

REPOBLIKAN'I MADAGASIKARA
Tanindrazana-Fahafahana-Fandrosoana

**THE MINISTRY OF ENERGY
AND MINES**

DECREE N° 2003- 784

Setting the conditions of enforcement of the Law n° 2001-031 on
October 8, 2002 establishing the Special Regime for Large
Investments in the Malagasy Mining Sector

THE PRIME MINISTER, HEAD OF GOVERNMENT,

Considering the Constitution;

Considering the Law n° 66-003 on July 2, 1966 concerning the general theory of obligations;

Considering the Law n° 67-028 on December 18, 1967 concerning financial relations of the Malagasy Republic with foreign countries, amended by the Order n° 73-053 on September 10, 1973 and the Order n° 93-010 on March 30, 1993;

Considering the Law n° 90-033 on December 21, 1990 concerning the Charter of the Malagasy environment and its amendments;

Considering the Law n° 91-014 on August 12, 1991 concerning the repatriation of assets that are held abroad, amended by the law n° 94-020 on December, 1994;

Considering the Law n° 94-029 on August 25, 1995 relating to the Labour Regulations;

Considering the Law n° 98-019 on December, 1998 on the arbitration;

Considering the General Code of taxes applicable in 1999 and was amended by the Law n° 99-009 on April 21, 1999 relating to the first correcting Law of Finances;

Considering the Law n° 99-013 on August 2, 1999 relating to the Insurances Code applicable in Madagascar;

Considering the Law n° 99-022 on August 19, 1999 relating to the mining Code;

Considering the Law n° 2001-031 on October 8, 2002 establishing the Special Regime for Large Investments in the Malagasy Mining Sector;

Considering the Order n° 60-084 on August 18, 1960 relating to the overhauling and codification of the legislation and customs regulations;

Considering the Order n° 62-041 on September 19, 1962 concerning the provisions of the domestic and the international private right, completed by the Law n° 98-019 on December 2, 1998;

Considering the Decree n° 72-446 on November 25, 1972 setting the mode of enforcement of the Law n° 67-028 on December 18, 1967 in addition to the concerned decree;

Considering the Decree n° 95-082 on January 24, 1995 relating to the regulations of currency accounts;

Considering the Decree n° 98-394 on May 28, 1998 relating to the definition of the mining politic;

Considering the Decree n° 99-954 on December 15, 1999 concerning the compatibility of investments with the environment;

Considering the Decree n° 2000-170 on March 15, 2000 setting the conditions of enforcement of the Law n° 99-022 on August 19, 1999 relating to the mining Code;

Considering the Decree n° 2002-1005 on September 11, 2002 setting the remits, organization and the running of the provincial committees (CPM) and the national Committee of Mines;

Considering the Decree n° 2003-007 on January 12, 2003 relating to the appointment of the Prime Minister, Head of government;

Considering the Decree n° 2003-008 on January 16, 2003 relating to the appointment of the Members of Government;

Considering the Decree n° 2003-102 on February 11, 2003 setting the remits of the Minister of Energy and Mines as well as the general organization of its ministry,

Under the bill of the Minister of Energy and Mines,

And the notification of the National Committee of Mines,
During the Council of Government,

DECREE:

Article 1: The aim of the decree

This decree sets the modes and the conditions of enforcement of the Law n° 2001-031 on October 8, 2002 establishing the Special Regime for Large Investments in the Malagasy Mining Sector, according to the following law.

TITLE I

GENERAL PROVISIONS

CHAPTER I

GENERALITIES

Article 2: Definitions

This decree incorporates the definitions of some specific words about the Law. Moreover, they are more stated as following:

1° “Starting date for the Effective Working”: to enforce the provisions of the article 3, 6° of the Law, the Minister of Mines is authorized to notice by decree under the notification of the relevant technical department, the starting date for the Effective Working. Consequently, he can also specify what constitutes the first commercial expedition of a project according to the technical criteria, which are generally implemented in the mining industry for this kind of operation.

2° “Local spending” : to enforce the provisions of the article 44 of the Law, “Local spending ” of the Holder or of the Transformation Entity are all spending relating to the Project and payable in Malagasy franc including salaries and contributions of the Project staff, dividends payable by national shareholders, amounts payable by national suppliers as well as taxes and customs duties.

3° “Recertification »: is the proceeding to anew the certification of an Investment that has already certified and the alteration of the Investment Plan is submitted to a prior study in accordance with the provisions of the article 22 of the Law.

4° “More Favourable Measures »: are the provisions implemented in accordance with the established texts and which will have the effect of reducing taxes or customs duties of the holder, the transformation entity, the subcontractors or the investors, or the effect of reducing the restrictions as far as exchanges transactions are concerned.

5° “Special Regime”: to enforce the provisions of the articles 27, 29 and 46 of the Law, changes, tax and custom sections, respectively, of the *special regime* consist of all valid constitutional and legal provisions and regulations of each matter on December 31,1999 as altered by:

- 1) More favourable measures for the Holder, the Transformation Entity, the Subcontractors and the Investors appointed by legislative or regulations acts that are effective after December 31, 1999 and before the concerned Date of the Eligibility Certification of the Investment; and
- 2) the provisions of the Law.

To enforce the provisions of the articles 27, 29 and 46 of the Law, the legal section of the *special regime* consists of the enforcement of the valid Constitutionals, legislatives Provisions and regulations on the Date of the

Eligibility Certification of the Investment that concerns the Holder, the Transformation Entity, the Subcontractors and the Investors as altered by the provisions of the Law.

Article 3: The Implementation activity

In accordance with the provisions of the articles 27, 29 and 46 of the Law and according to the above article 2, 5°, the special regime is enforced to the Holder, the Transformation Entity, the Investors and the Subcontractors as part of a Project subjected to an Investment. The eligibility of this Investment is certified in accordance with the provisions of the aforesaid Law and of the present decree, from the Eligibility Certification Date, on condition to the provisions of the Title I, Chapter V of the present decree concerning the Subcontractors and the provisions of the Title II, Chapter II of the Law concerning the enforcement of the common-law provisions.

Article 4: Updating amounts in Malagasy franc

In accordance with the article 4 of the Law, the Minister of Mines will periodically update all amounts in Malagasy franc according to the Law enumerated in the Annex A of the present Decree by indexation on the special edition right (DTS) value from International Monetary Funds into national currency on July 31, 1999.

In January of each year, a decree of the Minister of Mines sets, for the current year, amounts stated in the Annex A of the present Decree after the adjustment according to the DTS value on October 31 of the previous year as to the following formula:

$$M_{i,n} = M_{i,A} (DTS_n/DTS_0)$$

In which...

$M_{i,n}$ is the updated value for the year “ n ” of the amount “ i ” that figures in the Annex A.

$M_{i,A}$ is the value of the amount “ i ” specified in the Annex A.

DTS_0 is the DTS value in national currency on July 31, 1999.

DTS_n is the DTS value for the year “ n ”, defined like the DTS value in national currency on October 31 of the year “ n-1 ”.

The Minister of Finances communicates information to exploit and gives its visa on the decree taken by the Minister of Mines.

Article 5: The Duration of the Eligibility

The decree of the Minister of Mines specifies the duration of the Eligibility of a Project in accordance with the provisions of the article 6 of the Law.

Article 7: Incorporation of the Provisions of the Law

For the lack of details on the mode of enforcement of the present decree, the provisions of the aforesaid law are directly enforced. All file lodging predicted by the Law or the present decree has to be done at the permanent office of the control and follow-up system.

CHAPTER II THE CONTROL AND FOLLOW –UP SYSTEM

Article 8: Creation of the Committee on Mining Large Investments (CGIM)

To enforce the provisions of the article 8 of the Law, the Committee on Mining Large Investments "CGIM" is created to carry out works assigned to the control and follow-up system. The CGIM is related to the advisers of the Minister of Mines.

SECTION I QUALIFICATIONS, POWERS AND REMITS

Article 9: The Qualifications of the CGIM

The CGIM is competent:

- To be the unique negotiator of those who ask for the eligibility certification of an investment in order to take advantages of the special regime established by the Law;
- To give a decision on the admissibility of the certification or the approval applications predicted in the aforesaid law;
- To ask for additional information that are essential to the examination of the application files;
- To give the technical opinions and prepare bills predicted in the aforesaid law;
- To carry out control and follow-up operations predicted in the Law;
- To convene and consult the interdepartmental committee ad hoc if necessary;
- To appeal to experts among members, and outside the interdepartmental committee ad hoc if necessary; and
- Generally, to coordinate interventions of the concerned authorities in order to assure the efficient enforcement of the provisions of the Law and to increase important investments in the Malagasy mining sector,

These qualifications should be in accordance with the provisions of the present decree.

Article 10: The Powers of the CGIM

The CGIM has the power to get all the essential information from the concerned authorities on the fulfilment of the assigned works.

He can at any moment convene an interdepartmental committee ad hoc for opinion. If necessary, the CGIM specifies the required qualities of the members called committee.

Article 11 : The remits of the CGIM

They include the coordination, the examination, the control and follow-up predicted by the Law and specified in the present decree.

