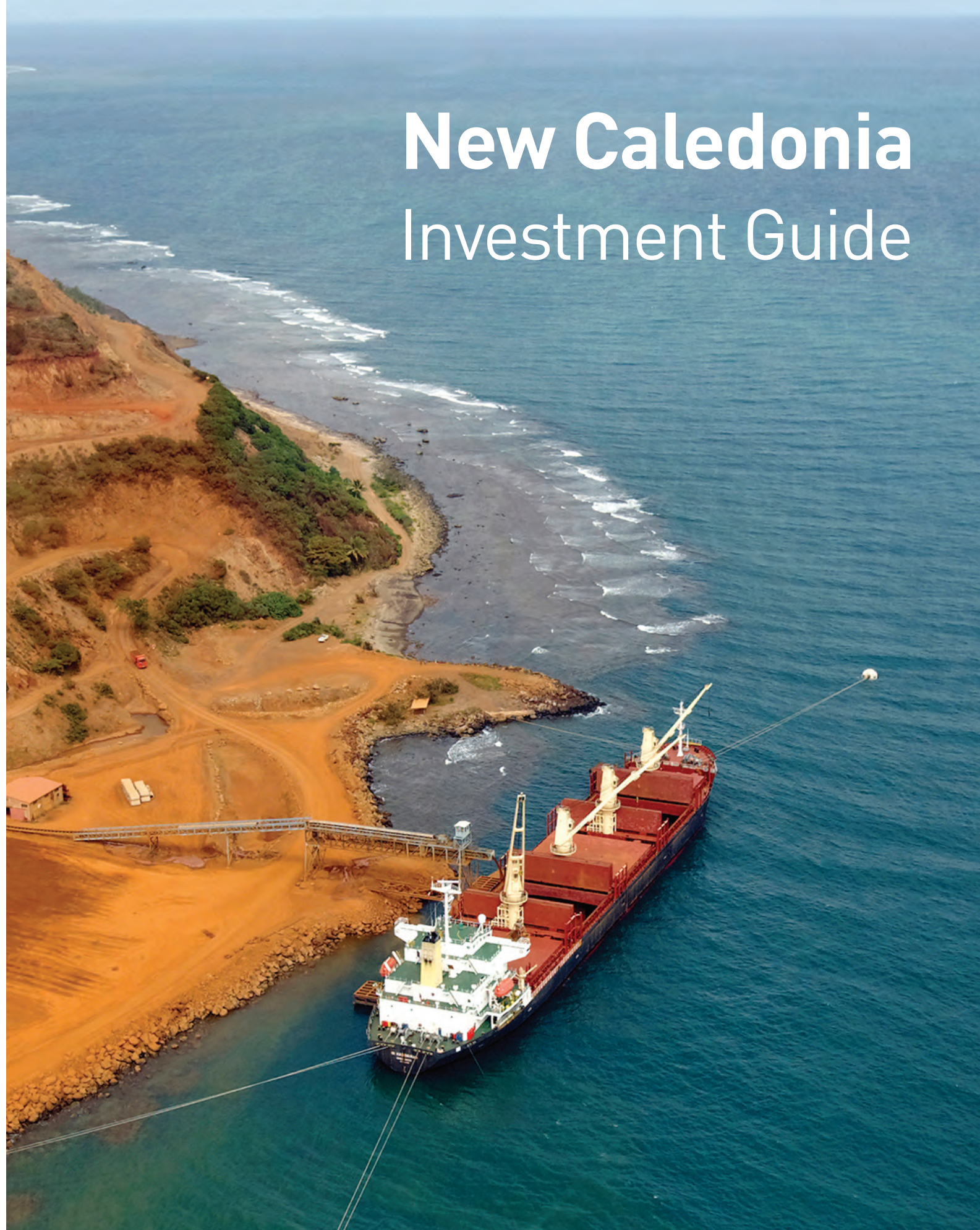


New Caledonia Investment Guide



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ADECAL

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New Caledonia - an overview

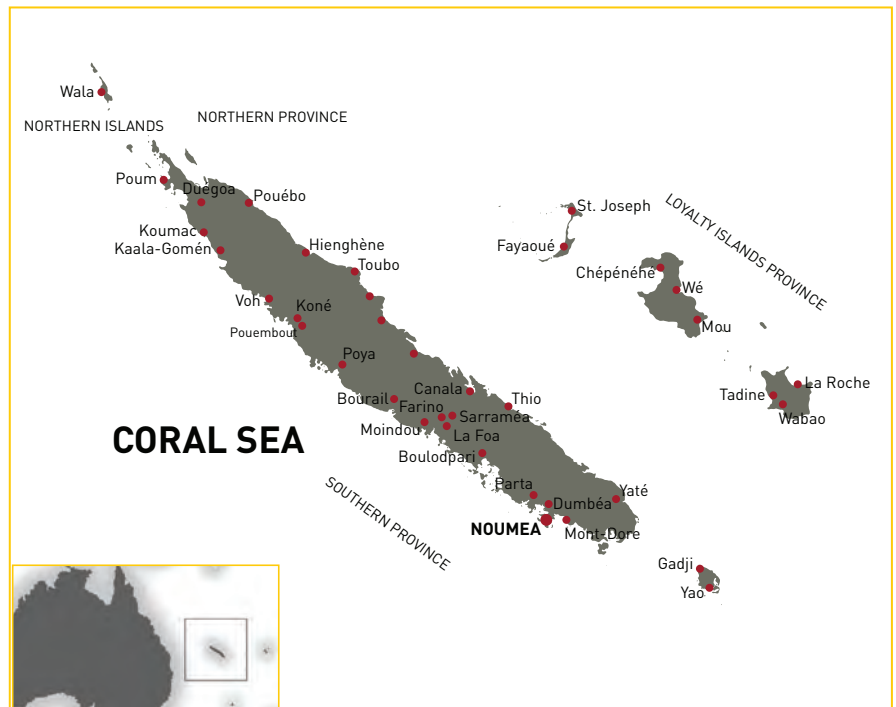
Geography

Area

New Caledonia is an archipelago in the Pacific Ocean located near the Tropic of Capricorn about 1,500 km off the east coast of Australia, 1,800 km north of New Zealand, 7,500 km from Japan and 18,000 km from metropolitan France.

Pacific region

The Pacific region is divided into three geographical groups: Micronesia in the north, Melanesia in the west and Polynesia in the east. New Caledonia is located in Melanesia, which also comprises Fiji, Vanuatu, the Solomon Islands, Papua New Guinea and Irian Jaya. New Caledonia is situated between 19° and 23° latitude south and between 158° and 172° longitude east and is the third largest island in the South Pacific after Papua New Guinea and New Zealand.



