Mining Code (Law No. 12 /2021 of 30 June) establishes that the holders of mineral rights are entitled to import goods required in connection with mining activities.

Yet, holders of mineral rights must give preference to Timorese suppliers, except if the goods and services provided by Timorese suppliers are of identical quality to the imported goods and the price of the national goods is superior by more than 10 per cent, in which case the goods will be acquired on an open and competitive basis. Holders of mineral rights shall also seek to acquire goods from Timorese suppliers in the minimum amount of 20 per cent of their annual expenditure, save if the national goods and services are not of the same quality as foreign goods and services.

Law stated - 20 April 2022

Standard conditions and agreements

Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

No standard conditions and agreements apply in this respect. However, considering the important presence and work carried out by multilateral agencies in East Timor (the Asian Development Bank, World Bank, International Finance Corporation, among others), certain projects and employment vacancy announcements may deem relevant good knowledge of such standards.

Law stated - 20 April 2022

Mineral restrictions

What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Holders of mineral rights are entitled to sell minerals obtained as a result of mining activities developed in accordance with the relevant mineral contract or licence.

Unprocessed minerals may only be exported if:

- the domestic industry is not capable of absorbing the unprocessed minerals;
- from a technical and economic standpoint of view, the processing of the minerals in Timorese territory is not justifiable; and
- the exporting minerals are classified as strategical minerals (the exportation being subject to previous approval by the competent body).

The sale of minerals by a third party (namely, not the holder of the mining rights) is subject to the issuance of a marketing licence.

The National Authority of Petroleum and Minerals may also authorise the holder of an exploration and appraisal licence to extract commercial samples for purposes of the market evaluation.

Law stated - 20 April 2022

Import of funds restrictions

What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

There are no specific restrictions imposed on the import of funds related to mining activities.

In relation to the repatriation of funds to foreign jurisdictions, the Tax Law and Law No. 15/2017 of 24 August, which establishes the legal regime on private investment (the Private Investment Law) expressly sets out that all investors, whether national or foreign, are entitled to transfer funds from any investment or reinvestment made in East Timor to foreign countries.

Law stated - 20 April 2022

ENVIRONMENT

Principal applicable environmental laws

What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Mining Code (Law No. 12 /2021 of 30 June) contains specific provisions aimed at preventing and minimising environmental and human damages, as well as provisions establishing the award of environmental mining licences.

Other legislative instruments that may be deemed relevant in this respect are Decree-Law No. 5/2011 of 9 February, which regulates the environmental review and licencing procedure (the Environmental Licencing Regime), and Decree-Law No. 26/2012 of 4 July, which approves the Framework Environment Law.

The principal regulatory bodies responsible for the administration of the abovementioned diplomas are the National Authority of Petroleum and Minerals (ANPM) and the Ministry of Petroleum and Mineral Resources.

Law stated - 20 April 2022

Environmental review and permitting process

What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The environmental review and permitting process is regulated by the Mining Code and by the Environmental Licencing Regime.

The Mining Code foresees the possibility of approval of a specific diploma regarding the environmental review and licencing procedure of mining activities.

The entity responsible for the review process and approval of the environmental licence is the Ministry of Petroleum and Mineral Resources, in coordination with the ANPM.

According to the Environmental Licencing Regime, mining projects are subject to environmental impact assessments, which must be requested from competent bodies.

Pursuant to the Environmental Licencing Regime, the completion of the review and licencing process may take up to 90 days.

Law stated - 20 April 2022

Sustainability

Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

East Timor is a party to the Paris Agreement.

In 2011, East Timor also approved the National Adaptation Programme of Action on climate change, which gives the environmental sector the status of an essential and indispensable vector in the country's sustainable development strategy and promotion of life quality of the Timorese citizens.

Also, in 2011, the country recognised climate change as one of its biggest environmental challenges, currently seeking the reduction of pollution and greenhouse gases.