As part of the coordination, the CGIM is the unique negotiator of those who ask for the eligibility certification as far as the proceeding of the certification is concerned. He coordinates interventions of the concerned department relating to matters that come within their remits as part of the enforcement of the Law. The CGIM is responsible for the receipt, the recording and the dispatch to the concerned administrative department particularly:

- Inventories of the provisions applicable to the sections of changes, tax and custom of the special regime,
- Conventions of the external loaning, and
- others documents or declarations required by the Law or by the present decree.

The CGIM convenes or consults the members of the interdepartmental committee ad hoc to resolve problems that come within their competence.

Concerning the examination, the CGIM gives a decision on the admissibility of the various applications, examines the files, gives the technical opinion and prepares the bills predicted by the Law in accordance with the provisions of

the present decree. Moreover, he receives the detailed lists of materials, properties and equipments to be imported during each phase of the Project and checks their conformity with the lists of generic categories and technical documents produced by the Holder in support of the approved Investment Plan.

The Checking operations carried out by the CGIM are those that are assigned by the Law to the control and follow-up system. As part of it, the CGIM is particularly responsible for:

- Receiving the notification concerning the transfer of rights that would not require any prior approval in accordance with the provisions of the article 23 of the Law;
- Receiving and checking, in collaboration with the concerned department of the Ministry of Finances and the Central Bank, the conformity with the operations declarations on major transfer to foreign countries stated in the article 37 of the Law;
- Receiving and checking, the conformity with the provisions of the article 45 of the Law, the monthly report provided by the Holder or the Transformation Entity on fund movements paid into his abroad principal account in foreign currency;
- Receiving and checking, the conformity with the provisions of the article 114 of the Law, the certified copies of the insurance policies signed by the Holder, the Transformation Entity and their Subcontractors;
- Receiving and checking, the conformity with the provisions of the article 117 of the Law, the statements of the unexpected difficulty in case of absolute necessity written by the Holder, the Transformation Entity or the Investors aiming at their duties according to the aforesaid law;
- Receiving and checking, the conformity with the applicable provisions of the Law, all other statement, report required by the Law that the Holder and the Transformation Entity should provide; and
- Writing jointly with the concerned administrative department, minutes certifying the Investor, the Holder or the Transformation Entity, if necessary, concerning their breach of the duties imposed by the Law.

The CGIM is responsible for making follow-up operations of the investments considered at the time of the proceeding of the eligibility certification, in order to check the minimum amount of the investment. With this end in view, he receives and studies the annual financial status that are audited, the six-monthly intermediate financial status that are non-audited and the annual report on the implementation of the Investment Plan predicted by the articles 112 and 113 of the Law. The CGIM is also authorized to make the necessary follow-up to see if the special regime is enforced by the concerned administrative departments.

SECTION II THE CONSTITUTION OF THE CGIM

Article 12 : The Constitution

The CGIM is composed with five (5) permanent and five (5) temporary members who are respectively the administrative departments of:

- Mines;
- The tax system;
- Customs;
- The control of exchanges transaction;
- The justice and
- Domains.

The Members of the CGIM are appointed by the decree of the Minister of Mines and at the suggestion of the concerned Ministers.

SECTION III

THE ORGANISATION OF THE CGIM

Article 13 : The manager of the CGIM

The CGIM is presided by the General Secretary of the Ministry of Mines, who can delegate his functions to the representative of the aforesaid Ministry at the CGIM.

Article 14 : The Permanent Office

The CGIM has a permanent office available in Antananarivo, at the office of the system responsible for the promotion of mining investments within the Ministry of Mines, and from this last he will receive a contribution to his financing.

Article 15 : The Responsible for the Permanent Office

The representative of the Ministry of Mines manages the Permanent Office. The responsible of the CGIM Permanent Office is authorized to represent the CGIM beside the public, the investors and the Administration, and in particular:

- To provide the public with all information on the provisions of the Law and its mode of enforcement;
- To receive at the Permanent Office all application, declaration, notification, report or other document of which the lodging at the control and follow-up system is predicted by the Law, and to dispatch them to the members of the CGIM or to the concerned administrative departments;
- To establish and maintain the filing and the archive of the documents concerning the applications of the eligibility certification as well as investment files that are certified eligible;
- To answer questions of the Investor representatives, the Holders, the Transformation Entities and the Subcontractors about the status of their application files or concerning their advantages or duties in relation to the Law;
- To prepare all correspondence of the CGIM to the Holders, the Transformation Entities or the Investors; and
- To forward the technical opinions and bills that are prepared by the CGIM to the Ministry of Mines.

The CGIM can delegate to the responsible of the Permanent Office of the CGIM, the power to give a decision on the admissibility of the different applications that are predicted by the Law, and concerning matters that come within the only remit of the Ministry of Mines, and can delegate the power to examine files and to check declarations, reports and other documents.

SECTION IV THE WORKING OF THE CGIM

Article 16 : The Working on Committee

The members of the CGIM are convened to study the files lodged at the Permanent Office or to carry out punctual operations of the coordination, of the control and follow-up. The members of the CGIM have rights to an indemnity for their participation to the working on Committee.

Article 17 : The recourse to the consultant services

At the time he studies the files subjected to him, the CGIM can appeal to the members of the interdepartmental committee ad hoc and to other national or international experts.

Article 18 : The internal regulation of the CGIM

The CGIM adopts its own internal regulation, that is subjected to the approval of the Minister of Mines.

CHAPTER III
ADMISSIBILITY AND EXAMINATION OF THE ELIGIBILITY CERTIFICATION
APPLICATION

Article 19 : Admissibility of the Eligibility Certification application

To enforce the article 9 of the Law, the CGIM gives a decision on the admissibility of the eligibility certification application within one working day after the receipt of the application file, checking that the file is complete and contains all the specified elements in the article.

Article 20 : Acknowledgement of Receipt of the Application

If the application is admissible, the CGIM issues to the applicant an acknowledgement of receipt indicating the name of the person, the lodging date of the application file as well as the legal duration of the examination of the application stated in the article 12 of the Law.

Article 21 : Notification in case of Non-Admissibility of the application

If the certification application is not admissible, the CGIM notifies to the applicant the missing or incomplete parts within one working day after the lodging of the application file.

Article 22 : Examination of the application

The CGIM examines the application for eligibility certification in accordance with the provisions of the articles 10 to 15 of the Law.

Article 23 : Approval of inventories of the provisions applicable to exchanges, tax and customs sections

To enforce the provisions of the article 27 of the Law, the Holder will include in the application file for eligibility certification, three (3) complete inventories of More Favourable Measures concerning exchanges, tax and customs. Each inventory will resume the more favourable measures aimed at in the article 27 of the Law as well as the return of the valid constitutionals, legal provisions and regulations for the concerned section on December 31, 1999 and of the provisions of the Law. These three inventories will be an integrated part of the application file for eligibility certification.

To the receipt of the application file for eligibility certification of the Investment, the responsible for the Permanent Office of the CGIM forwards first, the provisions inventory applicable for the exchange regime to the representative of the administrative department responsible for the exchange operations follow-up. Second, he forwards the provisions inventory forming the applicable tax regime to the representative of the administrative department responsible for taxes. And last, he forwards, the provisions inventory forming the custom regime applicable for the Investment, to the representative of the administrative department responsible for customs, for the study by their respective departments.

Each department provides the CGIM with, within fifteen (15) days after the receipt of his inventory, a technical opinion that consists of an application for confirmation, for correction or for precision.

The bill relating to the eligibility certification, established by the CGIM in accordance with the article 15 of the Law, consists of, in the annex, a certified copy by the concerned administrative department, of inventories of the provisions forming the More Favourable Measures with the exchange, tax and customs regimes respectively applicable for the Investment.

CHAPTER IV
PROCEEDINGS RELATING TO THE ALTERATIONS
AND TRANSFERS

Article 24 : Control of the External Loan Agreements that are part of the Investment

To enforce the provisions of the article 20 of the Law, the Holder and/or the Transformation Entity has to lodge two copies of each external loan agreement deduced with a non-resident backer at the Permanent Office of the CGIM within fifteen (15) days after the agreement is signed. The Permanent Office of the CGIM forwards immediately one of them to the department responsible for the follow-up of the exchange operations within the Ministry of Finances and checks, within thirty (30) days from the lodging date of the loan agreement, that:

- 1) The agreement is in harmony with the approved Investment Plan;
- 2) The duration of the loan is up to five years; and
- 3) The loan agreement does not allow the Holder and/or the Transformation Entity to maintain the ratio between the loaning funds and the proper funds superior to that of predicted in the approved Investment Plan.

If necessary, the CGIM can ask the Holder or the Transformation Entity, according to the case, to provide explanations or extra information about the loan agreements.

