

非洲矿业投资基本法律问题

The Basic Legal Issues in Respect of Mining Investments into
African Countries

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法律问题主要方面

Main Aspects of Legal Issues

➤ 东道国市场准入与投资监管政策
Market Entry and Investment Supervision of the Host Country

➤ 勘探开采作业和矿山建设运营过程中的相关法律问题
Issues in respect of Exploration Mining, Construction and Operations

➤ 劳工政策、社区政策及企业社会责任
Employment, Community and Corporate Social Responsibility

➤ 投资争议解决
Investment Dispute Resolutions

1. 基本法律制度 Fundamental Legal Systems

- 政治制度 The Political Systems

- 法律体系 The Legal System

- 订立或参加的国际公约及与中国的双边投资保护协定 Int'l Conventions and BITs with China

2. 外资准入与监管 Market Entry and Supervision of Foreign Investments

- 外资准入批准要求 The Requirements of Approval of Foreign Investments

- 重要的外资政策: Foreign Investment Policies

- 外资持股比例限制 Limitation of Equity Ratio of Foreign Investors

- 当地人持股最低比例要求: Requirement of Minimum Equity Ratio of Indigenous People

3. 外汇、进出口法律与政策 Foreign Currency and Imp & Exp Law and Policy

4. 政府干预 Interference by Government

5. 干股 Free Carry

6. 国家安全审查 State Safety Review

7. 反垄断审查 Antimonopoly Review

8. 国际制裁 International Organizations

订立或参加的国际公约及与中国的双边投资保护协定 Int'l Conventions and BITs with China

➤ 津巴布韦: Zimbabwe

- 1995年3月加入世贸组织WTO; Entered into the WTO in March 1995
- 洛美第四次会议协定 (Lome4 Convention) ;
- 东南部非洲共同市场(The Common Market of Southern and Eastern Africa, CMOSEA);
- 南部非洲共同体 (Southern African Development Community, SADC) ;
- 优惠贸易协定 (Preferential Trade Agreements) : 南非South Africa、马拉维Malawi、莫桑比克Mozambique、博兹瓦纳Botswana、纳米比亚Namibia;
- 最惠国协定 (Most Favored Nation Agreements, MFNA) : 坦桑尼亚Tanzania, 刚果金DRC, 安哥拉Angola, 斯威士兰Swaziland(SZ), 尼日利亚Nigeria, 莱索托Lesotho, 乌干达Uganda

■ 与中国签署的经贸协定Economy and trade agreements with China

- 1996年《中华人民共和国政府与津巴布韦共和国政府关于鼓励和相互保护双边投资协定》 Agreement between the Government of the People's Republic of China and the Republic of Zimbabwe on the Reciprocal Promotion and Protection of Investments
- 2015年《中华人民共和国政府与津巴布韦共和国政府关于对所得避免双重征税和防止偷漏税的协定》 Agreement between the Government of the People's Republic of China and the Republic of Zimbabwe on the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income

订立或参加的国际公约及与中国的双边投资保护协定 Int'l Conventions and BITs with China

➤ 南非 South Africa

- 1997年《中华人民共和国政府与南非共和国政府关于相互鼓励和保护投资协定》
Agreement between the Government of the People's Republic of China and the Republic of South Africa on the Reciprocal Promotion and Protection of Investments
- 2000年《中华人民共和国政府与南非共和国政府关于对所得避免双重征税和防止偷漏税的协定》
Agreement between the Government of the People's Republic of China and the Republic of South Africa on the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income
- 2004年承认中国市场经济地位：Recognized China's market economy status in 2004

➤ 刚果金 DRC

- 1997年加入WTO/ Entered into the WTO in 1997
- 中国非洲经济共同体 Economic Community of Central African State, ECCAS
- 南部非洲共同体 (Southern African Development Community, SADC)
- 东部和南部非洲共同市场 Community of East and Southern African States, COMESAS
- 2011年与中国签署《关于促进和保护投资协定》（刚方至今未履行批准手续，中方于2013年9月批准）
Agreement on the Reciprocal Promotion and Protection of Investments (signed in 2011 but not ratified yet)

➤ 埃塞俄比亚 Ethiopia

- 1995年签署《解决国家和他国国民投资争端公约》（华盛顿公约），但至今未履行国内批准手续；未加入WTO。Signed ICSID Convention in 1995 but not ratified
- 1998年《中国和埃塞俄比亚相互促进和保护投资协定》 Signed Bit with China 1998