New Caledonian archipelago

With an area of 18,575 km² the New Caledonian archipelago comprises:

- the Mainland;
- Isle of Pines;
- the Belep Archipelago;
- the Loyalty Islands consisting of Lifou, Mare, Ouvéa and Tiga; and
- numerous other small islands.

The Exclusive Economic Zone (EEZ) of New Caledonia is estimated at about 1,450,000 km².

Topography

The New Caledonian mainland is divided through the centre by the Chaîne mountain range. The Chaîne mountain range includes Mt. Panié at 1,628m in the north of the island and Mt. Humbolt at 1,618m in the south of the island. Whereas the eastern side of New Caledonia has a high and ragged coastline, the western side is low with several plains.

The Isle of Pines has a central plateau and coral coastal plain while the Loyalty Islands are flat islands that are formed from coral.



MUNICIPALITIES OF NEW CALEDONIA

- Nouméa - Paris: 16,674 km
- Nouméa - Los Angeles: 10,095 km
- Nouméa - Tokyo: 6,972 km
- Nouméa - Auckland: 1,859 km
- Nouméa - Brisbane: 1,500 km
- Nouméa - Suva: 1,400 km
- Nouméa - Port-Vila: 527 km

Source: ISEE, *New Caledonia facts and figures*, 2007.

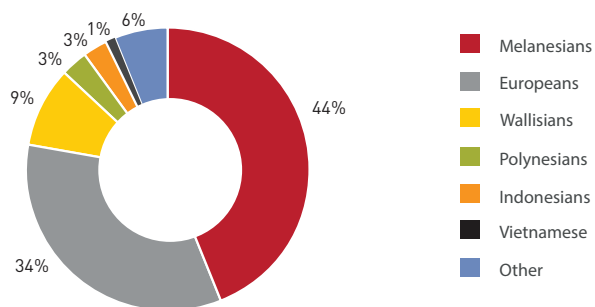
Population

The population of New Caledonia is estimated to be 252,000 (as at 1 January 2011). It is expected that New Caledonia's population will rise to 300,000 people in 2018, and thereafter double to 500,000 people by 2040.

Upon French colonisation, the population of New Caledonia consisted of approximately 30,000 to 40,000 indigenous Kanak people. By 1900, New Caledonia had approximately 23,500 European settlers.

New Caledonia has a diverse population. The 1996 census in which questions relating to ethnicity were posed, divided the population as follows.

ETHNIC DIVERSITY IN NEW CALEDONIA



Source: INSEE-ITSEE, Images de la population de la Nouvelle-Calédonie/ Principaux résultat du recensement 1996, INSEE Résultats, série Démographique-société, n55, février 1997

According to the 2009 census, the Melanesian Kanak community represents approximately 40.3% of the entire New Caledonian population, primarily residing in the Loyalty Islands Province, and the Northern Province. The European community represents 39.2% of the New Caledonian population and predominantly resides in the Southern Province. 71.2% of the New Caledonian population resides in the Southern Province, while 19.3% resides in the Northern Province and 9.6% resides in the Loyalty Islands Province.

The 2004 census presented an even gender distribution. Of the then 230,789 New Caledonians, there were 116,485 men and 114,304 women. Majority of New Caledonia's population has French citizenship. Foreign nationals residing in New Caledonia include nationals from Asian and Oceanian countries.

In 2009, 40% of New Caledonia's population was under 20 years of age.

The median age in New Caledonia is 30.7 years old. Average population density is approximately 13.8 inhabitants per square kilometre.

Customary traditions

Melanesian Kanak traditions

Melanesian Kanak traditions still exist in New Caledonia. Kanak society is a customary society based on clans which form larger groups of tribes. New Caledonia's civil law acknowledges the existence of the customary society. Additionally, the customary status of the Kanak people is recognised in article 75 of the New Caledonian Constitution which states that people who have Kanak customary civil status can elect to be governed by "custom" in civil matters. This status is optional for Kanak people.

A Decree dated 21 June 1934 states the specific civil status of native citizens by recognising customary procedures for specified acts including marriage and adoption. A Deliberation dated 3 April 1967 elevated specific civil status to "customary civil status". This was subsequently supplemented by the Organic Law of 19 March 1999 which provided a specific definition of, and structure to, customary civil status.

The customary civil status of citizens is determined by three elements which include paternal surname (family name); Christian name(s) (first name); and the individual or Melanesian first name. The Melanesian name of a person is very important under customary law, especially in a determination of land rights within a clan. Under customary civil law, the existence of a "master of the land" clan is generally accepted. The "master of the land" is the entity that the majority of families making up Melanesian clans or tribes originally received a concession from, being the land they live on and cultivate. Mayors, in their capacity as registrars, are responsible for maintaining customary civil status registers.

Any determination of a civil claim that encompasses a dealing of a Kanak person's civil status, will be determined by a judge that is assisted by two customary assessors.

A tribe is recognised within Melanesian society and customary districts are formed by groups of tribes. The Clan Council (*le Conseil du Clan*) is the legal institution that rules on questions relating to clan property and status. In this regard, the Clan Council holds an essential position within the customary social and political system of New Caledonia. Different institutions, including DIMENC, may consult the Clan Council on various matters.

TRIBAL GROUPS IN NEW CALEDONIA



Source: Institut de la Statistique et des Études Économiques (ISEE), *Panorama des tribus*, Notes et Documents No. 78, avril 1998.

According to the last census, 341 tribes exist in New Caledonia (approximately three-quarters live on the mainland and the remaining on the Loyalty Islands). These tribes live on 160 indigenous reserves. 80,443 Melanesians have declared themselves as belonging to a tribe, but not necessarily residing in indigenous reserves, while 28.7% of the population actually live in a tribe.

The Organic Law affirms the Kanak ties with the land, stipulating in Article 18 that customary lands are inalienable, non-transferable, non-exchangeable and cannot be seized.

Language

Following the constitutional law 92-554 (June 1992), the official language of New Caledonia is French. French is spoken throughout New Caledonia by the whole population. In addition to French, 30 vernacular languages are spoken by the Kanaks across New Caledonia.

Currency

The currency in New Caledonia is the CFP Franc (XPF). It has a fixed exchange rate with the Euro (€) of 1,000 XPF = 8.38 €. The fixed exchange rate provides for exchange security in international transactions.

Since 1967, the CFP Franc has been issued by the Overseas Issuing Institute (*Institut d'Emission d'Outre Mer*) (IEOM).

Political history

On 4 September 1774, English Captain, James Cook, "discovered" and named "New Caledonia". However, evidence of Lapita pottery is suggestive of a Melanesian presence in New Caledonia from approximately 1300 BC.

For nearly 70 years after its discovery, little contact with New Caledonia was recorded. Early visitors to New Caledonia included seafarers and pirates, both of which established trading centres in the Pacific region during the mid 1800s. These visitors were followed by British Protestant missionaries and French Catholics.