If the CGIM estimates that the external loan agreement of the Holder or the Transformation Entity does not fulfill the conditions specified in the aforesaid article, he will forward his justified opinion to the Minister of Mines, and the copy of it to the Holder and /or the Transformation Entity, within a period of time aforesaid, plus ten (10) days for the answer if necessary. At the suggestion of the CGIM, the Minister can decide, in accordance with the article 21 of the Law, that this loan agreement with an alteration of the Investment Plan needs a prior study and he can notify the concerned part that this alteration has to comply with the provisions of the article 22 of the Law as well as that of the present decree concerning the alteration of the Investment Plan submitted to the study.

Unless the CGIM notifies within this period, the external loan agreement lodged by the Holder and/or the Transformation Entity meets the conditions in the present article.

Article 25 : Proceeding concerning the applications for Eligibility recertification of the Investment

The proceeding about the admissibility of the application specified in the articles 19 to 21 of the present decree is implemented to the applications for eligibility recertification of the Investment in case of some alterations in the Investment Plan subjected to the study, for the enforcement of the provisions of the article 22 of the Law.

The examination and decision concerning the applications for recertification take place in accordance with the provisions of the article 22 of the Law.

Article 26: Notification of transfers that do not require a prior approval

To enforce the provisions of the article 23 of the Law, the Holder has to inform in writing the CGIM of all rights transfer of the initial investors beside the Holder, the Transformation Entity if necessary, and the Project, without an alteration in the Investment Plan in writing within five (5) working days following the carrying out of the transfer. The notification is left at six (6) copies. It has to include the following specifications for each Investor:

- The Identity and quality of the Investor who sells his rights;
- The Nature and quantity of the sold rights;
- The Identity and quality of the Investor who wins the rights; and
- The Nature and quantity of the established rights.

The Holder has to join with his notification a copy of the latest annual report of each new Investor.

The Permanent Office of the CGIM informs the authorities responsible of Mines Inspection, Exchanges, Customs and Taxes duties of the change of the Investors, at the latest within five (5) working days following the notification lodging.

Article 27: Approval application in case of rights transfer implying an alteration in the Investment Plan

To enforce the provisions of the article 24 of the Law, the Holder asks, through a letter addressed to the Minister of Mines, the approval to maintain the eligibility certification of the Investment in case of rights transfer of the initial Investors that implies an alteration in the Investment Plan. The Holder has to join with his application all documents and information required in the Article 9 of the Law.

Article 28: Approval application in case of the Mining Licences transfer of the Project before the carrying out of the Investment Plan

To enforce the provisions of the article 24 of the Law, the Holder asks, through a letter addressed to the Minister of Mines, the approval of the eligibility certification's transfer of the Investment in case of transfer of the mining Licences of the Project before the carrying out of the Investment Plan but without an alteration in it. The Holder has to join with his application the following information:

- (1) The Identity and quality of the buyer of the mining Licenses of the project;
- (2) the Identity and quality of the new Investors, with, if necessary, a copy of the latest annual report of each society that is part of it;
- (3) the Audited financial status of the three last financial year of the new(s) Investor(s) or the declarations of the incomes lodged at the tax authority of the residence country during the last three (3) years; in case of an individual Investor, proving their possession of the equity amount predicted by the financing plan that is part of the approved Investment Plan; and
- (4) A common letter of the international bank that is experimented with the financing mining projects on the size of the Project and that is chosen as the presumed leader of the Project refinancing. In this letter, he gives his opinion so that the Project will be financed with the conditions in accordance with the financing plan on the date mentioned in the letter, on condition to the approved transfer of the eligibility certification of the Investment.

Article 29: Admissibility of the approval application

The CGIM specifies the admissibility of the approval application for the maintaining or for the transfer of the eligibility certification of the Investment predicted in the articles 27 and 28 of the present decree from the receipt of the application file, and checking if the file is complete.

If the application is admissible, the CGIM issues an acknowledgement of receipt to the plaintiff indicating his name, the registration date of the application file as well as the legal period of the application examination. If the application is not admissible, he notifies to the person the missing or the incomplete parts within at maximum one (1) working day following the lodging of the application file.

Article 30: Examination of the approval application in case of Rights transfer implying an alteration in the Investment Plan

The CGIM examines the approval application for the maintaining of the eligibility certification predicted in the article 27 of the present decree in accordance with the articles 10 to 15 of the Law.

Article 31: Examination of the approval application in case of transfer of the Project Mining Licenses before the carrying out of the Investment Plan

Within thirty (30) days following the receipt of the application file, the CGIM examines the approval application for eligibility certification's transfer of the Investment because there is a transfer of the mining licenses of the project before the carrying out of the Investment Plan but without an alteration in it, and checking:

- 1) The eligibility of the buyer on the financial year of the mining working activity and
- 2) The sufficient financial capacity of the buyer of the project's mining Licences and/or the new Investors, established as the same as for the Holder and the initial Investors.

At the end of the examination period, the CGIM gives his favourable or unfavourable verdict to the Minister of Mines with his supporting report and, if necessary, the bill relating to the approval of the eligibility certification transfer of the Investment. The Minister of Mines has ten (10) days from the notification of the favourable or unfavourable verdict of the CGIM to ratify or to reject it. If the Minister does not react during this period, he is considered as having ratified the opinion of the CGIM.

If the Minister of Mines ratifies the favourable verdict of the CGIM, he has to refer to the Council of Government within twenty (20) working days from the receipt date of the CGIM opinion.

If the Minister of Mines ratifies the unfavourable verdict of the CGIM or rejects the favourable verdict because of an obvious mistaken assessment, he has to notify, to the Holder by an administrative letter, his decision on the refusal of the eligibility certification's transfer at the latest sixty (60) days following the receipt of the transfer application at the CGIM.

Article 32: Approval by Decree the maintaining or the transfer of the Eligibility Certification

If necessary, the Council of Government approves by decree the maintaining or the transfer of the eligibility certification of the Investment predicted in the Article 24 of the Law at the suggestion of the Minister of Mines, within sixty (60) days from the receipt of the maintaining or the transfer application by the CGIM.

Article 33: Subscription to the Implementation Commitment of the Investment Plan

Within fifteen (15) days after the Minister of Mines has notified the adoption in the Council of Government of the maintaining or the transfer decree of the eligibility certification of the Investment, the Holder (in case of transfer of the Investors rights) or the buyer (in case of transfer of the mining Licenses of the project) has to subscribe to the Implementation Commitment of the approved Investment Plan as specified in the article 17of the Law. The Minister of Mines is authorized to grant an extension of this period in case of unexpected difficulty that is justified of the signatory.

Article 34: Effective realization of the transfer

The effective maintaining or transfer of the eligibility certification of the Investment according to the conditions of the predicted rights transfer in the article 24 of the Law, is carried out from the publication date of the Decree relating to the transfer or the maintaining of the eligibility certification of the Investment.

**CHAPTER V
THE ENFORCEMENT OF THE LAW ON LARGE
INVESTMENTS TO SUBCONTRACTORS**

Article 35: Subcontractors who benefit from the Special Regime

To enforce the provisions of the article 28 of the Law, only the Subcontractors who work within the limits of a direct contract concluded with the Holder or the Transformation Entity for the Project requirements, can benefit from the enforcement of the special regime for those operations that are exclusively limited to the Project.

Moreover, the Subcontractors who are affiliated members of the Holder or the Transformation Entity cannot benefit from the special regime unless they work in Madagascar within the limits of the Project exclusively.

Article 36: Condition of registration on the Official List of Subcontractors

The Subcontractors will benefit from the special regime such as specified in the Law with the same condition as the Holder or the Transformation Entity with whom they have direct contractual bond, after having registered on the official list of Subcontractors.

Article 37: Obligation of the Holder and the Transformation Entity to provide and to update the list of their Subcontractors

The Holder and the Transformation Entity have to provide to the CGIM the initial list of their Subcontractors, as well as its each alteration (in case of addition or subtraction of Subcontractors), and the following elements for each Subcontractor:

(1) A technical data sheet including the following information:

- Name, domiciliation and the registration number of the subcontractor's company as well as the name, address and phone numbers of his representative in Madagascar;
- The kind of the subcontracting company (Malagasy or foreigner, resident or non-resident, affiliated or not affiliated member of the Holder or the Transformation Entity and legal form); and
- The short description of the kind and the duration of the benefits that are provided by Subcontractors to the Holder or the Transformation Entity.

(2) A certified copy of the subcontracting contract between the Holder or the Transformation Entity and the Subcontractor.

Article 38: Examination of the Subcontractors file

From the lodging of the initial list of Subcontractors of the Holder and the Transformation Entity and the lodging of the elements specified in the previous article, the CGIM checks that each person registered on the initial list is a Subcontractor who has concluded a direct contract with the Holder or the Transformation Entity for the Project requirement, and that each affiliated Subcontractor has also exclusively limited their activities for this Project in accordance with the article 28 of the Law. And it goes on with each name added on the list.

In case the CGIM would notice that the inclusion of one person on the Subcontractors list does not correspond to the provisions of this chapter, he informs it to the Minister of Mines and this last notifies the Holder and/or the Transformation Entity of it in writing and orders the withdrawal of the name from the list, until the required written proofs are provided.

