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International Energy and Natural Resources

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This article reviews significant legal developments during 2017 in the field of international energy and natural resources law.

I. Angola

A. Registration Form for Registry of Oilfield Goods and Service Providers

For the purposes of including service providers in the Ministry of Petroleum’s database, the Angolan Minister of Petroleum, by means of Order No. 29/17, approved template registration forms for access to tenders for the awarding of services contracts. The forms are also for companies that are parties to already-executed contracts that wish to have access to benefits set forth in the law.1

B. Downstream

During 2017, the Minister of Petroleum also approved, by executive decree, two important downstream statutes: (i) the Technical and Procedural Rules on Refining Activities2 and (ii) the Technical Regulations for

* Petra Stewart, counsel at Mediabiz International Inc. in Montreal, Canada, served as committee editor of this article and contributed the section on Grenada. The following authors submitted contributions: Ricardo Alves Silva, a partner at Miranda Alliance’s Headquarters in Lisbon, Portugal and Sara Frazão, an associate at Miranda Alliance’s Headquarters in Lisbon, Portugal, contributed the sections on Angola, Equatorial Guinea and Timor-Leste; Mauricio Becerra de la Roca Donoso, the managing partner of Becerra de la Roca Donoso & Asociados, in Santa Cruz de la Sierra, Bolivia and Mario Ballivian, a partner at Becerra de la Roca Donoso & Asociados, in Santa Cruz de la Sierra, Bolivia, contributed the section on Bolivia; Mathias Dantin, of counsel at Herbert Smith Freehills in Paris, France, contributed the sections on Burkina Faso, Cameroon, Mali and Tunisia; Kevin Haroff, a partner at Marien Law, PLLC, in San Francisco, California, United States, contributed the section on China; Leonardo Sempertegui, a partner at Sempertegui Ontaneda, LLP, in Washington, DC, United States, contributed the sections on Colombia and Peru; Kingsley Osei, contracts counsel at the State University of New York in Albany, New York, United States, contributed the section on Ghana.

1. See Order no. 29/17, DIARIO DA REPÚBLICA [DDR], Série I, No. 16 (Jan. 27, 2017) (Angl.).


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Bunkering. The Technical and Procedural Rules on Refining Activities covers the design, construction, operation, and maintenance of refineries, including the relevant location and mandatory approvals, authorizations and licensing, and control and inspection of facilities and equipment. The Bunkering Regulations set forth the principles and rules governing the supply of marine fuels and lubricants to moored or anchored vessels, as well as to platforms and equipment for the exploitation of natural resources in inland and territorial waters, in the contiguous zone or in Angola’s exclusive economic zone, by means of tankers, tanker trucks, and pipelines. Both statutes impose fines and additional penalties for breach of their provisions.

II. Bolivia

A. New Regulation for Recoverable Costs for the Oil and Gas Industry

In August 2017, the Bolivian government issued a regulation setting out new conditions and requirements for Yacimientos Petrolíferos Fiscales Bolivianos (“YPFB”) approval and recognition of Reported Costs as Recoverable Costs for oil service contracts. The new regulation significantly changes the previous system.

One of the most relevant changes under the regulation is the creation of a price band, which requires costs to be within a minimum and maximum range based on unit prices. To set the price band, YPFB will draft a price band proposal considering national and international oil industry prices, including historical prices and other data related to oil operations. YPFB may also require oil companies under services contracts with YPFB to...

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5. Executive Decree No. 275/17, supra note 3.
7. YPFB is the National Oil Company. Id. at art. 1.
8. Capital costs in a YPFB approved budget that are declared in cost reports. Id. at art. 3(i), (j).
9. Reported Costs that meet Supreme Decree No. 3278, Article 9 requirements. Id. at art. 3(h).
11. See Supreme Decree 3278, supra note 6, art. 9.
12. See id. at art. 8.
13. See id. at art. 9.