By order of Napoleon III, on 24 September 1853, Rear-Admiral Fébvrier-Despointes took possession of New Caledonia in order to establish a penal colony. Convicts first arrived in 1864 and New Caledonia continued as a penitentiary administration until 1897. In the late 1900s, colonials from metropolitan France were encouraged to settle in New Caledonia and were offered land for cultivation purposes. Despite this, the tropical climate and isolation from France ensured that the "free colonisation policy" was short lived. In the 1920s another group of French settlers unsuccessfully attempted to cultivate cotton.

The discovery of nickel ore by the engineer Jules Garnier in 1864 is a landmark in New Caledonia's history. Within 20 years, the nickel mining industry had developed so rapidly on the island that it was necessary to import labour, particularly from Asia, to sustain development.

World War II is another landmark in New Caledonia's history as it served as a military logistics base for American troops during the course of the Pacific War.

In 1946, New Caledonia became an overseas territory within the Republic of France. By 1953, French citizenship had been granted to all New Caledonians, despite ethnicity. The decolonisation period that followed World War II did not affect New Caledonia until the early 1970s and the independence movement peaked in the 1980s; a period

characterised by political crisis and violent confrontations between the pro-independent Kanaks and descendants of French settlers. The "Matignon Agreements", signed on 26 June 1988, provided for a period of stability in New Caledonia. The "Matignon Agreements" were approved by French and New Caledonian voters in a referendum held on 6 November 1988 which provided for a further referendum to be held in New Caledonia in 10 years' time which would determine its autonomy and civil relations and rights between indigenous people and the European descendants.

On 5 May 1998, the Nouméa Agreement was approved, which announced a new statute for New Caledonia to recognise the customary civil status and customary rights of the indigenous community. The Nouméa Agreement also provided a framework for governing the indigenous community and descendants of European settlers, as well as greater autonomy for the New Caledonian Government.

Pursuant to the Nouméa Accord, the Organic Law was passed in March 1999. The Organic Law provided for the implementation of New Caledonia's autonomous Government and Congress and a progressive transfer of authority from the French State. In addition, the Nouméa Accord has provided for a public consultation period between 2014 and 2018 to be held in order to decide whether New Caledonia will accede to have independent sovereignty from France.

The self-determination process granted by the Nouméa Accord has served to ensure social stability in New Caledonia.

Political organisation

Following the Nouméa Agreement, New Caledonia became a territorial collectivity with a specific status within the French State (a "*sui generis* collectivity"). The current political organisation of New Caledonia is derived from the Organic Law, (No. 99-209 dated 19 March 1999), which followed the Matignon Agreement and the Nouméa Agreement and was enacted pursuant to articles 76 and 77 of the French Constitution. Together these laws create a complex system that provides for the allocation of powers between the French State, the New Caledonian institutions and its three Provinces.

The French state

The French Republic retains sovereignty in relation to a number of heads of power (see below).

The French State is represented in New Caledonia by the High Commissioner (*le Haut Commissaire de la République*). The High Commissioner reviews the legal status of the acts taken or passed by

the local authorities of New Caledonia. As the French representative in New Caledonia, the High Commissioner consults the Congress and/or Government on national undertakings applicable in New Caledonia.

New Caledonia as a *sui generis* collectivity

New Caledonia is a "sui generis collectivity" that has gradually transferred certain powers from France. New Caledonian institutions include the Congress, the Government, the Economic and Social Council, the Customary Senate and the Customary Councils. The New Caledonian collectivity is subdivided into three provincial assemblies and 33 communes.

The legislative body of New Caledonia is the Congress. It is governed by 54 members from the provincial assemblies, which are each called a "Councillor of New Caledonia" (*Conseiller de Nouvelle Calédonie*). Each year the Congress elects the members of its executive, standing committee, and internal committees. The Congress also elects the president of the Government. The Government in New Caledonia is accountable to the Congress.

The Congress may pass local laws in relation to matters for which it has designated authority pursuant to Article 99 of the Organic Law. Laws passed by Congress come into force upon proclamation by the High Commissioner and publication in the Gazette of New Caledonia (*Le Journal Officiel de la Nouvelle Calédonie*).

The executive body of New Caledonia is the Government, whose number of members varies between five and 11. The members are elected by Congress by ballot from party lists. The Government is elected for a term of five years, its mandate expiring when the mandate of the Congress that elected it expires. The members of the New Caledonian Government elect a member as president. The president represents New Caledonia and is responsible for its administration and the appointment of civil servants.

The Government prepares and executes Congress' deliberations, and with Congress' authority adopts the regulatory decrees required for the implementation of its decisions. Decrees are signed by the President and countersigned by the member responsible for overseeing its execution. These decisions are made by majority vote. Initiatives for laws and deliberations come from both the Government and members of the Congress.

The Economic and Social Council (*Le Conseil Economique et Social*) is a consultative body, composed of 39 members, including 28 representatives from the civil society directly involved in economic, social and cultural activities designated by the Provinces.

The Customary Senate appoints two members, while the Government appoints nine members, each for a term of five years.

The Economic and Social Council is consulted on bills or local law proposals and on deliberations of Congress of an economic, social or cultural nature. The Economic and Social Council may also be consulted by the President of the Government, the President of Congress, the provincial assemblies or Customary Senate.

The Customary Senate is composed of 16 members, with two members appointed from each of the eight customary areas. A new president of the Customary Senate is designated each year, in accordance with a rotation system among the eight customary areas.

The Customary Senate is consulted on bills relating to and impacting indigenous customary civil status and customary land issues. It can express an opinion on all bills and proposals. It is mandatory for the Customary Senate to be involved in consultations regarding Kanak identity.

The three Provinces

The Referendum of 9 November 1988 established the three Provinces of New Caledonia. The Provinces are composed of the Northern Province, the Southern Province, and the Loyalty Islands Province. As above, the 1998 Referendum resulted in the French State agreeing to decentralise and transfer substantial powers to the Provinces. The Organic Law reinforced this transfer of authority from the French State to the three Provinces.

Generally speaking, the Provinces have authority on matters not falling within the exclusive authority of the French State or New Caledonia. Decisions relating to the application of the mining legislation are made by the Provinces.

Transfer of authority

The Nouméa Agreement of May 1998 and the Organic Law have transferred to New Caledonia the power to pass its own legislation in various areas: Labour law, Insurance Law, Taxation, Foreign Investments, and Natural Resources. Hence, today New Caledonian law is composed of French law and local law. Progressively and in order to match the political development of the Island, new powers will likely be transferred to New Caledonia. Transfer of powers does not mean that on the date of transfer, French law ceases to apply and that a New Caledonian statute immediately takes over. Transfer of powers means that, on the date of transfer, French law is received into the New Caledonian legal system and becomes a New Caledonian prerogative.

Powers already transferred to New Caledonia

These are contained in Article 21.2 of the Organic Law and include:

- taxation;
- labour law and trade unions law;
- insurance law;
- access to work for foreigners;
- native title; and
- mining regulation.