与中国签订BIT的非洲国家

African States That Have Signed BIT Treaties with China

China (128)

Party	Signature Date	Entry into Force Date	Reference to ICSID
Albania	Feb 13, 1993	Sep 01, 1995	✓
<u>Algeria</u>	Oct 20, 1996	Jan 28, 2003	✓
Argentina	Nov 05, 1992	Aug 01, 1994	✓
Armenia	Jul 04, 1992	Mar 18, 1995	
Australia	Jul 11, 1988	Jul 11, 1988	✓
Austria	Sep 12, 1985	Oct 11, 1986	✓
Azerbaijan	Mar 08, 1994	Apr 01, 1995	✓
Bahamas, The	Sep 04, 2009		
Bahrain	Jun 17, 1999	Apr 27, 2000	✓
Bangladesh	Sep 12, 1996	Mar 25, 1997	✓
Barbados	Jul 20, 1998	Oct 01, 1999	✓
Belarus	Jan 11, 1993	Jan 14, 1995	
Belgium-Luxembourg	Jun 04, 1984	Oct 05, 1986	✓
Belgium-Luxembourg	Jun 06, 2005	Dec 01, 2009	✓
Belize	Jan 16, 1999		
Bolivia	May 08, 1992	Sep 01, 1996	✓
<u>Botswana</u>	Jun 12, 2000		✓
Bulgaria	Jun 27, 1989	Aug 21, 1994	
Bulgaria	Jun 26, 2007	Nov 10, 2007	
Cabo Verde	Apr 21, 1998	Oct 01, 2001	✓
Cambodia	Jul 19, 1996	Feb 01, 2000	✓
<u>Cameroon</u>	May 10, 1997		✓
Chile	Mar 23, 1994	Oct 14, 1995	✓
Colombia	Nov 22, 2008	Jul 03, 2012	✓
Costa Rica	Mar 25, 1999	Oct 08, 2004	✓
Croatia	Jun 07, 1993	Jul 01, 1994	✓
Cuba	Apr 20, 2007	Dec 01, 2008	
Cuba	Apr 24, 1995	Aug 01, 1996	
Cyprus	Jan 15, 2001	Apr 29, 2002	✓

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African States That Have Signed BIT Treaties with China

Czech Republic	Dec 04, 1991	Dec 01, 1992	
Czech Republic	Dec 08, 2005	Jan 09, 2006	✓
Denmark	Apr 29, 1985	Apr 29, 1985	✓
Ecuador	Mar 21, 1994	Jul 01, 1997	✓
Egypt, Arab Republic of	Apr 21, 1994	Apr 01, 1996	✓
Equatorial Guinea	Oct 20, 2005	Nov 15, 2006	✓
Estonia	Sep 02, 1993	Jun 01, 1994	✓
<u>Ethiopia</u>	May 11, 1998	May 01, 2001	✓
Finland	Nov 15, 2004	Nov 15, 2006	✓
Finland	Sep 04, 1984	Jan 26, 1986	✓
France	Nov 26, 2007	Aug 20, 2010	
France	May 30, 1984	Mar 19, 1985	
<u>Gabon</u>	May 09, 1997	Feb 16, 2009	✓
Georgia	Jun 03, 1993	Mar 01, 1995	✓
Germany	Oct 07, 1983	Mar 18, 1985	✓
Germany	Dec 01, 2003	Nov 11, 2005	✓
<u>Ghana</u>	Oct 12, 1989	Nov 22, 1990	✓
Greece	Jun 25, 1992	Dec 21, 1993	✓
Guyana	Mar 27, 2003	Oct 26, 2004	✓
Honduras	Jun 26, 1996		
Hungary	May 29, 1991	Apr 01, 1993	✓
Iceland	Mar 31, 1994	Mar 01, 1997	✓
India	Nov 21, 2006	Aug 01, 2007	✓
Indonesia	Nov 18, 1994	Apr 01, 1995	✓
Iran, Islamic Republic of	Jun 22, 2000	Jul 01, 2005	✓
Israel	Apr 10, 1995	Jan 13, 2009	✓
Italy	Jan 28, 1985	Aug 28, 1987	✓
Jamaica	Oct 26, 1994	Apr 01, 1996	✓
Japan	Aug 27, 1988	May 14, 1989	✓
Jordan	Nov 15, 2001		✓