Article 39: Registration of Subcontractors on the Official List

Within five (5) working days, at the latest, from the lodging date of the list made by the Holder or the Transformation Entity, the CGIM registers, on the Official List, Subcontractors who benefit from the Special Regime and who have fulfilled the conditions in the previous article.

Article 40: Extract of the Registration on the Subcontractors Official List

Within 48 hours from the registration of Subcontractors who benefit from the Special Regime on the Official List, the CGIM forwards to the representative of each Subcontractor an extract of the registration signed by the President of the CGIM, and a copy of this extract to the Holder and to the Transformation Entity, and another copy to the administrative department respectively responsible for exchanges, taxes and customs duties.

Article 41: Demand on the enforcement of the Special Regime

When the Subcontractor demands on the enforcement of the Special Regime, he has to present to the concerned administrative department an eligibility declaration that shows the following elements:

- (a) His eligibility on the demand date, justified by a certified copy of the extract of the registration on the Official List of Subcontractors who benefit from the special regime;
- (b) The validity of the subcontracting contract on the demand date; and
- (c) The direct bond between profits or the transaction of which he foresees and his contract of subcontracting.

Article 42: Checking of the Conformity a posteriori

The advantages of the special regime are granted to the Subcontractor who presents the demand in accordance with the previous article.

The CGIM checks a posteriori the conformity of the operation carried out by the Subcontractor with the provisions of the articles 35 and 40 of the present decree. In case of non-conformity of the subcontracting operation, the CGIM informs it to the Subcontractor by letter within a very short period of time, with copies of it to the administrative persons and department in the above article 40.

Article 43: Sanctions in case of non conformity

The concerned Subcontractor can provide to the CGIM all justification in answer to the nonconformity observation, by letter left at the CGIM within fifteen (15) days from his receipt of the nonconformity observation. The CGIM studies them and established his written opinion on it, of which he forwards a copy to the Subcontractor and to the Administration departments stated in the above article 40.

The CGIM forwards the file including the non-conformity observation, the answer of the Subcontractor and the opinion of the CGIM on it to the Minister of Mines at most sixty (60) days after the forwarding date of the non-conformity observation to the Subcontractor.

The Minister ratifies, alters or rejects the opinion of the CGIM by decision within fifteen (15) days following the file receipt. If the Minister does not react within this period, he is supposed to have ratified the opinion of the CGIM.

The Minister of Mines pronounces in his decision the sanction, in case of non-conformity decision, concerning the increase of taxes and customs duties of common right applicable to the concerned operation from at minimum ten (10) to maximum twenty five (25) per cent.

In case that the decision certifies the non conformity observation, the concerned subcontracting operation is known non eligible to benefit from the special regime and the Subcontractor has to comply to the common right on exchanges, tax and custom duties applicable to the concerned operation, and these duties are increased in accordance with the decision of the Minister of Mines, within ten (10) working days from the date of the decision notification to the Subcontractor.

On the second decision of the non-conformity on the same Subcontractor, the sanction will consist of an increase of the common right, taxes and customs duties applicable to the concerned operation at minimum twenty five (25) to maximum fifty (50) per cent. On the third decision of the non-conformity on the same Subcontractor, the Minister will pronounce the same sanction and the loss of the Subcontractor eligibility to benefit from advantages of the special regime.

All decision of the Minister predicted by the present article is liable to administrative recourses predicted in the article 135 of the Law, that could be undertaken by the concerned Subcontractor.

Article 44: Obligation of the Holder and the Transformation Entity to notify the Authorities on changes of the Subcontracting Contract

The Holder and the Transformation Entity have to notify the CGIM within two working days from the occurrence of the one of the following case concerning one of their Subcontractors:

- (a) The alteration in the contract of the subcontracting;
- (b) The end of the contract;

- (c) The contract renunciation of the subcontracting; or
- (d) The contract cancellation of the subcontracting.

In (a) case, the Holder or the Transformation Entity has to leave a certified copy of the altered contract at the Permanent Office of the CGIM. This last checks the alteration term and adjusts, if there is, the Official List according to the data news.

In (b) and (c) cases, the CGIM derives the names of Subcontractors from the Official List. These subcontractors do not have anymore rights to the advantages of the special regime for the later operations, and this withdrawal does not affect the acquired rights if the operations had already carried out.

On the contrary, in (d) case, the effect of this withdrawal from the Official List is retroactive and the subcontractor becomes liable for all taxes, customs duties and others of which he had missed while his name was mentioned on the Official List.

In these cases, the CGIM informs it to all the concerned administrative departments.

TITLE II

EXCHANGES REGIME

CHAPTER I GENERALITIES

Article 45: Applicable regime

The exchanges regime applicable to the Investment is determined in accordance with the article 27 of the Law and its enforcement in the articles 3 and 23 of the present decree.

CHAPTER II CONTROL OF FUND TRANSFERS IN FAVOUR OF AFFILIATED MEMBERS OF THE HOLDER OR THE TRANSFORMATION ENTITY

Article 46: Justification of the price of goods or services supplied by the affiliated member

In accordance with the article 39 of the Law, the Holder or the Transformation Entity who pays for their affiliated members by goods or by supplied services, has to prove that these payments are justified compared with the prices of goods or similar services applied on the market.

Article 47: Checking a posteriori

The prior approval of each payment to the benefit of the affiliated member is not required.

However, the CGIM can, at any moment, check the transfers of goods or supplied services made by the affiliated persons in accordance with the provisions of the present chapter.

Article 48: Elements of justification

Each deal struck between an affiliated member and the Holder or the Transformation Entity has subjected to a contract.

The Holder or the Transformation Entity has to leave at the CGIM a certified copy of the contract within ten (10) working days after its signature and has to provide also one of the following elements to justify the price of goods or services, that are the subject of the contract:

- (1) If the contract is concluded thanks to an invitation to bid, the Holder or the Transformation Entity has to leave at the CGIM a certified copy of it including the reference terms as well as a certified copy of all received bids.
- (2) The Holder or the Transformation Entity has to provide the proof of the two (2) other contracts carried out between the non affiliated persons including the terms and similar conditions for the goods or similar services;
or
- (3) He or she has to explain the justification of the price of goods or services predicted in the contract with his affiliated member, in the absence of the previous justification elements.

Article 49: Verification

The CGIM checks information and justifications provided by the Holder or the Transformation Entity within fifteen (15) days at the end of which:

- (1) So be it he asks the Holder or the Transformation Entity for more information;
- (2) So be it he tells his opinion indicating that contract conditions and terms between the Holder or the Transformation Entity and his affiliated member are not justified compared with prices of goods or similar services applied on the market, indicating the surplus amount;
- (3) So be it he notices that the prices are considered as justified compared with the prices of goods or similar services applied on the market.

Article 50: Possible investigation

The CGIM can undertake his own investigation if he considers that the justification elements or the supplied explanation do not prove enough that the applied prices are identical to the prices of goods and similar services that are freely negotiated between non affiliated parties.

Article 51: The opinion of the CGIM

If the CGIM estimates that the contract conditions and terms between the Holder or the Transformation Entity and his affiliated member are not justified compared with the prices of goods and similar services applied on the market. He notifies his opinion to the Holder or the Transformation Entity within fifteen (15) days from the lodging date of the copy of the contract with the supplied proofs. The CGIM forwards at the same time a copy of his justified opinion to the Minister of Mines.

Article 52: Decision of the Minister

The Minister of Mines ratifies the opinion of the CGIM if he finds that it is justified. If necessary, he gives the Holder or the Transformation Entity notice to pay the purchase prices or services carried out and services to be carried out in order to enforce the concerned contract, within three (3) months from the notification date.

Unless the Minister of Mines reacts within thirty (30) days from the receipt date of the notice, the payments of goods or supplied services made by an affiliated member are known as justified compared with the prices of goods or similar services applied on the market.

Article 53: Consequences of the non regularization of the situation

Failing that the Holder or the Transformation Entity gets his situation sorted out within three (3) months from the notification, they are liable to pay the due predicted in the article 116 of the Law.

However, for tax requirements, the surplus payments to the affiliated member will be integrated to the calculation of the taxable benefit of the Holder or the Transformation Entity and will be submitted to the IBS in accordance with

the First Section of the Title IV of the Law. Moreover, this surplus will be dealt as dividend payments and subjected to income taxes of Transferable Capitals.

CHAPTER III CONTROL OF INCOME MOVEMENTS IN FOREIGN CURRENCY

Article 54: Notification to open a main account abroad

In accordance with the article 42 of the Law, the Holder and/or the Transformation Entity has to notify the opening of his main account abroad to the CGIM on and has to provide him with a bank account number within five (5) working days following the opening of the account.

Article 55: Lodging of the assessment of the initial annual budget

To benefit from the exemption to repatriate incomes in Madagascar for the payment of the common operations in accordance with the provisions of the article 44 of the Law, the Holder and/or the Transformation Entity has to provide the CGIM with an assessment of the annual budget for the local spending of the Project. The CGIM will issue a receipt to the Holder and/or the Transformation Entity specifying the receipt date of the assessment of the annual budget.