Powers kept by the French State

These are contained in Article 21.1 of the Organic Law and include:

- justice;
- education;
- immigration;
- police powers;
- defence;
- foreign affairs; and
- civil and commercial law.

Powers to be transferred to New Caledonia

Secondary school education and civil/commercial law are two important powers which could not be transferred unless and until New Caledonia was ready to take them in charge. This is the reason why Article 26 of the Organic Law provided that these powers were transferrable.

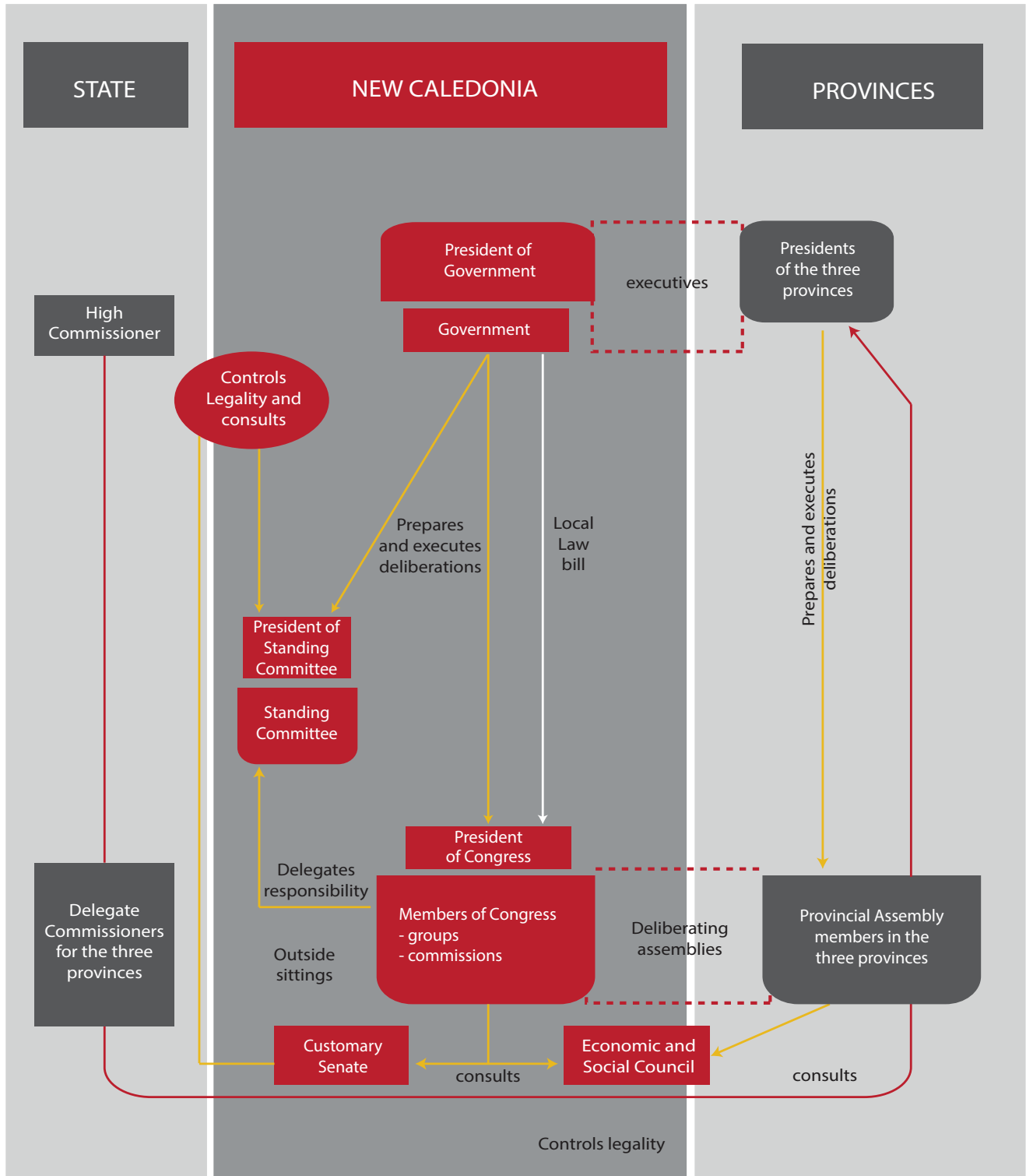
Secondary school education was transferred on 1 January 2012 pursuant to five specific conventions signed by the French State and the New Caledonian Government on 18 October 2011. The transfer is programmed to occur progressively at least until 2014.

On 20 January 2012, the Congress voted the transfer of civil and commercial law (Loi du pays n° 2012-2 du 20 January 2012). This transfer is expected to take effect on 1 July 2013.

Transfer of sovereignty?

From 2014, the Congress will have the choice to consult New Caledonians by way of referenda in order to determine the extent of sovereignty for the territory. This public consultation may lead to a full transfer of sovereignty to New Caledonia which would then become an independent country.

INSTITUTIONS IN NEW CALEDONIA



Courts and jurisdictions

French sovereignty

The French State is responsible for the administration of justice in New Caledonia. Therefore, New Caledonia shares a similar judicial system to the French State. As a French *sui generis* collectivity, the administration of justice in New Caledonia is governed by the rule of law and characterised by the separation of powers. Consequently, two types of courts exist in New Caledonia, Judicial Courts and Administrative Courts.

The *Conseil d'Etat* is the highest Administrative Court. The *Conseil d'Etat* sits in Paris. Generally speaking, disputes involving administrative law are first heard by the Administrative Court (*Tribunaux Administratifs*) and at second instance by the Administrative Court of Appeal (*Cours administrative d'Appel*). The Administrative Court sits in Nouméa and the Administrative Court of Appeal sits in Paris.

Judicial courts have jurisdiction over disputes between private individuals or companies and disputes involving the Government, the French State or a New Caledonian institution when it is acting in a commercial capacity.

Court structure

The court system is a two-tier court structure. Generally speaking, on first instance, a dispute will be heard by the relevant Court of First Instance (*Tribunal de Première Instance*). A subsequent second hearing would be heard at the Court of Appeal (*Cour d'Appel*). At this stage a judgment delivered by a Court of First Instance may be appealed.

A third and final level of adjudication exists in New Caledonia entitled *the Civil Supreme Court (Cour de Cassation)*. The *Cour de Cassation*, sits in Paris and has jurisdiction over all French territories, including New Caledonia. Any decision delivered by a Court from which there can be no further appeal may be the object of an appeal on a point of law brought by either party of the dispute to the *Cour de Cassation*. The *Cour de Cassation* does not review the facts of the case, rather determines how a particular legal rule should be applied.