与中国签订BIT的非洲国家

African States That Have Signed BIT Treaties with China

Korea, Republic of	Sep 30, 1992	Dec 04, 1992	✓
Korea, Republic of	Sep 07, 2007	Dec 01, 2007	✓
Kuwait	Nov 23, 1985	Dec 24, 1986	✓
Kyrgyz Republic	May 14, 1992	Sep 08, 1995	
Lao People's Democratic Republic	Jan 31, 1993	Jun 01, 1993	✓
Latvia	Apr 15, 2004	Feb 01, 2006	
Lebanon	Jun 13, 1996	Jul 10, 1997	
Lithuania	Nov 08, 1993	Jun 01, 1994	✓
Malaysia	Nov 21, 1988	Mar 31, 1990	✓
<u>Mali</u>	Feb 12, 2009	Jul 16, 2009	✓
Malta	Feb 22, 2009	Apr 01, 2009	✓
<u>Mauritius</u>	May 04, 1996	Jun 08, 1997	✓
Mexico	Jul 11, 2008	Jun 06, 2009	✓
Moldova	Nov 06, 1992	Mar 01, 1995	
Mongolia	Aug 26, 1991	Nov 01, 1993	✓
<u>Morocco</u>	Mar 27, 1995	Nov 27, 1999	
Myanmar	Dec 12, 2001	May 21, 2002	✓
Netherlands	Nov 26, 2001	Aug 01, 2004	✓
Netherlands	Jun 17, 1985	Feb 01, 1987	✓
<u>New Zealand</u>	Nov 22, 1988	Mar 25, 1989	✓
<u>Nigeria</u>	May 12, 1997		
<u>Nigeria</u>	Aug 17, 2001	Feb 18, 2010	✓
Norway	Nov 21, 1984	Jul 10, 1985	✓
Oman	Mar 18, 1995	Aug 01, 1995	✓
Pakistan	Feb 12, 1989	Sep 30, 1990	✓
Papua New Guinea	Apr 12, 1991	Feb 12, 1993	✓
Peru	Jun 09, 1994	Feb 01, 1995	✓
Philippines	Jul 20, 1992	Sep 08, 1995	
Poland	Jun 07, 1988	Jan 08, 1989	
Portugal	Dec 09, 2005	Jul 26, 2008	✓

与中国签订BIT的非洲国家

African States That Have Signed BIT Treaties with China

Qatar	Apr 09, 1999	Apr 01, 2000	✓
Romania	Feb 10, 1983	Feb 12, 1984	
Romania	Jul 12, 1994	Sep 01, 1995	✓
Romania	Apr 16, 2007	Sep 01, 2008	✓
Russian Federation	Jul 21, 1990		
Russian Federation	Nov 09, 2006	May 01, 2009	✓
Saudi Arabia	Feb 29, 1996	May 01, 1997	✓
Serbia	Dec 18, 1995	Sep 12, 1996	✓
Singapore	Nov 21, 1985	Feb 07, 1986	✓
Slovak Republic	Dec 04, 1991	Dec 01, 1992	
Slovak Republic	Dec 07, 2005	May 25, 2007	
Slovenia	Sep 13, 1993	Jan 01, 1995	✓
South Africa	Feb 30, 1997	Apr 01, 1998	✓
Spain	Nov 14, 2005	Jul 01, 2008	✓
Spain	Feb 06, 1992	May 01, 1993	✓
Sri Lanka	Mar 13, 1986	Mar 25, 1987	✓
Sweden	Sep 27, 2004	Sep 27, 2004	✓
Sweden	Mar 29, 1982	Mar 29, 1982	
Switzerland	Nov 12, 1986	Mar 18, 1987	
Switzerland	Jan 27, 2009	Apr 13, 2010	✓
Syrian Arab Republic	Dec 09, 1996	Nov 01, 2001	✓
Tajikistan	Mar 09, 1993	Jan 20, 1994	
Thailand	Mar 12, 1985	Dec 13, 1985	
Tunisia	Jun 21, 2004	Jul 01, 2006	✓
Turkey	Nov 13, 1990	Aug 20, 1994	✓
Turkmenistan	Nov 21, 1992	Jun 06, 1995	
Ukraine	Oct 31, 1992	May 29, 1993	
United Arab Emirates	Jul 01, 1993	Sep 28, 1994	✓
United Kingdom of Great Britain and Northern Ireland	May 15, 1986	May 15, 1986	
Uruguay	Dec 02, 1993	Dec 01, 1997	✓