Law stated - 20 April 2022

Closure and remediation process

What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

Holders of mineral rights are liable for any damages caused by mining activities. Environmental damages caused by actions or omissions sanctioned by legal provisions applicable to environmental matters and arising from mining activities may cause the revocation of the mining title.

In relation to the closure of a mining project, the holders of mineral rights are obliged to carry out the mining closure activities in accordance with the corresponding plan, previously approved by the Ministry of Petroleum and Mineral Resources.

The mining contract must also include an estimate of the mining closure reserve, which is based on the estimated liabilities arising from the closure of the mine and must take into consideration the specific nature and environmental risks.

The holders of mineral rights are further required to open an escrow account, for the benefit of the regulatory body, where the mandatory annual mine closure reserve contributions, which are to be used as contingency funds in the case of mine closure and environmental damages repair, must be deposited. In case such amounts do not suffice to conclude the mine closure activities and the damage repair, the holder of mineral rights and its corporate partners shall be jointly liable for the full funding and completion of any works necessary to comply with its obligations under the Mining Code and the applicable laws.

Holders of mineral rights are required to endorse and keep validly in force insurance policies regarding all mining activities, including, but not limited to, insurance policies covering:

- civil liability;
- work accident liability;
- loss or premises damages;
- losses and damages to premises and other assets;
- construction and cargo risks;
- material loss or damage, death or personal injury;
- costs of debris removal and clean-up activities following an accident; and
- payment of salaries, benefits and indemnities and other labour liabilities.

Additionally, the ANPM may also request the holder of an exploration and appraisal licence to grant a performance bond covering 20 per cent of the global investment amount foreseen for the exploration and appraisal phase.

Law stated - 20 April 2022

Restrictions on building tailings or waste dams

What are the restrictions for building tailings or waste dams?

The Mining Code does not foresee specific restrictions in that respect. In any case, mining plans must include information on the environmental management plan and associated monitoring plan, geographic location of the main mining operations, a map of the premises and other infrastructure to be installed in the concession area and technical specifications of the equipment, machinery and premises related thereto.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

A new health and safety and labour act for extractive industries is being prepared for some years now. Until the approval of such an industry-specific regulatory framework, the rules on health and safety and labour law applicable to the mining industry are set out in Law No. 4 /2012 of 21 February (the Timorese Labour Law). The principal regulatory body that administers the Timorese Labour Law is the Coordinating Minister for Economic Affairs and the Secretary of State for Labour and Professional Training.

Law stated - 20 April 2022

Management and recycling of mining waste

What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

There are no specific rules related to management and recycling of mining waste products nor specific titles to explore and exploit mining waste products in tailing ponds and waste piles.

Law stated - 20 April 2022

Use of domestic and foreign employees

What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Employment that is related to mining activities is preferably reserved for Timorese nationals, shall be based on the qualifications and skills of the candidates and must be guided according to a competitive process.

In case the applications from Timorese nationals to specialised employment positions do not meet the requirements (according to the good practices of the mining sector) necessary for the conduction of mineral activities, the holder of mineral rights is temporarily allowed to hire foreign employees until the Timorese nationals are deemed qualified.

Holders of mineral rights are also entitled to employ foreign employees under the following conditions:

- work requiring specialised qualifications and experience, for a service period of less than one year;
- work related to the development of the mining site or with mining-site closure activities; and
- the protection of intellectual property.

In any case, the terms proposed to the employees must not be subject to any discriminatory practices based on skin colour, race, marital status, gender, ethnic origin, language, social or economic position, political or ideological beliefs or religion.

Additionally, holders of mineral rights have a general duty of promoting the maximum possible transfer of technology and knowledge to Timorese nationals and entities, mainly through the provision of technical support aimed at

increasing the capacity of the country to supply goods related to mining activities and through the enhancement of the qualifications and skills of Timorese nationals regarding the mining industry.

Law stated - 20 April 2022

SOCIAL AND COMMUNITY ISSUES

Community engagement and CSR

What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Mining Code (Law No. 12 /2021 of 30 June) sets out several provisions on the rights of local communities residing in areas where mining activities are to be carried out.