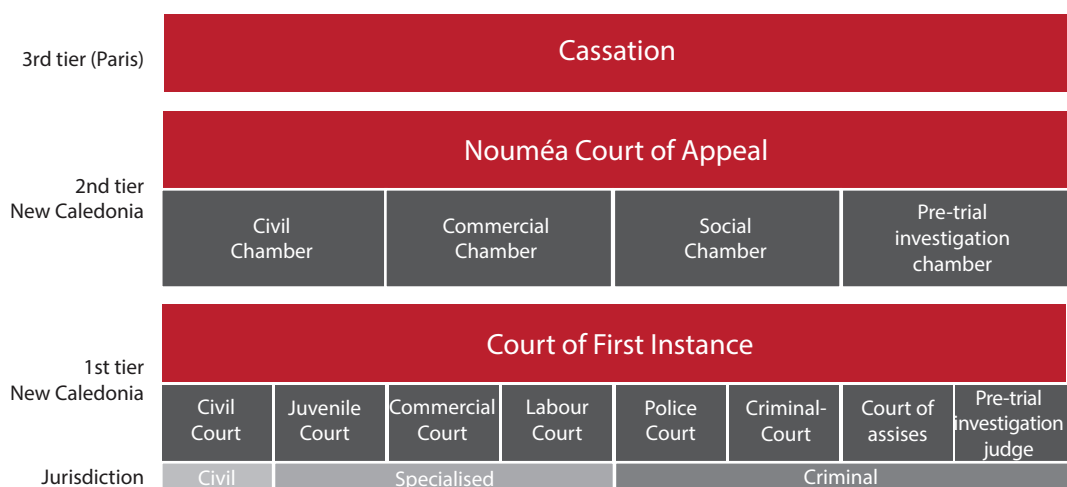
The Tribunal of First Instance of Nouméa (*Tribunal de Première Instance de Nouméa*) is jointly managed by the President of the Tribunal (*Président du Tribunal*) and the Prosecutor of the Republic (*Procureur de la République*). In addition to its civil and criminal jurisdictions, the Tribunal of First Instance of Nouméa encompasses the Commercial Court (*Tribunal Mixte de Commerce*), the Labour Court (*Tribunal du Travail*) and the Juvenile Court (*Tribunal des Enfants*).

Mix Courts

The Commercial Court consists of one professional judge and two consular judges, which are appointed as representatives of the business community.

The Labour Court (*Tribunal du Travail*) consists of one professional judge, four assessors, two employees and two employers.

The Court of Appeal (*Cour d'Appel*) sits in Nouméa, and is the responsibility of the President of the Court and the Public Prosecutor and covers New Caledonia, Wallis and the Futuna islands.



Economy

GDP

In 2010, the estimated Gross Domestic Product (GDP) of New Caledonia was US\$9.03 billion and US\$36,436 per capita. The GDP per capita exceeds the GDP per capita in New Zealand and is significantly higher than the other small insular economies of the Pacific region.

The economy of New Caledonia has grown at a rate of approximately 4% per annum for the past 20 years. During the same period, the GDP per capita rose by an annual average of almost 2%. As a result, living standards in New Caledonia are now similar to metropolitan France.

From the mid-1980s, a new economy emerged in New Caledonia. The agricultural sector (which contributed up to 10% of GDP in the early 1960s) has been gradually displaced by a services sector, the nickel industry and a productive agricultural system.

The services sector of the New Caledonian economy continues to strengthen. In the 1960s the services sector accounted for

approximately 54% of New Caledonia's GDP, the sector now accounts for 70% of New Caledonia's GDP. This is comparable to metropolitan France.

New Caledonia is a major player in the global nickel market, accounting for a significant proportion of the world's nickel ore reserves (estimated at approximately 25-40%).

Although nickel represents a major export resource for New Caledonia (90% of all goods exported), the relative weight of the sector has generally tended to be in decline since the beginning of the 1970s, which marked the end of the "nickel boom". During the early 1970s the nickel industry accounted for approximately 30% of New Caledonia's GDP. However, this percentage gradually declined until 1998. Subsequently, nickel prices have risen steadily, resulting in its export income contributing to a larger portion of New Caledonia's GDP. Recent estimates suggest that the nickel industry contributes to over 10% of New Caledonia's GDP.

Imports to New Caledonia in 2010 totalled approximately €2,500 and €1,128 million of goods and services exports.

The nickel industry (ore extraction and metallurgy) in New Caledonia is dependent on both the international economic outlook and the global demand for nickel. The nickel sector contributed over to 10% of New Caledonia's GDP for the 2006-2010 period.

New Caledonia's industrial sector (which includes energy but excludes metallurgy) has continued to develop since the 1980s. A diverse range of small and medium-sized industries, contributed approximately 6% to added value, while building and construction contributed to approximately 10.5%.

The agricultural sector, which also encompasses livestock production, forestry, fisheries and aquaculture, contributed to approximately 1.5% of added value.

Investment environment

In order to best describe the investment environment of New Caledonia, this Guide focuses on three relevant aspects of the New Caledonian market including:

- organisations that promote development;
- the job market; and
- the banking system.

Organisations that promote development

The Southern Province of New Caledonia is the most developed area in New Caledonia and on that basis is the subject of continuous political discussion as to how the other provinces can obtain a similar

level of development. Investment initiatives in the Northern Province and in the Loyalty Islands Province are welcomed and encouraged.

The development agency of New Caledonia (ADECAL) was established in 1995 to oversee trade relations and promote foreign investment in New Caledonia.

The development agency of New Caledonia

ADECAL was founded by the public authorities and receives support from both public and private institutions. As part of its missions, ADECAL acts in a number of capacities, including as an interface, a consultative body and coordination body, to accompany new actions and projects that benefit New Caledonia. ADECAL receives the majority of its funding from the French Government, the Government of New Caledonia and the three Provinces of New Caledonia.

ADECAL's mission is to promote New Caledonia's economic potential. ADECAL is also responsible for external trade, regional cooperation and managing the exploration programme to the Exclusive Economic Zone called Zonéco.

ADECAL assists in project developing by providing:

- information on exportable goods and services;
- international investor canvassing and external markets exploration;
- contact with appropriate local government officials and business partners;
- project management, facilitating administrative procedures; and
- cooperation activity.

ADECAL is developing high-tech industrial research and development facilities, a structuring and federative structure, to stimulate innovative projects and streams, with a view on improving competitiveness and promoting sustainable economic development.

The first set of themes is related to sustainable use of land and marine biodiversity, since the potential has been deemed under-exploited, to generate blue and green growth. ADECAL now has tools and skills, technical and human, in the fields of innovation and technological transfers.

Services provided by ADECAL are free of charge. Investment in New Caledonia's economy is promoted in different ways. The European Union, the French State and the New Caledonian Provinces support inbound investment in various ways. Additionally, a number of other "non-governmental" organisations exist in New Caledonia that also promote investment.