与中国签订BIT的非洲国家

African States That Have Signed BIT Treaties with China

Uzbekistan	Mar 13, 1992	Apr 12, 1994	
Uzbekistan	Apr 19, 2011	Sep 01, 2011	✓
Vietnam	Dec 02, 1992	Sep 01, 1993	✓
Yemen, Republic of	Feb 16, 1998	Apr 10, 2002	✓
Yugoslavia, Federal Republic of	Dec 18, 1995	Sep 12, 1996	✓
<u>Zimbabwe</u>	Mar 23, 1996	Mar 01, 1998	✓
Colombia (17)			
Comoros (4)			
Congo, Democratic Republic of (9)			
Congo, Republic of (6)			
Costa Rica (20)			
Croatia (66)			
Cuba (51)			
Cyprus (25)			
Czech Republic (113)			
Côte d'Ivoire (10)			
Denmark (53)			
Djibouti (5)			
Dominica (2)			
Dominican Republic (15)			
Ecuador (27)			
Egypt, Arab Republic of (109)			
El Salvador (20)			
Equatorial Guinea (6)			
Eritrea (3)			
Estonia (32)			
Ethiopia (29)			

外资政策

Foreign Investment Policies

■ 津巴布韦 Zimbabwe

- ◆ 由津巴布韦投资局Zimbabwe Investment Agency主管
- ◆ 鼓励的矿产能源行业：黄金、铂族金属、煤炭、钻石、铬铁、镍、铜、铁、花岗岩、水电站火电站建设
/Key encouraged industries for mining and energy: gold, platinum group metals, coal, diamonds, chromite, copper, iron, nickel, granite, constructions of hydropower and thermal power stations

■ 南非 South Africa

- ◆ 由工业贸易部Department of Trade and Industry, DTI主管
- ◆ 鼓励的矿产能源行业：采矿和选矿、可再生能源和能源、石油和天然气 /Key encouraged industries for mining and energy industry: mining and mineral processing, renewable energy and energy, oil and gas.

■ 刚果金 DRC

- ◆ 由国家投资促进署（Agence Nationale pour la Promotion des Investissements, ANAPI）负责投资申请受理并决定许可，制定和调整投资政策
- ◆ 鼓励的矿产能源行业：资源开采，提高资源的附加值和扩大生产规模 /Key encouraged industries for mining and energy industry: resource extraction, increase the added value of resources and expand the scale of production.

当地人持股最低比例要求

Requirement of Minimum Equity by Indigenous People

◆ 津巴布韦《本土化和经济授权法案》 Zimbabwe: Indigenization and Economic Empower Act

- 2008年3月津巴布韦颁布《本土化和经济授权法案》(Indigenization and Economic Empower Act, 要求所有在津企业由津本土人控股51%以上(部分与政府合作项目可达到50%, 但必须保留75%的价值留在当地, 通过工资、税收、社区持有计划、采购及联动计划实现), 外国人和白人须将51%股份转让给黑人或当地政府, 新设公司须预留51%股份给本土人。
- 2011年3月出台本土化细则, 2015年12月公布实施框架、程序和指导方针, 要求外资股份不得超过49%, 10%股份必须给当地社区(通过资源价值折股), 员工持股5-28%(其中本地人必须占到75%), 高管持股不超过5%, 其余由政府指定机构持有。
- **2016年3月宣布钻石行业全部实行国有化, 要求所有企业离开钻石矿场。**

◆ 南非《全面提高黑人经济实力法案》 /South Africa: Broad Based Black Economic Empower Act

- 2003年11月《全面提高黑人经济实力法案》(Broad Based Black Economic Empower Act), 黑人在矿业公司的股比至少要占26%; 2002《南非矿业全面提高弱势群体经济地位章程》, 规定弱势群体在未来十年内在石油和矿业行业中的股权比例要达到26%, 在管理层中的比例要达到40%。到2010年黑人要拥有金融资产至少25%。造成贫富分化加重, 少部分黑人精英收益。