The assessment of the first annual budget has to mention on the annual tax during which the Starting Date of the Effective Working will take place. The Holder and/or the Transformation Entity are asked to lodge this assessment of the budget between two (2) months and six (6) months before the Starting Date of the Effective Working.

After having received the assessment of the annual budget for the local spending of the Project, the CGIM issues a certificate, that specifies his approval or refusal of it, within thirty (30) days from the receipt of the budget assessment. This certificate would also specify the amount of the minimum balance to keep in the bank accounts of the Holder and/or the Transformation Entity in Madagascar to avoid repatriating obligation. The minimum balance will correspond to a fraction (equivalent to three months of the local spending) of the total amount of the budget assessment for the local spending of the Project during the financial year as it is accepted to the CGIM.

Article 56: Assessment of the annual budget for the next financial year

At least thirty (30) days before the end of each financial year and after the Starting Date of the Effective Working, the Holder and/or the Transformation Entity have to provide the CGIM with the assessment of the annual budget for the local spending of the Project for the following financial year.

The CGIM will issue to the Holder and/or the Transformation Entity a receipt and a certificate in accordance with the provision of the previous article. The new minimum balance indicated in the certificate will take effect from the first day of the new financial year.

Article 57: Conformity of the assessment of the annual budget with the real spending

Within three (3) months from the beginning of the new financial year, the Holder and/or the Transformation Entity has to provide the CGIM with the amount of the local spending that are really incurred by the Project during the previous financial year.

If the amount has a difference of more than 10% to the assessment of the annual budget for the local spending in the previous year, the Holder and/or the Transformation Entity has, either to adjust his assessment of the budget in the current year to the percentage of this difference, or to provide with explanations proving that this last is more reliable than the previous assessment of the budget.

The CGIM can ask the Holder and/or the Transformation Entity to provide with the additional explanations in case of significant differences between the assessment of the annual budget for the local spending and that of which is really incurred for the previous financial year.

Article 58: Notification to the minimum amount of the balance

Within ten (10) working days from the lodging date of the application for conformity stated in the previous articles (if necessary, plus ten (10) other days from the receipt date of the additional information), the CGIM notifies the Holder and/or the Transformation Entity in writing:

- (1) either his approval of the suggested minimum balance,
- (2) or the minimum balance that he has recalculated.

The copies of the notification letter will be forwarded at the same time to the management department responsible for the follow-up and the exchanges control and to the Central Bank of Madagascar.

The new minimum balance will be effective from the tenth days following the notification date of the opinion of the CGIM.

The notification letter can subject to recourse predicted in the Title VIII of the Law.

Article 59: Obligation to keep in Madagascar the amount of the minimum balance

The Holder and/or the Transformation Entity has to keep at his bank account in Madagascar the minimum amount of the balance specified in the notice issued by the CGIM until its next adjustment, that happens normally in the beginning of the following financial year.

Article 60: The Monthly report

In accordance with the article 45 of the Law, the Holder and/or the Transformation Entity, or his foreign bank has to provide the CGIM with a monthly report on the fund movement supplied on the main account abroad.

The monthly report is to leave at the CGIM with five copies within fifteen (15) days following the end of each month.

Article 61: Elements of the monthly report

In this report, the Holder and/or the Transformation Entity or his foreign bank has to present the following elements:

- the specified references of the exportation files corresponding to each income (in particular numbers and dates of banking domiciliation); and
- For each payment, the nature of the transfer, either for current operations, or for foreign debt service, in accordance with the provisions of the article 44 of the Law.

One copy of the latest and available bank statement of the principal account abroad and one copy of the local bank statement in Madagascar have to be attached with the monthly report.

Article 61: Checking by the CGIM

The CGIM makes sure, by consulting the follow up departments of the Minister of Finances and the Central Bank that:

- (1) Transfers for the payment of the foreign debt are in accordance with the loan agreements lodged by the Holder and/or the Transformation Entity to enforce the financial plan of the approved Investment Plan; and
- (2) Transfers due to the current operations comes under the one of the enumerated categories in the article 35 of the Law, and that their amount are reasonable; and

(3) The Holder and/or the Transformation Entity keeps the minimum balance, predicted in the article 44 of the Law, in the bank accounts in Madagascar.

Article 62: The approval of the monthly report and sanctions

Unless the CGIM notifies to the Holder or the Transformation Entity their objections on the monthly report within thirty (30) days from its receipt, the report is considered as accepted.

If, on the other hand, the study of the monthly report made by the CGIM reveals that one or more conditions imposed by the Law are not enforced, the CGIM can make a report on the breach of the Holder and/or the Transformation Entity to their obligations, jointly with the concerned administrative department of the Minister of Finances. If necessary, the proceeding on the notification to pay predicted in the article 118 of the Law is enforced.

Article 63: Conclusions of the CGIM

In any case, the CGIM forwards a copy of the monthly report with his observations and conclusions to the departments responsible for the follow up of the exchange operations within the Minister of Finances and to the Central Bank of Madagascar within short period of time.

Article 64: The Confidentiality

The CGIM and all the relating administrative departments will strictly respect the confidentiality of all information provided by the Holder and/or the Transformation Entity in accordance with the provisions of this chapter. Persons subjected to receive information, are kept on professional secrecy from terms in the article 378 of the penal code and liable to sentences predicted in the aforesaid article. This information will not divulge to another person who is not responsible for the control functions predicted by the present decree, safe in case of injunction emanated from a legal proceeding.

TITLE III

TAX REGIME

CHAPTER I GENERALITIES

Article 65: Determination of the tax regime

The Provisions of the articles 3 and 23 of the present decree determine the tax regime applicable to the Holder, to the Transformation Entity, to the Subcontractors and to the Investors, in accordance with the articles 27 to 29 and 46 of the Law.

CHAPTER II DETERMINATION OF RATES APPLICABLE TO THE CORPORATION INCOME TAX

Article 66: The Net result

In accordance with the article 48 of the Law, the IBS rate applicable to a given financial year is according to the internal output rate (TRI) on historical results realised by the Holder and the Transformation Entity all considered.

For the calculation of the TRI on historical results realised on the Investment, the result after the considered tax for each financial year is the net result of this financial year after the IBS payment, increased or decreased from a certain number of accountant items described in the articles 67 and 68 of the present decree.

Article 67: Increases of the net result

For the TRI calculation on the historical result, the net result of each considered financial year is increased from:

- (1) The deductions for the payments effectively made [and postponed payments made] during the considered financial year;
- (2) All grant for setting up supplies in accordance with the Malagasy General Accountant Plan, with the mining Code and with the Law;
- (3) The loss reported in the previous financial years in deficit;
- (4) The tax reduction for the investment; and
- (5) Except from the payment of loan advantages, from other deduction made in accordance with the Malagasy General Accountant Plan, for the spending other than the current spending of the taxpayer.

Article 68: Deduction of the net result

For the calculation of the TRI on historical results, the net result of each considered financial year is decreased:

- (1) From the capital spending (the equipment acquisition, the research expenses and the construction in case of expansion, etc.); and
- (2) From all other expenses effectively made and attributable to a post known by the Malagasy General Accountant Plan that is not accepted as the deduction for the IBS calculation.

Article 69: Calculation of the internal output rate (TRI)

The Holder or the Transformation Entity calculates the TRI annually on the sets of their historical results according to the rules generally known in the international mining industry with respect of the rule of the Malagasy General Accountant Plan.

Article 70: Verification of the realised output rate

The Holder and the Transformation Entity are asked to annex their declaration of the result for the IBS taxation a calculation statement of the TRI with an explanatory and a certified note made by an external auditor. The competent Department of the Ministry responsible for taxes checks the declared TRI calculation by proceeding, if necessary and to his fray, into an audit by an expert internationally well known.

Article 71: The effect of the realised output rate

To enforce the provisions of the article 48 of the Law, the rates of the IBS apply to the Holder and the Transformation Entity, as well as to their Subcontractors liable to the IBS, according to the level of the realised TRI on historical results of the Holder and the Transformation Entity considered together, are as follows:

<u>Taxpayer</u>	<u>Internal Output Rate</u>		
	<u>Less than 20%</u>	<u>20% to 25% excluded</u>	<u>25% or more</u>
The Holder and his Subcontractors	25%	35%	40%
The Transformation Entity and his Subcontractors	10%	35%	40%

The rate is set for each year according to the realised TRI on the set of historical results of the Holder and the Transformation Entity.

Article 72: The IBS rate to withhold for the tax reduction of the investment

To enforce the provisions of the article 52 of the Law, the IBS rate to withhold for the calculation of the tax reduction of the investment specified in the article 01-01-08 of the General Code of Taxes is that of enforced in the financial year for which the tax reduction is used.

CHAPTER III
**CONTROL OF OPERATIONS SUBJECTED
TO THE INCLUSIVE TAX ON TRANSFERS**

Article 73: Content of the statement to sign

To benefit from the base reduction subjected to the inclusive tax on transfers predicted in the paragraph 2 of the article 56 of the Law, the statement stated in the article 35 of the aforesaid law has to contain the following information:

- (1) The beneficiary of the transfer is not an affiliated member of the Holder or the Transformation Entity;
- (2) The beneficiary of the transfer is not liable to the IBS;
- (3) Services are helpful within the limits of the Project at the time of the first installation; and
- (4) Services are others than financing and insurance services.