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provide, among other things, supplier, operations, and investment information, both current and historical.\textsuperscript{14}

The Hydrocarbons National Agency (“ANH”) will approve the price band, taking into consideration the YPFB proposal.\textsuperscript{15} Ultimately, YPFB will establish parameters based on the ANH approved price band, which YPFB will then use for the approval of oil companies’ Recoverable Costs.\textsuperscript{16}

The Bolivian government implied that it is necessary to exert more supervision of the costs that oil companies incur under oil services contracts. The government stated that while oil companies’ operating costs are decreasing worldwide, the opposite occurs in Bolivia, where such costs are increasing in some cases.\textsuperscript{17}

Oil companies have expressed concern that this regulation will affect legal certainty, which directly affects future investments in the sector that are essential to fulfill Bolivia’s commitments, including commitments under a gas sale contract with Brazil.\textsuperscript{18}

B. Bolivian Lithium Company Formed

In April 2017, Empresa Pública Nacional Estratégica de Yacimientos de Litio Bolivianos (“YLB")\textsuperscript{19} was formed as a strategic national State company under the supervision of the Ministry of Energy.\textsuperscript{20} According to the approved legislation, the new company’s mandate covers activities across the entire lithium resources production chain, including exploration, exploitation, installation, implementation, commissioning, industrialization, commercialization, and operation and administration of evaporitic resources and complexes of inorganic chemistry.\textsuperscript{21}

The Bolivian State through YLB will develop the production phase of its evaporitic resources. YLB will also oversee the subsequent phases of semi-industrialization, industrialization, and waste processing, which may be carried out by joint ventures between national or foreign private companies.

\begin{thebibliography}{9}

\bibitem{14} Id.
\bibitem{15} Id. at art. 9, ¶ 3.
\bibitem{16} See Supreme Decree 3278, supra note 6, art. 9, ¶ 4.
\bibitem{17} See Clayton Benavides, \textit{Gobierno Fijará con petroleras costos y precios ‘racionales’ [Government will set rational costs and prices with oil companies]}, \textit{Cambio} (Bol.) (Aug. 27, 2017), http://cambio.bo/?q=node/30908.
\bibitem{19} YLB is the Bolivian Lithium Company.
\bibitem{21} See id. ¶ 2.
\end{thebibliography}
and the Bolivian State, with the government always maintaining a majority stake through YLB.22

YLB expects to complete construction of a potassium chloride factory in 2017 and begin operations in 2018 to reach production of 350 tons per year.23 Also, the request for bids for the EPC (Engineering, Procurement, and Construction) contract for the industrial phase of a lithium carbonate production facility with a production capacity of 15,000 tons per year is expected to be awarded in 2017.24

C. RATIFICATION OF AMENDMENT TO NUCLEAR MATERIAL CONVENTION

In February 2017, Bolivia ratified the Amendment to the Convention on the Physical Protection of Nuclear Material,25 which is the only legally binding international agreement addressing the physical protection of nuclear material.26 The President of the Chamber of Deputies described the ratification as a necessary means to protect the physical handling of nuclear material, as is done in all countries.27

III. Burkina Faso

A. Electricity

In a decree dated May 26, 2017, the President of Burkina Faso enacted law No. 014-2017 regulating the energy sector (Energy Law).28 As the country has suffered from power shortages and a substantial dependency on fossil fuels, the Energy Law was enacted in order to achieve Burkina Faso's

22. See id. ¶ 3.
24. Id.
objective of eighty percent electrification by 2020, as expressed in the 2016-2020 National Plan for Economic and Social Development ("PNDES").

The Energy Law regulates the entire energy sector excluding hydrocarbons. Ultimately, the Energy Law will allow the country to open up the energy sector by authorizing private entities to produce and sell electricity throughout the country. A more open market will be achieved by: (i) allowing eligible clients, as defined by their consumption or annual production levels, to be directly supplied by producers and to import electricity; (ii) granting producers, self-producers, and eligible clients a right to access the power transmission network; and (iii) removing the single buyer system that Société nationale d’électricité du Burkina Faso ("SONABEL") oversees. SONABEL, however, retains its monopoly over power transmission but not distribution.