反垄断审查

Antimonopoly Review

美国反托拉斯法体系 The main statutes of the US antitrust law

◇ 谢尔曼法:限制卡特尔形成和防止共谋

The Sherman Act 1890: restricts the formation of cartels and prohibit other collusive practices regarded as being in restraint of trade

◇ 克莱顿法:限制并购减少竞争

The Clayton Act 1914: restricts the mergers and acquisitions of organizations that could substantially lessen competition

◇ 联邦贸易委员会法:防止垄断和滥用垄断地位

The Federal Trade Commission Act 1914: prohibits the creation of a monopoly and the abuse of monopoly power

非洲国家的反垄断审查

Antimonopoly Review by African Countries

◆ 津巴布韦 Zimbabwe

《竞争法》（1996颁布，2011修订）（Competition Act），鼓励竞争、防止垄断和促进公平贸易，规定：由工商部长规定并购限额，并购涉案金额超过限额的必须向竞争和关税委员会（Competition and Tariff Commission）提交申请，经审查通过后才能实施。

◆ 南非 South Africa

- 1998年《竞争法》，成立了南非竞争委员会，规定严禁反竞争行为，滥用市场支配地位行为，以及固定价格、掠夺性定价和共谋性竞标等限制竞争行为，同时也规定了收购兼并的审批程序，对影响南非的一切行为均具有约束力。
- 2000年《维护和促进竞争法》（第35号法令），维护和促进市场公平竞争，防止和控制商业中的限制竞争行为，收购和垄断行为。

◆ 刚果金 DRC

- 没有反垄断法，执行2002年《投资法》（注：矿业投资适用《矿业法》）
- 但需征得刚果金国企部（Ministere du Portefeuille）同意

法律问题主要方面

Main Aspects of Legal Issues

➤ 东道国市场准入与投资监管政策
Market Entry and Investment Supervision of the Host Country

➤ 勘探开采作业和矿山建设运营过程中的相关法律问题
Issues in respect of Exploration Mining, Construction and Operations

➤ 劳工政策、社区政策及企业社会责任
Employment, Community and Corporate Social Responsibility

➤ 投资争议解决
Investment Dispute Resolutions

勘探开采作业和矿山建设运营过程中的相关法律问题

Issues in respect of Exploration, Mining, Construction and Operations

1. 矿业权法律制度The Legal System of Mineral Rights
2. 地表权Surface Rights
 - 地表权与矿业权的关系 Surface Rights vs Mineral Rights
3. 勘探作业相关法律问题Legal Issues in Respect of Exploration Services
 - 勘探作业相关法律问题—工作许可Legal Issues in Respect of Exploration Services-Work Permits
4. 勘探技术标准相关法律问题Legal Issues in Respect of Exploration Technical Standards
5. 工程承包Engineering Contracting
6. 项目融资Project Financing
7. 矿产品销售政策Mineral Products Sales Contract Policy
8. 环境保护 Environmental Protection
 - 自然保护区勘探开发限制政策 Limitations on Exploration and Mining Activities in Reserved Areas
 - 矿山关闭复垦法律 Rehabilitation and Reclamation
9. 安全生产Safety of Production

地表权与矿产权关系

Surface Rights vs Mineral Rights

➤ 津巴布韦Zimbabwe

- 国家所有80%，私人10%，社区10%
- 土改地不得买卖；冠名地entitled land可以自由流通
- 外资企业和外国人可以通过合法方式购买商用地和住宅地等非农耕地所有权和使用权。

➤ 南非South Africa

- 外国人不可以拥有南非土地，只可以租赁
- 类型：私人土地、国有土地、省市土地、半国有土地

地表权与矿产权关系

Surface Rights vs Mineral Rights

➤ 埃塞俄比亚 Ethiopia

- 土地为公有，不允许出售和抵押，但可以租赁取得和转租 /land is public and is not allowed to be sold or mortgaged, but can be leased to and sublet.
- 主要分为为农村土地和城市土地 /rural land and urban land.
- 地区政府根据联邦法律和地方法律对投资者用地申请进行审批，投资委员会（EIC）跟踪和协调 /The regional government approves investors' applications for the land use according federal and local laws, and the EIC tracks and coordinates.