The first installation of the Project includes the works of the Development and Construction Phase that come to an end on the Starting date of the Effective Working.

Article 74: The lodging of the statement

The Holder, the Transformation Entity or the Subcontractor, according to the case, will leave at the CGIM three (3) copies of the statement stated in the article 35 of the Law at least five (5) working days before the transfer operation.

Article 75: Control of operations subjected to the Inclusive Tax on Transfers

The CGIM checks that:

- (1) The beneficiary is not an affiliated member of the Holder or the Transformation Entity;
- (2) Services are helpful within the framework of the Project at the time of the first installation; and
- (3) Services are others than financing and insurance.

The CGIM forwards his opinion to the competent department of the Ministry responsible for taxes within two (2) working days from the lodging date of the statement.

The competent department of the Ministry responsible for taxes examines that the correct amount of the TFT has to be paid before the realisation of the transfer.

CHAPTER IV
**THE UPPER LIMIT OF THE LAND TAX
ON BUILT PROPERTIES (IFPB) AND
OF THE ANNEX TAX TO THE IFPB (TAFPB)**

Article 76: Sharing out the IFPB and the TAFPB between Towns

When lands, properties and buildings forming the base of the IFPB and of the TAFPB are situated on the territories of different Towns, the upper amount of 1.000.000.000 FMG, predicted in the article 59 of the Law and enforced within the whole Malagasy territory, will be shared between Towns in proportion to the value of these lands, properties and buildings.

On the occasion of the role establishment for the IFPB and the TAFPB, in accordance with the article 01-12-01 of the General Code of Taxes, the Ministry responsible for tax regulation will share out between Towns, on the territory of which are situated properties and locals forming the base of the IFPB and the TAFPB, the upper amount of 1.000.000.000 FMG per year, on the base of the proportion stated in the preceding paragraph.

The aforesaid upper amount is enforced to the taxation of the Holder and the Transformation Entity considered together. Under no circumstances, the Holder and the Transformation Entity will be owed more than 1.000.000.000 FMG per year (the amount is updated in accordance with the provisions of the present decree) to the account of the the IFPB and the TAFPB considered separately, for the whole activities of the Project.

CHAPTER V
SALES ON DOMESTIC DEAL

Article 77: 10% limit on TVA exemption

To specify the sales quantity of the production or of intermediate products made in Madagascar on the national deal that the Holder or the Transformation Entity can realise in accordance with the article 65 of the Law, without losing the advantage of TVA exemption stated in the first paragraph of this article, the calculation base of the 10% limit will be the average production of three years before the application.

If, at the moment of the application, the production of the current year is more than the average production, the quantity of the national sales, eventually authorised without losing TVA exemption, cannot exceed 10% of the current year's production at the time of the application.

Article 78: Application for sales authorization on the national deal

The application for sales authorization on the national deal has to be done by the Holder or the Transformation Entity in writing at the CGIM and has to contain the following elements:

- (1) The quantity that the Holder or the Transformation Entity suggests to sell;
- (2) The reasons of the national economic interest that justifies the sale, and
- (3) The statistics of the production of the three previous financial year and that of the current year set on the immediate date from that of the application.

Article 79: Examination of the sales authorization's application on the national deal

The CGIM will have fifteen (15) working days from the lodging date of this sales authorization application to examine it.

Within fifteen (15) days, the CGIM forwards the application file with his opinion to the Minister of Mines who, within ten (10) days from the receipt of the application file, either notifies his justified decision to reject the application sales authorisation on the national deal to the Holder or the Transformation Entity, or prepares a decree on sales authorization on the national deal by the Holder or the Transformation Entity.

After having prepared the decree of national sales authorization, the Minister of Mines forwards the notices to the concerned Ministries and suggests its adoption in the council of Government within fifteen (15) days from the transmission of the bill to the different Ministries. The Council of Government has to adopt or reject this bill within sixty (60) working days from its presentation to the Council of Government.

The CGIM has five (5) working days from the decision of the Council of Government to notify to the Holder or the Transformation Entity who lodged the authorization application, the decree of sales authorization on the national deal or its rejection.

Unless the Council of Government gives his decision within this period of time, the sale on the national deal of the quantity suggested by the Holder or the Transformation Entity will be considered as authorized.

CHAPTER VI
**EXEMPTION OF THE INCOME TAX OF TRANSFERABLE CAPITALS FOR LOANS
INTERESTS PAID BY THE HOLDER AND THE TRANSFORMATION ENTITY TO THEIR
AFFILIATED MEMBERS**

Article 80: Deduction of the loans interest paid by the Holder and the Transformation Entity to their affiliated members

The interests that are paid abroad on sum available to the mining company from shareholders or from one of the affiliated company, are deductibles when the interest rate and other loan conditions are also favourable or when they are better than the rates and conditions that the Holder or the Transformation Entity, according to the case, will be able to get from backers who are not affiliated members.

In accordance with the provisions of the article 20 of the Law, the Holder is asked to leave at the CGIM two (2) certified copies of the loan agreements, that are concluded with the affiliated and non-affiliated backers. In case of loan contract with an affiliated member, he has to leave at the same time his certification about the aforesaid interest rate and other loan conditions, with all supporting documents to justify his explanation.

Article 81: Possibility of an eventual investigation

The CGIM can undertake its own investigation if he thinks that the supporting document provided by the Holder and the Transformation Entity do not meet the criteria stipulated in the first paragraph of the previous article.

Article 82: The opinion of the CGIM

If the CGIM estimates that the interest rates and other loan conditions of the contract between the Holder or the Transformation Entity and his affiliated member are not favourable or are better than rates and conditions that the Holder and the Transformation Entity, according to the case, will be able to get from backers who are not affiliated members, he notifies his justified opinion to the Holder or the Transformation Entity within fifteen (15) days from the lodging date of the copies of the contract and that of the supporting documents provided by the Holder. The CGIM forwards at the same time a copy of his justified opinion to the Minister of Mines.

Article 83: Decision of the Minister

The Minister of Mines is authorized to ratify the opinion of the CGIM if he finds that it is justified. If necessary, he gives the Holder or the Transformation Entity notice to pay the interest rates and other loan conditions of the contract, within three (3) months from the notification date.

Unless the Minister of Mines reacts within thirty (30) days from the receipt date of the opinion of the CGIM, he is considered to have ratified it.

Article 84: Consequences of the lack of regulation

In absence of the situation regulation made by the Holder and the Transformation Entity within three (3) months from the notification, he or she is liable to pay the constraint predicted in the article 116 of the Law.

Moreover, for tax requirements, the surplus of the payment to the affiliated member will be integrated into the calculation of the taxable advantage of the Holder or the Transformation Entity and is subjected to the IBS in accordance with the Chapter II, First Section in the Title IV of the Law. Furthermore, this surplus will be treated as dividend payments and is subjected to the Income Taxes of transferable capitals.

CHAPTER VII
CALCULATION OF THE MINING TAX WHEN THE FIRST SELLING OF THE MINING PRODUCTS IS CARRIED OUT BETWEEN THE HOLDER AND THE AFFILIATED MEMBER OF THE TRANSFORMATION ENTITY

Article 85: Selling price of the mining products applied between the Holder and the Transformation Entity

To enforce the provisions of the paragraph 2 of the article 91 of the Law, the selling price of the mine products between the Holder and the Transformation Entity, if necessary, has to be at least equal to the average price received by the Holder during the previous quarter for the selling to the third party, and adjusted to FOB conditions at the payment delivery and to the conditions comparable to that of applied for the selling to the third party.

Unless the selling by the Holder to the third party exists during the previous quarter, the price should be similar to the price applied for the selling, between non affiliated entities, of the mines product which quality, quantity and conditions of transport and of payment are equal.

Article 86: Proceeding of the justification on the selling price of the mining products between Holder and the Transformation Entity

At the suggestion of the Minister of Mines, the CGIM can ask the Holder by letter to justify the selling price of their mine products to the Transformation Entity during a specified period. If necessary, the Holder will leave at the CGIM, within fifteen (15) days from the receipt date of the application:

- either the complete list of the mine products sold to the third party during a quarter preceding the concerned period, mentioning the name and address of the purchaser, the quantity and the quality of the sold products, and the price and other selling conditions for each deal;
- or, for lack of selling to the third party during the previous quarter, a statement of the price used during the concerned period on the international deal, published by a newspaper dealing with international notoriety, for the selling of mineral substances in similar quality and quantity.

Article 87: The Control of the CGIM

The CGIM evaluates the justifications of the selling price applied by the Holder of these mine products to the Transformation Entity and forwards his opinion on it to the Minister of Mines, with a copy to the Holder, within thirty (30) days from the lodging date of the document made by the Holder.

Article 88: Decision of the Minister

In accordance with the provisions of the forth paragraph of the article 91 of the Law, the Minister of Mines decides, within fifteen (15) days from the receipt of the CGIM opinion, to accept or not accept the selling prices of the Holder's mine products to the Transformation Entity according to the CGIM opinion. The decision of the Minister is written and is justified. It is notified to the Holder within a very short period of time.