Moreover, the Energy Law contains numerous innovations such as renewable energy promotion, self-generation, and energy efficiency. It also defines the mission of the energy regulator Autorité de Régulation du Secteur de l’Énergie and establishes a set of penalties for infringement of the new rules.

On October 26, 2017, the first set of implementing decrees were issued that pertained to the energy regulator’s powers, the terms and conditions for issuing power generation licences, and the specifications book defining the rights and obligations of all electricity producers.

B. MINING

Burkina Faso enacted a new mining code, Law 036-2015, in October 2015. In 2017, the government issued several implementing decrees for the code. These decrees set out, among other things: (i) the conditions for granting, renewing, extending, waiving, and withdrawing mining rights and...
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authorizations;40 (ii) a model mining contract for the exploitation phase, replacing the models in effect since 2005;41 (iii) the amount of mining taxes and royalties;42 (iv) the organization and functioning of the Mining Fund for Local Development (Fonds minier de développement local) which will collect one percent of the turnover mining companies generate with exploration permits;43 and (v) the organization and functioning of the Mine Rehabilitation and Closure Fund (Fonds de réhabilitation et de fermeture des mines).44

Additionally, on May 18, 2017, the National Assembly enacted a law on the commercialization of gold and other precious substances.45 The law regulates all transactions in these minerals.

IV. Cameroon

B. Mining

In December 2016, the Cameroon government adopted a new mining code,46 replacing the previous version from July 29, 2010,47 with the aim of promoting investment in the mining sector.48 The Code sets out five types of mining title: (i) artisanal mining permits; (ii) semi-mechanized artisanal mining permits; (iii) exploration licenses; (iv) small-scale mining licenses; and (v) industrial mining licenses.49

The mining code provides that the holder of any type of mining title must be a company formed under Cameroon law.50 The code does not require a

48. Law No. 2016/17, supra note 46, art. 2. The Code does not cover hydrocarbons. Id. at art. 3(2).
49. Id. at art. 11.
50. See id. at art. 15(5).

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competitive process to award mining titles;51 the award procedures are to be established by regulation,52 which at the time of writing has not been published.

The code entitles an exploration license holder to obtain an exploitation license—small-scale or industrial—subject to providing evidence of a deposit within the perimeter of the initial permit.53 To obtain an exploitation license, the holder must enter into a mining agreement with the State.54 The State will take up to ten percent of a mining company’s share capital in the case of a small-scale mining license holder,55 and ten percent of a mining company’s share capital in the case of an industrial mining license holder.56 In both cases the State may request an additional share capital interest.57 The Minister of Mining must approve any direct or indirect transaction on a mining title.58

The mining code’s additional noteworthy innovations include: (i) compliance with international commitments aimed at transparency, such as the Kimberley Process and the Extractive Industries Transparency Initiative, and an obligation to declare any payments made to the State;59 (ii) further inclusion of local content requirements;60 and (iii) stricter environmental obligations.61

V. China

A. Renewable Energy

This past year brought notable developments in domestic energy production and use in China. While coal is still the country’s largest source of electricity,62 China’s National Energy Administration (“NEA”) began 2017 by issuing its thirteenth Five-Year Plan for Energy Development and

51. See id. at art. 16.
52. See id. at art. 17.
53. Law No. 2016/17, supra note 46, art. 46(1).
54. Id. at art. 44(1). A standard form mining agreement is to be defined by regulation, as yet unpublished. Id. at art. 44(3).
55. Id. at art. 54.
56. Id. at art. 58.
57. Id. at arts. 54, 58.
58. Law No. 2016/17, supra note 46, art. 36.
59. Id. at art. 142.
60. Id. at arts. 164-69.
61. Id. at arts. 135-40.
Renewable Energy Development. Under this Plan, the NEA reportedly is halting progress on 103 new coal plants.