➤ 刚果金 DRC

- 土地为国家所有，但土地可以分为公有财产和私有财产 Land is owned by the state, but the land can be divided into public property and private property.
- 外资企业通过转让或租赁取得土地使用权 Foreign-funded enterprises obtain land-use rights through transfer or lease.
- 土地转让大多为时限性转让，最长期限为25年，到期可申请延续，但累计最长不超过99年 Land transfer is time-limited, the longest period: 25 years, with cumulative 99 years

环境保护

Environmental Protection

■ 环境影响评价 **Environmental Impact Assessment(EIA)**

- 南非环境保护法体系：《国家环境管理法》（1998）（NEMA）、《空气质量法》、《国家遗产法》、《海洋生态资源法》、《国家森林法》、《国家草原及森林防火法》、《国家公园法》（修正案）、《湿地保护法案》、《濒危物种保护法案》、《国家统一废物管理战略》、《南非共和国水法》等。/Environmental Protection Law System of South African : National Environmental Management Act (NEMA) (1998), Air Quality Law, National Heritage Act, "Marine Ecological Resources Law, National Forest Law, National Grassland and Forest Fire Protection Law, National Park Law (Amendment), Wetland Protection Act, Endangered Species Protection Act, National Unification Waste Management Strategy ,Water Law of the Republic of South Africa, etc.
- 根据2010年《环境影响评估规章》，环境影响评估分为基本评估适用简易程序）和环境影响评价报告（具有潜在重大影响的清单项目），只有取得环境保护部门的环保授权方可实施。/According to the 2010 Environmental Impact Assessment, environmental impact assessment is divided into basic assessment(BA) (applicable summary proceedings) and environmental impact assessment report (list item with potentially significant impact), implementation with the authorization of environmental protection authority.

■ 环境管理方案及其执行 **Environmental Management Plan and Implementation**

- 莫桑比克：公司应制定环境管理计划、环境管理程序报主管机关批准，以获得环境许可；5年内更新；监督程序；每年报告。/Mozambique: The company should develop an environmental management plan and environmental management procedures to obtain environmental permits of the competent authorities ; update per 5-year; supervision procedures; annual report.

自然保护区勘探开发限制政策

Exploration and Mining Activities in Natural Reserve Areas

■ 范围Scope

国家公园、湿地公园、自然保护区、森林公园、水源地、濒临灭绝物种保护区、海洋保护区

National Park, Wetland Park, National Reserve Area, Forest Park, Water Conservation Area, Endangered Species Protection Area, Marine Conservation Area

■ 规则Rules

➤ 中国问题 China issues

法律问题主要方面

Main Aspects of Legal Issues

➤ 东道国市场准入与投资监管政策
Market Entry and Investment Supervision of the Host Country

➤ 勘探开采作业和矿山建设运营过程中的相关法律问题
Issues in respect of Exploration Mining, Construction and Operations

➤ 劳工政策、社区政策及企业社会责任
Employment, Community and Corporate Social Responsibility

➤ 投资争议解决
Investment Dispute Resolutions

劳工政策、社区政策及企业社会责任

Employment, Community and Corporate Social Responsibility

- 劳工制度Employment Regulations
- 社区发展Local Community Development
- 反商业贿赂Anti-Bribery
- 企业社会责任Corporate Social Responsibility

劳工制度 Employment Regulations

➤ 就业许可制度 Work Permits Granting System

根据南非《移民法》及《外国人管理法》，外国人只有持有内政部签发的《工作许可证》并且在工作许可证规定的单位才是合法的。

➤ 数量限制 Limitation of Quantity

南非：外国人工作许可配额

刚果金：凡是本国人能完成的工作不允许引进外劳。以电信合资企业为例，低级别员工中外国人为0，基层干部和辅助领导中外国人为2%，领导干部中外国人为2%。

劳工制度 Employment Regulations

➤ 劳动保护制度 Labor Protection

核心问题

- ✓ 工作时间 Work time
 - 南非：雇佣每周工作不超过45小时，每天工作不超过9小时，年收入超过16500美元以上者不限。
- ✓ 最低工资待遇 minimum salaries
 - 南非：按行业划分，制定最低工资标准，普通工作第一年平均最低工资135美元。
- ✓ 休假 vacations
 - 南非：每年12天公共假期，工作按两倍计算；工作满12个月享有21天带薪休假；每满12个月有3天家庭责任假期；每周工作五天每满3年享有30天的带薪病假；雇员享有4个月产假。
- ✓ 解雇问题 dismissal issues