European assistance

New Caledonia has had "Overseas Countries and Territories" status (Pays et Territoires d'Outre Mer) (PTOM) within the European Union since the Rome Treaty of 1957. Financial initiatives provided from the European Union to New Caledonia include issuing lines of credit to fund research on environmental and health issues, investment initiatives undertaken by the European Investment Bank (BEI), the establishment of regional programs including Procfish (open sea fishing program managed by CPS South Pacific Secretariat) and the European students exchange program called ERASMUS.

The European Development Fund (EDF) is also vital in the context of financial assistance provided by the European Union. Broadly, EDF issues funding on the basis of periodic discussions and on a per need basis. The global budget allocated to New Caledonia for EDF Round IX (2000-2007) amounts to €21.5 million.

The French State

The French State undertakes a variety of assistance programs in New Caledonia. They focus on development and wealth redistribution. Development and urban agglomeration contracts are utilised by the French State as part of its wider assistance programs in New Caledonia.

Development contracts are individual agreements that the French State has entered into with the New Caledonian Government and the Provinces since 1990 (and individual municipalities since 2000). These development contracts provide for long-term development in accordance with objectives established in an overall improvement and development plan.

Urban agglomeration contracts are formed between the French State and the municipalities of Greater Nouméa, with priority given to measures for urban development (including housing, water supply and waste treatment) and social development (including insertion youth programs and training).

Ad-hoc contracts between the French State and its collectivities, referred to as "State-Collectivities Contracts", were also entered into for the 2000-2004 period. These contracts outlined the financing and implementation of policies between the French State and the Collectivities.

French State intervention under these contracts represented €226 million for the 2000-2005 period, with €393 million planned for the ongoing 2006-2010 contracts.

These forms of direct financial intervention from the French State are complemented by other indirect mechanisms, such as tax incentives

for its collectivities. Investment undertaken with such tax incentives amounted to approximately €50 million in 2005.

Assistance provided by the Provinces

As a result of the Matignon Agreement which handed the Provinces authority in matters of economic development from 1988, the Provinces are a major local investor in New Caledonia.

Each Province has semi-State owned/semi-private companies (*Societe d'Economie Mixte*) (SEMs) which promote investments and economic development within their respective Province. Each of the three Provinces has a SEM on the Board of Directors on which it sits (These SEMs are listed below). The Province consequently takes part in the decision to finance, pilot or commit to structuring projects, while simultaneously reassuring the confidence of private investors. SEMs aim to consolidate the level of equity capital of a targeted company so that they can partially self-finance their investments and, if necessary, benefit from satisfactory credit conditions.

- **In the Southern Province: Promo Sud**
Promo Sud mainly operates to finance projects for the tourism industry as well as the fishing and aquaculture, innovative technologies and mining industries.
- **In the Northern Province: Sofinor**
Sofinor favours the financing of projects within the mining sector, the hotel industry and aquaculture.
- **In the Loyalty Islands Province: Sodil**
Sodil finances projects in the transport, hotel, fishing and aquaculture industries.

Provincial specific development and/or investment codes also assist in Provincial specific investment initiatives. Broadly, these codes define the general mechanisms and application of formalities within each assistance regime.

The Modified Deliberation Number 06-97 of 16 May 1997 has supplemented the assistance package of the Southern Province. Broadly, it provides assistance for the creation of micro-enterprises and provides a variety of other mechanisms to encourage economic development.

Subject to provincial specific eligibility criteria, private businesses can also receive various forms of financial assistance. In 2005, €1.8 million worth of subsidies were paid out by the Southern Province, €3.4 million by the Northern Province and €0.9 million by the Loyalty Islands Province.

Other organisations assisting and promoting investment

Organisations other than the European Union, the French State and the Provinces, contribute to the economic and social development of New Caledonia.

- New Caledonian Institute of Participation (*Institut Calédonien de Participation*) (ICAP)

The Central Fund for Cooperation (Caisse Centrale de Coopération Economique) and the three Provinces established ICAP in 1989.

ICAP is a New Caledonia-wide development institution, providing benefits to both the mainland and the islands. The purpose of ICAP is to promote projects for the restoration of an economic balance between Nouméa and the rest of New Caledonia.

ICAP mainly operates in the production sector or the service sector (insofar as it is related to production).

- Central Bank of Overseas Territories (*Institut d'Emission d'Outremer*) (IEOM)

As the central bank of the Overseas Territories of the French State, the IEOM play an important role in development initiatives. One of the missions of the IEOM is to direct credit policy. The IEOM aims to facilitate investments in priority sectors in order to develop production systems and create jobs. It also seeks to maintain moderate credit rates by issuing a low re-payment discount rate, which contributes to reducing the financial costs of local companies belonging to the priority sectors of economic development.

Rediscountable loans (either short term – 12 months; or long term – up to seven years) may be issued for the following operations:

- Short term loan

Providing overdraft, assignment of receivables, bridging loan, campaign loan and interim financing loan of procurement contracts.

- Long-term loan

Funding production and sales equipment (machinery, tools, transportation, administrative or commercial equipment, purchasing of breeding stock), equipment aimed at protecting the environment and energy-saving, and construction of buildings for economic use.

- Sofotom

The Company for the Management of Guarantee Funds for Overseas Territories (*Société de Gestion des Fonds de Garantie des*

Territoires d'outre-mer (SOFOTOM) regroups the three inter-bank guarantee funds (FGIs) of French Polynesia, Wallis and Futuna, and New Caledonia, which were created on the initiative of the IEOM. The FGI of New Caledonia was set up in April 1982. The FGI of New Caledonia was created in order to facilitate the granting of financial aid by credit institutions in favour of borrowers who do not have sufficient security.

Since 1989, the scope of the New Caledonian FGI has been extended to all branches of industry, provided the project's economic interest has been proven. The scope of the New Caledonian FGI includes the hotel industry and tourist activities.

- **The French Development Agency (*Agence Française de Développement*) (AFD)**

At the heart of the French Development Assistance Policy is the AFD, whose mission is to finance development. The framework for the AFD's 2007-2009 New Caledonian initiatives sets out the following three principle objectives.

1. Finance, support and advise public collectivities, especially in relation to health and water treatment.
2. Support the creation of businesses and the development of competition, especially in the field of environmental protection.
3. Finance public policies, especially those regarding housing and structural investments.

AFD intervenes in New Caledonian development through a wide variety of mechanisms which include direct lending to the public and private sectors, management of shareholdings in certain companies, funding and management of properties and providing guarantee funds.

- **Association for the Right to Economic Initiative (ADIE)**

ADIE was created in 1989 and targets funding for the start-up and development of economic activities, through micro-lending to people who do not have access to bank funding. These micro-finance initiatives (solidarity, honorary and progressive solidarity loans) are awarded in addition to any assistance from the Provinces.