The NEA also announced that it would cap total domestic energy consumption at about 4.8 gigatons of coal equivalent (Gtce) by 2020, and it would invest an additional $361 billion in renewable power generation. Major projects are already underway, including the Longyangxia Dam Solar Complex. The Solar Complex, which is the world’s largest solar farm and was built by the state-run Huanghe Hydropower Development Company, opened in February 2017 and has an 850 megawatt installed capacity.

B. National Carbon Trading System

The Chinese National Development and Reform Commission ("NDRC") is set to launch a new national carbon-trading system to reduce the country's impact on global warming. The system is being designed to carry out the nation's commitments under the United Nations' 2009 climate change conference in Copenhagen. It will be modeled, in part, on California’s cap-and-trade program, as well as on the European Union’s program. The carbon trading system will cover three industries—coal-fired power plants, cement, and aluminum—but most other details on how it will be implemented are not yet public.

68. China-U.S. Joint Presidential Statement on Climate Change, The State Council of the People’s Republic of China (Sept. 26, 2015), http://en.ndrc.gov.cn/newsrelease/201509/t20150929_735626.html. (in establishing a national carbon market, China is following through on a joint pledge with the Obama Administration to support the 2016 Paris Agreement on Climate Change)
70. Buckley, supra note 69.

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VI. Colombia

A. Regulations for the Allocation of Areas and Criteria for Contracting Hydrocarbon Exploration and Exploitation

Regulation 02/2017, enacted in May 2017, sets new rules for the allocation of oil and gas blocks. It moves block allocation from a biennial competitive bidding process to a system in which a proposal may be submitted at any time, triggering a competitive process for adjudication of the specific requested area. The rules also adopt new criteria for contracting hydrocarbon exploration and exploitation, as well as for objectively selecting contractors.

The National Hydrocarbons Agency is responsible for selecting areas for the development of hydrocarbon exploration and production activities. Corporations that wish to be included in the Register of Interested Persons or authorized to explore and exploit hydrocarbons in Colombia must prove that they have, among other requirements, adopted transparent practices and will contribute to sustainable development.

VII. Equatorial Guinea

By means of Order no. 2/2017, of January 30, 2017, the Minister of Transports replaced the rules in force since 1997 on registering vessels and granting authorizations to perform maritime activities, including cargo handling. The order requires petroleum platforms and their owners, lessees, or operators to register in the National Register of Vessels and Maritime Companies and pay several fees. Failure to comply with the new rules triggers the assessment of fines of up to fifteen million XAF.
VIII. Ghana

A. Maritime Boundary Ruling Favors Ghana

On September 23, 2017, the International Tribunal for the Law of the Sea (“ITLOS” or “Tribunal”)80 ruled in favor of Ghana in a long-running maritime boundary dispute between Ghana and the Republic of Côte d’Ivoire (“Côte d’Ivoire”).81 Ghana had carried out extensive oil exploration and commercial activities within the disputed area, including three significant oil fields, the Tweneboa, Enyira, and Ntome (“TEN”), that formed the bulk of Ghana’s prospecting and operational assets.82 Ghana claimed that these activities were within its maritime boundary, and after failed attempts to amicably settle the matter, Ghana commenced arbitration proceedings in 2014 under Annex VII to the United Nations Convention on the Law of the Sea (“UNCLOS”).83

In an April 25, 2015 order (“Provisional Order”),84 the Tribunal85 denied Côte d’Ivoire’s request to suspend Ghana’s oil exploration and exploitation operations. It required, however, that Ghana “take all necessary steps” to prevent information resulting from its oil activities from being used to Côte d’Ivoire’s detriment, and it prohibited “new drilling” in the disputed area until the dispute was resolved.86

The parties submitted different methods to delimit the disputed maritime boundary in February 2017 proceedings. At that time, Côte d’Ivoire also


82. See TEN Cluster, SUBSEAIQ (July 2, 2014), http://www.subseaiq.com/data/Project.aspx?project_id=1038. (“The TEN Cluster Development consists of three discoveries in the Deepwater Tano Block, Tweneboa, Enyira, and Ntomme, offshore Ghana in water depths ranging from 1,000 to 2,000 meters. Partners in the block include Tullow Oil plc (49.95 percent working interest and operator), Kosmos Energy (18 percent working interest), Anadarko (18 percent) Sabre Oil & Gas Holdings Ltd (4.05 percent working interest) and the Ghana National Petroleum Corporation (10 percent carried interest).”).


85. Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Case No. 23, Order of Jan. 12, 2015, ITLOS Rep. 122. (The arbitration proceeded with a special chamber of five judges as requested by the parties.).

86. Order of April 25, 2015, supra note 84, ¶ 108(1)(a)-(b).
alleged that Ghana’s activities in the disputed area violated Côte d’Ivoire’s sovereign rights, Article 83 of UNCLOS, and the Provisional Order.87

1. Jurisdiction of the Tribunal

Procedurally, the court asserted its authority under the UNCLOS to delimit the maritime boundary between the parties in the territorial sea, EEZ, and on the continental shelf, both within and beyond 200 nautical miles (200 nm).88

2. Existence of a Tacit Agreement and Estoppel

The court rejected Ghana’s claim of a tacit agreement with Côte d’Ivoire for over fifty-two years and Ghana’s contention that its long exercise of rights through the grant of commercial rights estopped Côte d’Ivoire from objecting to a customary equidistance boundary in their territorial sea, EEZ, and the continental shelf both within and beyond 200 nm.89

3. Delimitation of Maritime Boundary

Having found no tacit agreement by custom or estoppel, the Tribunal proceeded to delimit the maritime boundary between the parties. The Tribunal ruled that absent compelling reasons such as the presence of complex geographical peculiarities (such as small islands), the equidistance/relevant circumstances-methodology, as opposed to an angle bisector methodology that Côte d’Ivoire advanced, was the methodology pertinent to delimit the disputed boundary.90 The established boundary was a strict equidistance based boundary,91 which favored Ghana.

4. Violation of Côte d’Ivoire’s Sovereign Rights

The Tribunal further ruled that Ghana did not violate Côte d’Ivoire’s sovereign rights.92 Whether or not Ghana conducted activities in the disputed area that the Tribunal later delimited as Côte d’Ivoire’s continental shelf, the delimitation itself gave Côte d’Ivoire entitlement priority; consequently, only activities after the delimitation could constitute a violation.93

87. See Judgement of Sept. 23, 2017, supra note 81, ¶ 61 (Tribunal Registry’s translation of Côte d’Ivoire’s submission).
88. Id. ¶¶ 76-90.
89. Id. ¶ 228.
90. Id. ¶¶ 243-46.
91. See id. ¶¶ 289, 323-24.
92. See Judgement of Sept. 23, 2017, supra note 81, ¶ 324.
93. See id. ¶¶ 592, 594.
94. See id.
5. Violation of Convention Art. 83

Regarding Côte d'Ivoire's claim that Ghana violated Article 83 of UNCLOS by not negotiating in good faith to delimit the continental shelf between the two countries, the Tribunal found that Côte d'Ivoire failed to convincingly substantiate this claim.95

6. Violation of Provisional Measures

The Tribunal disagreed with Côte d'Ivoire's claim that certain drilling activities in the disputed area by Ghana violated the Provisional Order96 and required, among other things, that no “new drilling” take place in the disputed area until the dispute was resolved.97 The Tribunal ruled that Ghana's drilling in pre-existing sites in the disputed area did not constitute new drilling.98 The Tribunal also found that Ghana cooperated as the Provisional Order required despite some delay in providing certain information to Côte d'Ivoire.99

Both parties have accepted the ruling.