劳工制度Employment Regulations

➤ 工会Trade Union

□ 津巴布韦：工会Trade Union、工人委员会Workers/ Committee

➤ 工资集体协商制度Collective Salary Negotiations System

津巴布韦：

- 一揽子劳资合同：由工会与资方公开谈判，谈成后由劳工部登记公开发布成为法规，内容涉及：利益、工资级别、工资扣除、工作时间、安全加班休假、基本工资最低工资和工资增长标准、就业情况记录；
- 工人委员会：负责影响工人权利和利益的事项与公司进行谈判，不代表管理层雇员。

➤ 罢工问题Issues of Strikes

津巴布韦

- 1985年《劳工法》
- 工会有权组织罢工、停工、抵制、静坐
- 但从事公共服务行业通讯、电力、铁路、卫生、消防、加油站、交通、供水等不得罢工；
- 提前14天通知资方并明确罢工场所

社区发展

Local Community Development

➤ 社区发展协议及其执行

Local Community Development Agreement and Implementation

■ 莫桑比克：《采矿协议》

- ◆ 社区发展内容：公司应当支持收益社区的发展，为这些社区的居民促进社区的总体幸福感和生活质量，在开展矿产资源勘探业务时，公司应当考虑到人的尊严、正义和平等，性别平等，理解和尊重的文化、权利、当地的习俗和价值观的原则，公司也应当按照法律和框架计划，以不断改善社区的社会经济发展计划和生活条件来进行活动。/The content of community development: the company should support the development of the beneficiary community, improve the community's overall well-being and quality of life; the company should take human dignity, justice and equality, gender equality into account in the development of mineral resources exploration business, understand and respect the principles of culture, rights, local customs and values; the company should also follow the legal and framework plans to continuously improve the community's socio-economic development.
- ◆ 社区发展协议：公司应当与地方政府主管机关签订一份理解备忘录，获得采矿特许权后，投入XX万美元用于开发协议下的社会项目。/Agreement on Local Community Development: sign a MOU with local government and engage to make agreed investment for local community development
- ◆ 社区协议发展报告：公司每年应当在每个日历年结束后60日内准备向国家矿业局递交一份社区发展协议报告，最少应包括以下内容：（1）对协议下的目标是否达到的定性评估；（2）如未能达到目标，如何在将来达到并完成目标；（3）该公司为社区发展协议所花费任何金额的详细清单；（4）与社区的任何特殊或不断发生的问题；（5）关于矿区闭坑计划的进展。 Local Community Development Report: the company shall report to the Bureau of Mines on local community development every year within 60 days of each calendar year.

➤ 问题Issues

反商业贿赂

Anti-Bribery

■ 津巴布韦 Zimbabwe

- ◆ 防止腐败法The Prevention of Corruption Act 1983
- ◆ 公职人员法Public Service Act 2006
- ◆ 监察员修正案The Ombudsperson Amendment Act 1997
- ◆ 反腐败委员会法The Anticorruption Commission Bill 2004
- ◆ 银行使用促进和抑制洗钱法Bank Use of Promotion and Suppression of Money Laundering Act, 2004
- ◆ 刑事诉讼和证据法修正案Criminal Procedure and Evidence Amendment Act, 2004
- ◆ 刑法Criminal Law (Codification and Reform) Act, 2006

■ 南非 South Africa

- ◆ 南非公司和知识产权委员会（CIPC）阻止腐败企业参与政府采购

企业社会责任

Corporate Social Responsibility

- ✓ 资源节约Resource Intensive
- ✓ 环境友好Environment Friendly
- ✓ 社区发展： Local Community Developed

法律问题主要方面

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➤ 东道国市场准入与投资监管政策
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投资争议解决

Investment Dispute Resolutions

- 东道国诉讼Litigation in Host Country
 - ◇ 诉讼管辖的确定Determination of Jurisdiction
 - ◇ 法律适用Application of Law
- 商事仲裁Commercial Arbitration
 - ◇ 商事仲裁的机构选择Choice of Commercial Arbitration Institution
 - ◇ 法律适用Application of Law
- **ICSID条约仲裁ICSID Arbitration**
- ICSID裁决的承认与执行Recognition and Enforcement of ICSID Arbitration Awards
 - ◇ 商事仲裁裁决的承认和执行（vs 《纽约公约》）**Recognition and Enforcement of Commercial Arbitration Awards**
 - ◇ 国家主权豁免问题The Issue of State Immunity