Unless the Minister reacts within fifteen (15) days, he is supposed to have ratified the opinion of the CGIM.

If the Minister of Mines decides not to accept the selling price between the Holder and the Transformation Entity, the mining tax will be applied on 50% of the selling price value of the transformed product and will be payable by the Holder at the moment of the selling.

Article 89: Proceeding of the assessment of the real selling price of the transformed products

Each time the Minister of Mines will make an application for it, if he considers that the price applied by the Holder or the Transformation Entity for the selling of transformed products to his clients, affiliated or non affiliated entities, does not match the real price of such products, the CGIM will be able to ask the Holder or the Transformation Entity, if necessary, to provide one of the following elements for justification of the transformed products price that are the aim of the selling:

- (1) If the contract is concluded thanks to an invitation to bid, the Holder or the Transformation Entity has to leave at the CGIM a certified copy of the invitation to bid including the terms of reference as well as a certified copy of each received bid; or
- (2) The Holder or the Transformation Entity has to report the proof of the two other contracts between non affiliated persons with the same terms and conditions for goods or similar services; or
- (3) If there is an international deal for the transformed products, the Holder or the Transformation Entity has to provide a statement of the price applied within the last six (6) months; or
- (4) The Transformation Entity has to explain the lack of the price justification for goods or services predicted in the contract with his affiliated member and has to explain the origin of the contract price.

Article 90: Checking of the CGIM

The CGIM checks information and justifications provided by the Transformation Entity within fifteen (15) days from their lodging through which:

- (1) either he forwards to the Minister of Mines his opinion that the conditions and terms of the contract of transformed products selling by the Transformation Entity to his clients, affiliated or non affiliated entities, are not justified compared with the prices applied on the market for the similar transformed products, indicating the amount of the difference,
- (2) or he forwards to the Minister of Mines his opinion that prices are considered justified.

The CGIM can ask the Holder or the Transformation Entity to provide further information as possible. If necessary, the checking period is increased to ten (10) additional days.

Article 91: Decision of the Minister

The Minister of Mines decides, within fifteen (15) days from his receipt of the CGIM opinion, to accept or not accept the selling price of the transformed products of the Holder or the Transformation Entity, according to the CGIM opinion. The decision of the Minister is written and is justified. It is notified to the Holder within a short period of time.

Unless the Minister reacts within fifteen (15) days after his receipt of the CGIM opinion, he is considered to have ratified this opinion.

If the Minister decides not to accept the selling price of the transformed products, he specifies the corrected price to be applied for the calculation of the mining tax.

All eventual adjustment of calculations and payments will be done within thirty (30) days following the definitive determination of the mineral selling price.

The decision of the Minister of Mines opens right to appeal in accordance with the Title VIII of the Law.

TITLE IV

CUSTOMS REGIME

Article 92: Determination of the applicable Customs Regime

The customs regime applicable to the Investment, in accordance with the provisions of the articles 27 to 29 and 46 of the Law, is determined by the proceeding predicted in the articles 3 and 23 of the present decree.

Article 93: Checking of the Detailed Lists

The CGIM checks, to enforce the provisions of the articles 72 and 73 of the Law, that detailed lists of materials, goods and equipments to import within the limit of each phase of the Project, lodged by the Holder, correspond to the list of the generic categories and of the technical documents provided by the Holder in support of his Investment Plan (the Study of the Pre-Feasibility or the Feasibility of the Project) during the proceeding of the eligibility certification of the Investment

Article 94: Personal effects of the expatriate employees

To enforce the provisions of the article 78 of the Law, the personal effects of the expatriate employees exempted from importation, exportation, and customs stamp duties are those specified first by the regulation means, on condition to the provisions of the articles 3 and 23 of the present decree.

Exceptionally, a joint decree of the Ministers respectively responsible for Mines and Finances can depart from the common law as far as the personal effects of the expatriate employees are concerned.

TITLE V

LEGAL REGIME

CHAPTER I

THE UPPER LIMIT TAXATION TO THE ASSESSMENT CHARGES OF THE ENVIRONMENTAL IMPACT STUDY

Article 95: Taxation to the assessment charges of the Environmental Impact Study

To enforce the provisions of the article 92 of the Law, the Holder and, if necessary, the Transformation Entity considered together are subjected to pay the taxation to the assessment charges of the environmental impact study, in accordance with the provisions of the decree n° 99-954 on December 15, 1999 concerning the compatibility of the investments with the environment, of the Investment total amount up to 3.000.000.000.000 FMG. The Investment amount up to 3.000.000.000.000 FMG is not taken into account for the calculation of the aforesaid taxation. By the application for the fixed scale in the Annex III of the predicted decree, the maximum amount of the taxation to assessment charges is 3.410.000.000 FMG.

CHAPTER II

ASSESSMENT PROCEEDING OF THE EXPROPRIATION INDEMNITY

Article 96: Indemnity application in case of measures that reduce the economical benefit of the properties, rights, titles or interests

To implement the provisions of the article 95 of the Law, the Holder and the Transformation Entity or Investors submit an indemnity application, if necessary, by letter addressed to the Minister of Mines, and which is left at the CGIM as soon as possible. The letter has to specify:

- the arrangements made by the Malagasy State which have direct or indirect effect to deprive the Holder and the Transformation Entity or Investors from the checking or the economical profit of properties, rights, titles or interests;
- the effect of the concerned arrangements of which the plaintiff part complains; and
- His proposition of the right value of the harm undergoes by the Investment.

The CGIM informs it immediately to the Minister of Mines and to the Minister of Finances.

Article 97: Agreement between parties on the indemnity amount

The wrong part (ies) and the Minister of Mines jointly with the Minister of Finances manage to get an agreement on the indemnity amount, within thirty (30) days from the receipt of the indemnity application by the CGIM.

Article 98: Appointment of an expert

Unless an agreement on the amount of the indemnity is reached within the assigned delay, the parties have to appoint jointly, within ten (10) working days from the expiry date of the thirty (30) days delay in the previous article, an independent expert responsible for specifying the indemnity amount.

Unless parties reach an agreement on the appointment of an independent expert within this time limit, the Holder, the Transformation Entity or the wrong Investors can ask within a very short time the General Secretary of the Chambre de Commerce Internationale in Paris, to appoint the expert responsible for the indemnity assessment.

The Charges and fees of the Chambre de Commerce as well as the expert are put halfway in charge of the two parties. However, the part that has initiated the proceeding can decide to pay alone the whole amount of the said charges and fees in order to advance the assessment of the indemnity. If necessary, the paid amount will be added to the amount of the indemnity payable by the Malagasy State.

Article 99: Preliminary report of the expert

The appointed expert will have thirty (30) days from his nomination to write a preliminary report on the assessment of the indemnity and forwards it to the concerned parties. The Government and the Territory Management will make the expert easier to get information that he needs for his report.

The concerned parties have to communicate to the expert their objections in writing, within fifteen (15) days from the receipt of the preliminary report.

Article 100: Final report of the expert

The expert forwards his final report on the amount of the indemnity to the CGIM, to the Holder, to the Transformation Entity or the Investors and to the Minister of Mines and Minister of Finances, within fifteen (15) days after having received their written objections.

After the receipt of the final report, the Government sets by decree the amount of the indemnity according to the final report of the expert, within at most thirty (30) days.

Article 101: Assessment of the indemnity due in case of expropriation or nationalisation

Before the fifteenth day following the valid entry of an expropriation or nationalisation act, if necessary, the Minister of Mines appeals the Chambre de Commerce Internationale in Paris to get the list of the independent consultancy firms suggested as experts in the specification of the enterprises value. He forwards a copy of his letter to the Holder and/or the Transformation Entity or, failing that, to the Investors. Unless the Minister reacts within this time limit, one of the parties is authorized to ask for the list.

Just as the Minister receives the list, he will provide one copy of it to the Holder and/or the Transformation Entity or, failing that, to the Investors. Within thirty (30) days following the receipt date of the aforesaid copy, the

Government, represented by the Minister of Mines, and the concerned private parties will manage to reach an agreement on the choice of the consultancy firm for the specification of the indemnity value due to the private parties in accordance with the expropriation or the nationalisation of their rights, properties and/or enterprise.

For lack of agreement between the parties concerning the choice of the expert within the time limit, the Minister of Mines will ask the General Secretary of the International Chambre de Commerce in Paris to appoint the consultancy firm. The Minister will forward his letter within three (3) days following the expiry of the thirteenth day from the receipt date by all the concerned parties, the lists of the suggested experts, and will provide the private parties with one copy of it. Unless the Minister reacts within this time limit, the private parties are authorized to forward the application.

Just as the Minister receives the recommendation of the General Secretary of the Chambre de Commerce Internationale in Paris on the selection of the independent consultancy firms, he will provide the Holder and/or the Transformation Entity or, failing that, to the Investors with a copy of it. Within thirty (30) days following the receipt date of the aforesaid recommendation, the Government, represented by the Minister of Mines, will take on the consultancy firm that is appointed to specify the right value trade of the expropriated or the nationalised interests.