IX. Grenada

A. Incentives for Hydrocarbon Exploration

In June 2017, the Grenada parliament passed the Hydrocarbon Exploration Incentives Act, 2017 (the “Act”).100 The Act provides incentives for oil and gas exploration—activity aimed at determining the existence, quantity, and quality of oil or natural gas deposits—in Grenada that involve an investment of over eighty million dollars.101 An exemption from customs duties applies to certain specified items, including machinery, used for oil and gas exploration covered by the Act.102 Non-resident individuals benefit from income tax exemptions on income from services provided for oil and gas exploration covered by the Act,103 and no value added tax will be assessed on such services.104 The Act also clarifies that non-resident non-domiciliary employees providing services for oil and gas exploration covered by the Act

95. See id. ¶¶ 604-05. The Tribunal also found that Ghana did not violate Article 83 by jeopardizing or hampering an agreement. See id. ¶¶ 633-34.
96. See Order of April 25, 2015, supra note 84, ¶ 108(1)(a).
98. Id.
99. See id. ¶¶ 653-657.
101. See id.
102. See id. at § 3.
103. See id. at § 4.
104. See id. at § 5.
do not trigger National Insurance Act obligations. To date, Grenada has not produced oil or natural gas; but in October 2017 the government confirmed natural gas discovery in its territorial waters and is waiting for test results to determine the quality of the finding.

B. Electricity Sector Reform and Dispute

The Grenada Parliament enacted the Electricity Supply Act, 2016 ("Electricity Supply Act") and the Public Utilities Regulatory Commission Act, 2016 ("Public Utilities Act"), both of which became effective in August 2016 and significantly reformed the electricity sector.

As background, the Electricity Supply Act, 1994 coupled with a 1994 privatization agreement ("Privatization Agreement") between Grenada Private Power Limited ("GPP"), its United States parent WRB Enterprises Inc. ("WRB"), and the Grenada government, set up the following: (i) GPP with fifty percent ownership of Grenlec, Grenada’s formerly state-owned electricity company, and a right to demand the repurchase of its shares in the event of unilateral action by the Grenada government that adversely impacts Grenlec or GPP’s interest as a shareholder; and (ii) Grenlec with an exclusive license to generate, transmit, distribute, and sell electricity in Grenada until December 1, 2073.

With the aim of liberalizing Grenada’s electricity market in part to take advantage of renewable energy sources, the Electricity Supply Act, among other things, repealed and replaced the Electricity Supply Act, 1994 and issued Grenlec a non-exclusive license to generate, transmit, and distribute electricity. Also in furtherance of sector reform, the Public Utilities Act created the Public Utilities Regulatory Commission, which: (i) sets electricity rates that licensees can charge consumers; (ii) processes and enforces licenses to generate, distribute, or sell electricity; and (iii) manages consumer complaints. This reform markedly departs from the Electricity Supply Act, 1994 regime.

105. See id. at § 6.
111. Electricity Supply Act, supra note 107.
As a result of these reforms, on March 22, 2017, GPP submitted a formal demand to the Grenada government that it repurchase GPP’s shares in Grenlec pursuant to the Privatization Agreement, on the basis that the 2016 legislation adversely impacts Grenlec and GPP’s interest as a shareholder and violates the Agreement.\textsuperscript{113} Further, on May 15, 2017, the GPP and WRB filed a request for arbitration with the International Centre for Settlement of Investment Disputes (“ICSID”),\textsuperscript{114} seeking to enforce GPP’s share repurchase rights pursuant to the Privatization Agreement. The ICSID tribunal was constituted on November 9, 2017.\textsuperscript{115}

X. Mali

In December 2016, the Mali government adopted a law governing public-private partnerships (“PPP”) in a bid to increase private sector participation in the delivery of services.\textsuperscript{116} As the PPP law also governs concession agreements, it seems reasonable to conclude that the new law will govern concession agreements in the energy sector. The PPP law also specifically identifies public companies acting as network operators (including those providing a public service relating to the production, transmission, and distribution of electricity and gas) as contracting entities subject to its provisions.\textsuperscript{117}

PPPs are awarded through calls for tenders.\textsuperscript{118} But the law also provides for exceptional procedures, such as negotiated procedures and spontaneous applications.\textsuperscript{119} The decree implementing the PPP law was enacted in February 2017 and provides details on procurement rules and procedures.\textsuperscript{120}