条约仲裁 ICSID Arbitration

《华盛顿公约》

Washington Convention /ICSID Convention

Convention on the Settlement of Investment Disputes between States and
Nationals of Other States

153/161

Belize, Dominican Republic, Ethiopia, Guinea-Bissau, Kyrgyz Republic,
Namibia, Russian Federation, Thailand

国际投资争端解决中心ICSID

International Centre for Settlement of Investment Disputes(ICSID)

News

August 10, 2017
ICSID Fall Internships 2017

August 01, 2017
New issue of the ICSID Caseload – Statistics published (Issue 2017-2)

July 14, 2017
ICSID hosts half-day event, "Investor-State Mediation: Perspectives from States, Mediators & Practitioners" on June 15

July 12, 2017
Investor-State Mediator Training

July 10, 2017
Mobil Investments Canada Inc. v. Canada (ICSID Case No. ARB/15/6) – Public Hearing

July 07, 2017
New issue of the ICSID Caseload - Statistics published (Special Focus – Africa)

June 30, 2017
Revised Schedule of Fees Effective July 1, 2017

[More](#)

Convention and Rules



Featured



[More](#)

Upcoming events

September 18, 2017 (Paris)
Proportionality in Investor-State Arbitration

October 23, 2017 - October 27, 2017 (Beijing)
International Dispute Resolution Masterclass

October 24, 2017 (Prague)
7th Investment Treaty Arbitration Conference

October 25, 2017 - November 02, 2017 (Singapore)
Singapore International Arbitration Academy 2017

December 01, 2017 (New York)
34th Annual Joint Colloquium on International Arbitration (save the date)

Recently Registered

August 24, 2017
Future Pipe International B.V. v. Arab Republic of Egypt (ICSID Case No. ARB/17/31)

August 22, 2017
Lotus Holding Anonim Şirketi v. Turkmenistan (ICSID Case No. ARB/17/30)

August 18, 2017
Gardabani Holdings B.V. and Silk Road Holdings B.V. v. Georgia (ICSID Case No. ARB/17/29)

August 16, 2017
Blue Bank International & Trust (Barbados) Ltd. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/20)

August 16, 2017

Recently Constituted

August 16, 2017
Itisaluna Iraq LLC and others v. Republic of Iraq (ICSID Case No. ARB/17/10)

August 11, 2017
Rizzani de Eccher S.p.A., Obrascón Huarte Lain S.A. and Trevi S.p.A. v. State of Kuwait (ICSID Case No. ARB/17/8)

August 7, 2017
Bank of Cyprus Public Company Limited v. Hellenic Republic (ICSID Case No. ARB/17/4)

August 4, 2017
VC Holding II S.a.r.l. and others v. Italian Republic (ICSID Case No. ARB/16/39)

August 2, 2017

Recently Published

August 24, 2017
Perenco Ecuador Limited v. Republic of Ecuador (ICSID Case No. ARB/08/6) Decision on Claimant's Application for Dismissal of Respondent's Counter-claims (August 18, 2017)

August 22, 2017
Lone Pine Resources Inc. v. Canada (ICSID Case No. UNCT/15/2) Application for leave to file an amicus curiae submission submitted by Mr. Muhammad Muzahidul Islam (August 4, 2017)

August 22, 2017
Lone Pine Resources Inc. v. Canada (ICSID Case No. UNCT/15/2) Application for leave to file an amicus curiae submission submitted by the Centre québécois du droit de l'environnement (CQDE) (August 16, 2017)

ICSID仲裁裁决的执行问题

Enforcement of ICSID Arbitration Awards

裁决视同国内法院判决予以承认和执行（《公约》第54条）

Article 54(1): Each Contracting State shall recognize an award rendered pursuant to ...as if it were a final judgment of a court in that State.

国家主权豁免问题

The Issue of State Immunity

（《公约》第55条） Article 55: Nothing in this Article shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

结束语 Close Remarks

- ✓ 世界本无不同，就看你怎么看One World, Uniform Law
- ✓ 让灵魂跟上我们的脚步Let Our Thoughts Keep up with Our Steps
- ✓ 入乡随俗Do in Rome as Romans Do
- ✓ 细节决定成败The Devil is in the Details

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