The labour market

Assessment

According to the criteria for assessment set out by the International Labour Organisation (ILO), there is no formal assessment of the labour force in New Caledonia. In 2009, the working labour force

was estimated to be 111,906. Approximately 60% of the total working labour force was employed in the services industry, whereas 20% was employed in agriculture and another 20% in industry. In 2009, the estimated unemployment rate in New Caledonia was 13.8%.

Employing people in New Caledonia

Article 3.1.1 of the Nouméa Agreement together with Article 22 of the Organic Law provides that New Caledonia has authority over all matters of labour law.

Part 5 of this Guide sets out the framework that applies to employers in New Caledonia.

Banking system

At the end of 2011, New Caledonia had 10 credit institutions.

Five banks

- Banque Calédonienne d'Investissement
- Banque de Nouvelle-Calédonie
- Banque Nationale de Paris Paribas - Nouvelle-Calédonie
- Société Générale Calédonienne de Banque
- ANZ (Representative Office).

Five financing companies

- Crédit Calédonien et Tahitien
- Oceor Lease Nouméa ex Crédit Commercial de Nouméa
- Crédit Agricole Mutuel
- Nouméa Crédit
- GE MONEY.

The Noumea Finance Centre (*Centre Financier de Nouméa*) and the post office (*l'Office des Postes et Telecommunications*) (OPT) also provide banking services in New Caledonia. Additionally, these institutions offer insurance products of the *Caisse Nationale de Prévoyance* (CNP) and saving products of *Caisse Nationale d'Epargne* (CNE).

No specialised financial institution or mutual banking network has been established locally.

In addition to the local banking system, seven credit institutions located outside the Pacific franc monetary zone, participate locally. These institutions are:

- the French Agency for Development (*Agence Française de Développement*) (AFD);

- the European Investment Bank (BEI);
- Dexia;
- Managing Company of the Overseas Guarantee Funds (*La Société de Gestion des Fonds de Garantie d'Outre-Mer*) (SOGEFOM);
- CASDEN Popular Bank (*La CASDEN Banques Populaires* - which is a shareholder of the Société Générale of New Caledonia);
- Natexis-Banques Populaires; and
- Deposit Fund (*La Caisse des Dépôts et Consignations*) (CDC).

Trade

Imports

Over the last decades, imports into New Caledonia have increased significantly. This growth reflects the increase of New Caledonian domestic household consumption, as well as strong levels of investment by local business.

For the 2001-2010 period, imports have grown 2.5 fold, mainly stimulated by industrial investments. The large refinery projects have generated imports of hardware, like earth moving equipment, and raw materials. Four product categories accounted for majority (62%) of New Caledonian imports.

1. Machines, appliances and electrical equipment (19% of import value)
2. Transport equipment (15%)
3. Mineral products (16%)
4. Foodstuffs (12%).

The mineral products category was the most significant increase in quantitative terms. Mineral products which are primarily used in metallurgic activity are dependent on the situation in the metallurgic sector of the New Caledonian economy and their cost is largely determined by fluctuations in raw materials prices on the international markets. Notably, an increase in coal imports from Australia to feed the power plants.

The continued links between New Caledonia, metropolitan France and the high living standards of the New Caledonian population are demonstrated by France being the major supplier of imports (22% of imports in 2010). Other import partners include the European Union (excluding France - 14%), Singapore (13%), Australia (10%), New Zealand (4%), the United States (3%) and Japan (2%). New Caledonia also purchases and imports goods from numerous other countries, in particular those in Asia, whose market share of imports into New Caledonia continue to rise.

Exports

Caledonian exports, being predominantly mining and metallurgy products such as nickel ore, ferro-nickels and mattes, are dependent on the international resource market and in particular their prices on the London Metal Exchange (LME).

In 2010, New Caledonian exports was in excess of €1,072 million.

Nickel remains New Caledonia's largest exported product. 93% of all exports between 2005 and 2010 were derived from nickel ore and its fusion products, which averaged a total value of €615 million per year.

Other New Caledonian exports are seafood products, but their share is low. In 2010, they represented 1.3% of the total exports in value. New Caledonia's major export markets are France, Japan, Taiwan, EU (excluding France). South Korea and Australia. New Caledonia is also developing further export markets such as China, which ten years ago was non-existent.

Trade balance

Strong growth in imports has contributed to a significant trade deficit in New Caledonia. The balance of trade in New Caledonia is dependent on nickel prices and the demand for nickel in the international resource markets.

Despite New Caledonia being unable to achieve an overseas trade balance, export growth has, to an extent, compensated rising imports. The New Caledonian export/import cover rate (situated between 38% and 110% since the early 1970s) remains far superior to the remainder of the French overseas territories.

New Caledonia's trade balance remained in deficit with its major trading partners. Excluding Japan, Taiwan and South Korea - each of which are significant buyers of nickel ore and ferro-nickels.



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Company law

Overview

Companies wishing to conduct business in New Caledonia must decide whether they wish to establish a company, a branch or a representative office. Companies must be aware of the particularities of the complex system of French business law that is applicable in New Caledonia. For example, New Caledonian legal requirements require that the statutory documents of a company be translated into French.

There are two types of companies, civil companies and commercial companies. Generally speaking, civil companies are professional partnerships (common for lawyers, architects, doctors...) or companies with a real property related purpose (acquisition or development of property). Commercial companies are the most common type of companies and are set up for any other type of for profit businesses.

Commercial companies are either divided between limited liability companies (*sociétés de capitaux*) or unlimited liability companies (*sociétés de personnes*). Companies wishing to establish a presence in New Caledonia are recommended to be established as a limited liability company.

The payment of dividends by a New Caledonia to a foreign parent is not restricted at law, however tax implications may arise as New Caledonia is only party to one international tax treaty with France. Therefore companies may need to undertake tax planning to ensure dividends are appropriately received. Alternatively, a presence in New Caledonia can also be set up through a branch or a representative office.

Limited liability companies (*Sociétés de capitaux*)

There are three types of limited liability companies under French law: Société Anonyme (SA); Société par action Simplifié (SAS); and Société à Responsabilité Limité (SARL). These companies are the most common type of company formation and are generally characterised as being established by minimum capital divided into transferable shares, and that liability is transferred to their shareholders in proportion to their shareholding. Various filing requirements are imposed on limited liability companies to be made with the Register of Trade and Companies (*Registre du Commerce et des Sociétés*).

Formation of S.A., S.A.S., S.A.R.L.

Forming a limited liability company can be divided into three steps: 1) drafting the constitution; 2) completing the requisite legal formalities and registration (see below); and 3) shareholders making of contributions to the company.

Drafting a company constitution

The company constitution should describe in detail the following:

- The company's structure;
- The name and address of the company's registered office;
- The purpose and the activities of the company;
- The amount of its issued capital;
- The value of in-kind contributions;
- Limitations as to the transferability of shares;
- Limitations as to the powers of the legal representatives of the company; and
- Method of allocation of profits and losses.