Also in February 2017, a PPP Unit was established by decree as the national agency in charge of providing effective guidance regarding PPP projects.\textsuperscript{121} The Unit mainly ensures that the government departments or local authorities carrying out PPPs adhere to the applicable regulations, but it also provides risk analysis and a prior assessment of the needs and costs.

\begin{itemize}
  \item \textsuperscript{113} Major Shareholder Submits Proposals Regarding Purchase of Shares in Grenlec, supra note 109.
  \item \textsuperscript{115} Id.
  \item \textsuperscript{117} Id. at art. 2 (providing the definitions of contracting entity and public company acting as network operator).
  \item \textsuperscript{118} Id. at art. 13.
  \item \textsuperscript{119} Id. at art. 14.
  \item \textsuperscript{120} Décret No. 2017-0057/PM-RM [Decree No. 2017-0057/PM-RM dated Feb. 9, 2017], J.O.M. (Feb. 17, 2017) (establishing the conditions for the implementation of the law regarding public-private partnerships in Mali).
\end{itemize}
related to these projects.122 A February 28, 2017 decree appointed the Unit members.123

XI. Peru

A. Mining Formalization Process

Legislative Decree No. 1336, adopted in January 2017, establishes detailed rules for formalizing artisanal and small-scale mining in Peru.124 The formalization process is available to persons who are on the Comprehensive Register of Mining Formalization and who meet certain other requirements that the decree sets forth.125 In addition, the decree creates the Instrument of Environmental Management and Auditing for the Formalization of Small-scale Mining and Artisanal Mining Activities, which contemplates that miners take corrective and preventative measures, and through which miners seeking formalization will adopt corrective and preventative environmental management measures.126

B. Mining Law Reform

Legislative Decree No. 1320, enacted in January 2017, amends Articles 40 and 41 of the General Mining Law.127 The amended Article 40 provides that in the event of non-compliance with minimum annual production requirements, a concessionaire shall pay a penalty based on a percentage of the minimum annual production required per year and per hectare granted.128 The concession expires in the event that a concessionaire does not meet minimum production requirements at the end of the thirtieth year following the year the concession was granted.129 The amended Article 41 provides that the concessionaire shall not pay a penalty if the concessionaire invests in the concession or its economic administrative unit at least ten

122. Law No. 2016-061, supra note 116, arts. 6-9.
124. Presidente de la República del Perú [President of the Republic of Peru], Decreto Legislativo que establece disposiciones para el proceso de formalización minera integral [Legislative Decree establishing provisions for the comprehensive mining formalization process], art. 1, D.O. No. 13927, January 6, 2017 (Peru).
125. See id. at art. 3.
126. See id. at art. 6.
127. Presidente de la República del Perú [President of the Republic of Peru], Decreto Legislativo que modifica la Ley General de Minería suyo texto único ordenado fue aprobado por Decreto Supremo No. 014-92-EM [Legislative Decree that modifies the General Mining Law whose single text was approved by Supreme Decree No. 014-92-EM], unique article, D.O. No. 13926, January 5, 2017 (Peru).
128. See id. at unique article (two percent from 11th year; five percent from expiration of 15th year; ten percent from expiration of twentieth year; all calculated from year following the year in which concession granted).
129. See id.
times the amount of the applicable penalty.\textsuperscript{130} Legislative Decree No. 1320 becomes effective as of January 1, 2019.\textsuperscript{131}

XII. Timor-Leste

A. Downstream

By means of Regulation No. 2/2016, the Autoridade Nacional do Petróleo e Minerais (“ANPM”) approved the Trading Activities Regulations (“Trading Regulations”) that set forth the principles, rules, and conditions to be complied with in the performance of trading activities involving fuels, biofuels, and lubricants in Timor-Leste.\textsuperscript{132} The Trading Regulations apply to all entities that trade or wish to trade fuel, biofuel, and lubricants in the country, irrespective of their nationality and nature.\textsuperscript{133} The Trading Regulations include rules on registration, licensing, organization, and operation of trading activities, fees and duties, inspection, and offences.\textsuperscript{134} Moreover, the Timor-Leste government also approved the exceptional and temporary licensing of the Port facilities to Cement Timor Trading SA and Lai-Ara Unipessoal, Limitada to import and store fuel for a one-year period effective as of April 25, 2017.\textsuperscript{135}