The Malagasy State will pay the fees and charges of the consultancy firm.

The consultancy firm has to leave his assessment report at the Minister of Mines before the expiry date within six (6) months following the date of the valid entry of the expropriation or the nationalisation act. At the same time, he has to provide the copies of report to the concerned private parties.

Article 102: the Interest rate applicable to indemnities

The due amount of indemnities, as noted by decree, has to be matched to the rate of the LIBOR + 3% from the date of the indemnity application or the date of the valid entry of the expropriation or the nationalisation act, according to the case.

CHAPTER III **PROFESSIONAL TRAINING AND PROMOTION OF THE MALAGASY EMPLOYEES**

Article 103: Planning on professional Training and promotion of the Malagasy employees

Within six (6) months from the Eligibility Certification Date, the Holder and the Transformation Entity, if necessary, have to leave at the department responsible for the professional promotion of the Ministry of Labour, with copy to the CGIM, a planning on professional training and promotion of the Malagasy employees presenting the specified objectives as well as the measures to carry out them.

A copy of this planning has to be displayed at the local of the staff representative.

Article 104: Implementation of the aforesaid Planning

The Holder and the Transformation Entity, if necessary, have to consult the department responsible for the professional training of the Ministry of Labour and have to answer their observations concerning the content and the implementation of the planning concerning the professional training and promotion of the Malagasy employees.

Article 105: The Annual assessment

The Holder and the Transformation Entity, if necessary, have to proceed to an annual assessment of the planning on professional training and promotion of the Malagasy employees in collaboration with the department responsible for the professional training of the Ministry of Labour, and have to adjust consequently the objectives and the mode of the following year planning.

CHAPTER IV **PROCEEDING TO OBTAIN THE RESIDENCE VISA**

AND THE WORK PERMIT

Article 106: Application file for residence visa or work permit

To enforce the provisions of the articles 106 and 107 of the Law, and in accordance with the provisions of the article 27 of the said law, the application file for residence visa or work permit has to contain the elements required by the valid legislation and regulation in these domains on the Eligibility Certification Date of the concerned Investment.

The application files are left at the Permanent Office of the CGIM, which is responsible for their transfer to the competent management for their handling, and verifies its delivery within legal time limit, to the required administrative authorization.

CHAPTER V ANNUAL REPORT FORWARDED BY THE HOLDER TO THE CGIM

Article 107: The Annual report

At the latest on march 31 following the end of each civil year, the Holder and the Transformation Entity, if necessary, have to leave at the CGIM an annual report concerning the previous year, including the analytical table composed with four (4) columns in which are exposed:

- (a) The elements of the current Investment Plan,
- (b) The carrying out of each element during the considered year,
- (c) The accrued carrying out of the elements, and
- (d) The predictions for the following year.

The Holder and the Transformation Entity have to provide the written explanations for each step compared with the Investment Plan.

The annual report has to, moreover, include a description of the assigned works and operations, and their report with the predictions for the passed year. He has to provide further information on the stock consumption and on the production and the selling realised during the year, as well as the recapitulation of the mining taxes paid by the State.

Concerning the workers and the job, the annual report has to specify the number and the quality of the trained and employed workers, during the considered year, and it is according to the previous year. He has to describe the recruitment planning and the current professional training as well as their results.

Concerning the environment protection, health and hygiene, the annual report has to specify the measures of the PGEP implemented during the year, as well as the assessment on their efficiency. Particularly, the Holder and the Transformation Entity, if necessary, have to explain the undertaken measures towards the local community in order to contribute into a lasting development in the establishment area of the Investment, during and after the Project. The parts on health and hygiene have to recapitulate the implemented plans, infrastructures as well as the implemented preventive and the curative measures, and also their organisation and coordination with the local and national competent authorities.

CHAPTER VI TAKING OUT OF THE HOLDER, THE TRANSFORMATION ENTITY AND THE SUBCONTRACTORS TO THE REQUIRED INSURANCE POLICIES

Article 108: Summary of the insurances of the Project

Thirty (30) days before the starting Phase of Development and Construction of the Project, the Holder and the Transformation Entity, if necessary, have to lodge a summary of insurances of the Project in accordance with the article 114 of the Law.

This summary has to include the following elements for each insurance policy:

- (a) The references and guarantee cover by the insurance policies,
- (b) The respective names and addresses of the insurance agents, and
- (c) The respective limits of the subscribed covers.

The Holder and the Transformation Entity, if necessary, have to join as well a copy of each insurance policy.

Article 109: Alteration in the Insurance Policy

In case of alteration in an insurance policy or a change of an insurance agent, the Holder and the Transformation Entity, if necessary, have to lodge a copy of the altered insurance policy or the new insurance policy, and have to explain the reason of this alteration.

Article 110: Examination and Approval of the Insurance Policies

The CGIM checks that the insurance policies respect the provisions of the article 114 of the Law.

For lack of notification within thirty (30) days from the receipt of the summary of the insurances of the Project, the insurance policies taken out by the Holder or the Transformation Entity is considered as approved.

In case that the CGIM estimates that the insurance policies taken out by the Holder, the Transformation Entity or the Subcontractors are not in accordance with the limitations in the article 114 of the Law, he will forward his observation to the Minister of Mines who will be able to give the Holder and/or the Transformation Entity notice to take correct measures in accordance with the provisions of the article 118 of the Law.

TITLE VI

FINAL PROVISIONS

Article 111: Abrogation of the previous opposite provisions

The Provisions of the present Decree are taken as an exception from all prior opposite regulation provisions.

Article 112: Implementation of the Decree

The Minister of Mines, the Minister of Environment, the Finances Minister, the Budget Minister, the Minister of Autonomous Provinces Development, the Minister of Estate, the Minister of national and regional development, the Minister of Industry and Crafts, the Minister of Forestry Commission, the Trade Minister, the Minister of Labour, the Minister of Public Health, the Minister of Civil Engineer, the Minister of Higher Education, the Minister of Scientific Research, the Minister of Justice, the Minister of the Interior, the Minister National Police Force, the Minister of National Police force, the Minister of the Armed Force are responsible, each one concerned, to carrying out the present decree, which will be issued in the *Journal Officiel* of the Republic

Antananarivo, July 08, 2003

BY THE PRIME MINISTER,
CHEIF OF GOVERNMENT

Jacques SYLLA

The Vice Prime Minister of
Economical Programs,
Minister of Transports, Civil Engineer and
National and Regional Development

RAMANDIMBIARISON Zaza Manitranja

The Minister of the Interior and
The Administrative Reform

RAMBELOARIJAONA Jean Seth

French Minister of Justice,
Minister of Justice

Alice RAJAONAH

The Minister at the Presidency of the
Decentralization,
Autonomous Provinces and Towns Development

ANDREAS ESOAVELOMANDROSO Monique

The Minister of Law and Order

**The General Controller
AMADY Augustin**

The Minister of Environment,
And of Forestry Commission

**The Major General
RABOTOARISON Charles Sylvain**

The Minister of National Defence

**The Major General
MAMIZARA Jules**

The Minister of the Civil Service

RAZAFINDRALAMBO Vola Dieudonné

Finance and Budget Minister

RADAVIDSON Andriamparany Benjamin

The Minister of Industry,
Commerce and Private Sector Development

RAZAFIMIHARY Mejamirado

The Minister of Energy and
Mines

Jacquis RABARISON

ANNEX A
TABLE ON UPDATING AMOUNT IN MALAGASY FRANCS IN THE LAW ON LARGE MINING INVESTMENTS AND IN ITS ENFORCEMENT DECREE

Articles references of the Law on Large Mining Investments	Description	Amount in Malagasy Francs specified in the Law on Large Mining Investments	Amounts updated on the date of ----- --
Article 4	Threshold of the Eligibility of investments	1.000.000.000.000 FMG	
Article 59	Annual upper limit of Land Tax on Built Properties (IFPB) and Annex Tax of IFPB (TAFPB)	1.000.000.000 FMG	
Article 68	5 capital sections of which the corresponding rate to determine the proportional right of the contribution rights is applied	(1)<50.000.000 FMG; (2)>50.000.000 FMG and <500.000.000 FMG; (3)>500.000.000 FMG and <5.000.000.000 FMG; (4)>5.000.000.000 FMG and <13.800.000.000 FMG; and (5)>13.800.000.000 FMG.	
Article 68	Upper limit of fixed right of the contribution rights for each act aimed at in the article 68(1)	10.000 FMG	
Article 68	Upper limit of the proportional right of contribution rights	50.000.000 FMG	
Article 95	Amount determining the payment delay for the expropriation indemnity	(1)<100.000.000 FMG (2)>100.000.000 FMG	
Article 116	Amount of the constraint per day in case of breach of the Holder or the Transformation Entity, and not involving the loss of the eligibility	5.000.000 FMG	
Article 92 (Article 95 of the Decree)	Upper limit of the contribution of the Holder on costs of the assessment of the Environmental Impact Study	3.410.000.000 FMG	