The principal regulatory bodies in this respect are the National Authority of Petroleum and Minerals and the Ministry of Petroleum and Mineral Resources.

Law stated - 20 April 2022

Rights of aboriginal, indigenous or disadvantaged peoples

How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

The Mining Code establishes that during the planning and development of mining activities the holders of mining rights and any third parties responsible for conducting mining activities must put in place adequate measures aimed to consult local communities and accommodate their legitimate concerns.

For that purpose, the holders of exploration and appraisal licences and the holders of operation licences must appoint a Community Relations Officer, which must be a Timorese national, fluent in one of the official languages, who will be responsible for the coordination with the local communities, particularly with the local community leaders.

If the presence of local communities in the concession area is not compatible with the development of the mining activities, the holder of the mineral rights, together with the local and national authorities, must prepare and implement a relocation plan, which must be approved and monitored by the competent government entities. Conversely, the relocated communities are entitled to be compensated by the mining rights holders for the loss of crops, livestock, forest products and other ceasing profits related to land usage.

Law stated - 20 April 2022

International law

What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

East Timor is a party to the following treaties and conventions:

- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination Against Women;
- International Labour Organization Convention No. 111 concerning Discrimination in Respect of Employment and

Occupation; and

- the International Convention on the Protection of All Migrant Workers and Members of Their Families.

Law stated - 20 April 2022

ANTI-BRIBERY AND CORRUPT PRACTICES

Local legislation

Describe any local legislation governing anti-bribery and corrupt practices.

The Mining Code (Law No. 12 /2021 of 30 June) contains specific provisions regarding anti-bribery and corrupt practices.

Other relevant legal diplomas in this regard are:

- Decree-Law No. 13/2005 of 1 December, which approved the Criminal Procedural Code;
- Law No. 6/2009 of 15 July, which approved the Penal Code;
- Law No. 8/2009 of 15 July 2009, regarding the Anti-Corruption Commission; and
- Law No. 7/2020 of 26 August, which sets out measures to prevent and combat corruption.

East Timor is also a party to the United Nations Convention against Corruption.

Law stated - 20 April 2022

Foreign legislation

Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Yes. Particular attention is usually paid to the US Foreign Corrupt Practices Act and the UK Bribery Act.

Law stated - 20 April 2022

Disclosure of payments by resource companies

Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

East Timor joined the EITI in 2008.

According to East Timor's section in EITI's website (East Timor | EITI);

Law stated - 20 April 2022

FOREIGN INVESTMENT

Foreign ownership restrictions

Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

There are no relevant restrictions in this respect (except for artisanal mining and exploration and mining of construction materials where access to mineral rights is restricted by local content provisions).

Law stated - 20 April 2022

INTERNATIONAL TREATIES

Applicable international treaties

What international treaties apply to the mining industry or an investment in the mining industry?

Not applicable.

Law stated - 20 April 2022

UPDATE AND TRENDS

Recent developments

What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

The Mining Code (Law No. 12 /2021 of 30 June) was enacted and published in June 2021, with the corresponding regulations currently being drafted and expected to be published during the second quarter of 2022.

The creation of the National Mining Company, as well as the award of the first exploration and appraisal licences under the regime created by the Mining Code, is scheduled for 2022.

Law stated - 20 April 2022

Jurisdictions

	Angola	VdA
	Argentina	Allende & Brea
	Canada	Cassels Brock & Blackwell LLP
	East Timor	VdA
	Ecuador	Tobar ZVS
	Finland	Kalliolaw Asianajotoimisto Oy
	Ghana	Kimathi & Partners Corporate Attorneys
	Greenland	Nuna Law Firm
	India	Trilegal
	Ireland	Whitney Moore
	Mexico	RB Abogados
	Mozambique	VdA
	Nigeria	ENR Advisory
	Philippines	Cruz Marcelo & Tenefrancia
	South Africa	Beech Veltman Inc
	Sweden	Foyen Advokatfirma
	Thailand	Chandler MHM Limited
	USA	Haynes and Boone LLP