B. Electricity

By means of Ministerial Diploma No. 1/2017, of January 4, 2017, the Minister of Public Works, Transports and Communications approved electricity power connection and participation fees.\textsuperscript{136} This statute includes, among others, provisions on the power rating and low voltage circuit breaker measurement, power change fees (for single-phase or three-phase energy meters), connection fees, and costs of technical equipment and electrical materials.\textsuperscript{137}

\textsuperscript{130} See id.
\textsuperscript{131} See id. at Disposição Complementaria Final Primera [First Final Supplementary Provision].
\textsuperscript{133} Id. at art. 3.
\textsuperscript{134} Id. at arts. 4-19.
\textsuperscript{137} Id. at arts. 2-5.
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XIII. Tunisia

A. Hydrocarbons

Law No. 2017-41 dated May 30, 2017 amends law No. 99-93 dated August 17, 1999. In accordance with Tunisia Constitution Article 13, adopted on January 26, 2014, law No. 2017-41 provides that specific agreements authorising hydrocarbon exploration and exploitation will now be approved by law and no longer by decree. Furthermore, prospection permit holders now have an exclusive right (instead of a preferential right) to have these permits converted into exploration permits if they have met their obligations under the specific agreement.

In June 2017, the energy minister, Héla Cheikhrouhou, announced to the press that Tunisia will apply the Extractive Industries Transparency Initiative (“EITI”) principles, although it will not join the EITI. A working group consisting of government representatives, companies (public and private), and members of civil society was established on June 22, 2017, primarily to prepare a reconciliation report on revenues and payments in line with annual EITI reports.

B. Electricity

All energy produced in Tunisia from renewable sources must be exclusively sold to and transported by the Société Tunisienne de l'électricité et du gaz (“STEG”), which holds a monopoly on electricity production and transmission. Pursuant to law No. 2015-12 on renewable energies and

141. Law No. 2017-41, supra note 139, art.1 (amending article 19.5 of law No. 99-93).
142. Id.

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its implementing decree No. 2016-1123,\(^\text{147}\) templates for the agreements/specifications to be used with STEG for renewable projects (power purchase agreements,\(^\text{148}\) transmission agreements,\(^\text{149}\) and specifications relating to technical requirements for grid connection\(^\text{150}\)) were approved by ministerial orders on February 9, 2017.

The energy ministry launched a call for tenders on solar and wind projects on May 11, 2017.\(^\text{151}\) Each project, which cannot exceed an installed power capacity of 10MW (solar) and 30MW (wind), will be developed on the BOO model (build, own, and operate).\(^\text{152}\) The first application deadline for both solar and wind projects is November 15, 2017.\(^\text{153}\) For wind projects, a second deadline is scheduled on August 15, 2018.\(^\text{154}\)


\(^{148}\) Arrêté de la ministre de l'énergie, des mines et des énergies renouvelables du 9 février 2017 [Order of the Minister of Energy, Mines, and Renewable Energies of February 9, 2017], No. 13 JORT 700 (Tunisia), http://www.cnudst.rnrt.tn/jortsrc/2017/2017f/joO132017.pdf (approving the template for contracts to sell the electricity generated from renewable energies to STEG, subject to authorization) [hereinafter Order of Feb. 9].

\(^{149}\) Id. (approving the template for contracts on the transmission of electricity generated from renewable sources and purchase of the surplus by STEG).

\(^{150}\) Arrêté de la ministre de l'énergie, des mines et des énergies renouvelables du 9 février 2017 [Order of the Minister of Energy, Mines, and Renewable Energies of February 9, 2017], No. 13 JORT 694 (Tunisia), (approving the specifications book regarding the technical requirements for connecting and evacuating energy produced from renewable energy facilities, one for the low voltage grid and the other for the medium and high voltage grid).


\(^{152}\) Id.

\(^{153}\) Id.