Officers and representatives of the company are generally appointed at the time the statutes of the company are signed.

Legal formalities

In order for a company to be validly established, a legal notification announcing the creation of the company must be published in a New Caledonian newspaper and the company must receive notice of its registration from the Register of Trade and Companies (*Registre du Commerce et des Sociétés*).

The Commercial Court (*Tribunal Mixte de Commerce*) requires the company to provide it with certain documents regarding its directors and managers which include birth certificates, police clearances, up-to-date civil status and overseas residential addresses.

Further, a foreign national can only perform management functions in a New Caledonian company if they have obtained a business permit (*carte de commerçant*). However, other European Union nationals and individuals holding a residence permit are not required to obtain this document.

A number of additional formalities need to be finalised for tax and social security purposes.

Contributions

Contributions may be paid either in cash or in kind. Contributions in cash must be deposited in a bank account or in a notary's office in a

blocked account in the name of the company. Contributions may only be released after the final completion of registration (from one to six months).

Valuation of in-kind contributions must be confirmed by an auditor appointed by the Commercial Court.

Registered capital

The amount of the share capital issued by a company must be contained in the statute of the company. The minimum amount that must be issued is dependent on the type of limited liability the company established:

- for the S.A.R.L and S.A.S., there is no minimum amount;
- for the S.A., €37, 000; and
- in a SA and a SAS, 50% or more of the capital shall be fully paid up at the incorporation stage (whereas for a S.A.R.L., only 20% or more of the capital shall be fully paid up at the incorporation stage).

Any change to the share capital of a company requires the company to lodge a number of formalities and notices to the Register of Trade and Companies and the Commercial Court.

Management of S.A., S.A.S. and S.A.R.L. companies

- S.A. companies

An S.A. company may be governed in two different ways. Firstly, via a Board of Directors (*Conseil d'Administration*) and a Chief Executive Officer (*Président Directeur Général*); or, by having a Directing Board (*Directoire*) and Supervisory Board (*Conseil de Surveillance*).

- SA with a Conseil d'Administration and a Président Directeur Général

A General Assembly (*Assemblée Générale*) of the shareholders will appoint about three to 24 members as the Board of Directors. The Board of Directors will be appointed for a maximum of six years with broad powers to act on behalf of the company. A Chief Executive Officer (*Président Directeur Général*) will be appointed by the Board of Directors which, amongst other things, is responsible for the company's management. The *Président Directeur Général* may be assisted by general managers (*Directeur Général*) and is revocable at the will of the Board of Directors.

- SA with a Directoire and a Conseil de Surveillance

Generally speaking, the directing board must be composed of up to five members. However, in the case of a S.A. company with a

share capital of less than 11,000,000 XPF, a directing board may only have one member. Members of the Directing Board are called "Directeurs". The Supervisory Board of a company is responsible for appointing members of the Directing Board. Stringent limitations on the remuneration of Directors and/or members of the Supervisory Board exist.

The Chief Executive Officer, the Executive Officer as well as Directors are treated as employees of a company for tax and social security purposes. However, unlike other employees, the Chief Executive Officer does not benefit from protection against dismissal, and remains dismissable at the will of the Board of Directors.

- **S.A.S. companies**

S.A.S. Companies have the ability to adjust their governance. The company may be governed by one or several Presidents, and with or without a board of directors. The President of an S.A.S. Company may be a foreign company, a shareholder or any other person the company deems suitable. A President of an S.A.S. Company does not need to be a resident of New Caledonia.

Although this flexibility exists within S.A.S. Company, the shareholders may require the company to seek shareholder approval for certain company decisions. On this basis, the powers of the President may be limited by shareholder requirements contained within the Company's Constitution. Accordingly, statutes of S.A.S. companies can be extensively tailored to suit the requirements of multinational groups, whereas S.A. and S.A.R.L. companies are not so flexible.

- **S.A.R.L. companies**

The managing directors of an S.A.R.L. company is called a 'Gérant'. There can be several Gérants for an S.A.R.L. company. Gérants are appointed by the shareholders and their remuneration is set at the general meeting of the company. Flexibility exists in the fact that a Gérant is not required to be a shareholder of the company. Generally speaking, the Gérant is empowered to undertake activities concerning the management of the company. The constitution of the company will provide for any limitations of power that may exist in regards to a Gérant. Any constitutional Limitation of power that applies to a Gérant does not bind third parties which do not have any knowledge of the constitution or applicable limitations. If several Gérants exist, unless otherwise limited by the company constitution, each Gérant has the power to act jointly and separately on behalf of the company. For tax and social security purposes, Gérants are

regarded as employees if they do not hold directly or indirectly, 50% of the capital of the company. For all other purposes, Gérants are not regarded as employees and are not entitled to the protection of New Caledonian Labour Law regarding termination of employment.

Branch of a foreign company

Opening a branch of a foreign company must be approved by the New Caledonian Government and the Province, as applicable, if the investor is not a EU resident.

In order to open a foreign branch, the Commercial Court must be provided with two certified translations of the foreign company status and details relating to the branch manager.

A company wishing to establish a presence in New Caledonia must consider tax implications. Broadly, the net income of a branch is deemed to be fully distributed and on that basis subject to withholding tax.

Accounting

Annual accounts

Generally speaking, the financial year of a company operating in New Caledonia is a period of 12 months. However, this period may be extended or reduced during the first financial year of a company operating in New Caledonia. The financial year end of a company is determined by its constitution.

Each year a company must prepare an accurate yearly balance sheet and a profit and loss account. This documentation must be provided to the relevant tax authorities in New Caledonia within four months of the financial year end of the company. The annual general meeting, which is held to approve this documentation, must be held within six months after close of the financial year.

Within a month of their approval at the annual general meeting, two copies of the approved accounts must be filed with the Commercial Court. The director of a company is responsible for the preparation of these accounts and must ensure that their content complies with local regulations.

Accounting records and audit requirements

Accounting records

According to French company law, every company is required to keep a certain number of accounting books. These include:

“Journal Général”

A General Journal (*Journal Général*) which will have pre-numbered pages initialled by a judge of the Commercial Court. The General Journal should be used to record all operations performed by the company on a daily basis or to reconcile the accounts on a monthly basis (provided other documents exist that support the monthly figures).

A balance sheet book (*Livre d’inventaire*)

A balance sheet book (*Livre d’inventaire*) which will have prenumbered pages initialed by a judge of the Commercial Court.

A payroll book

Payroll books are required to be kept by the company for period of at least ten years. Although operation details may be recorded in languages other than French, the company may be required to provide a certified translation.

A S.A. Company and a S.A.S. Company must have a statutory auditor (*Commissaire aux Comptes*). Additionally, a S.A.R.L. Company may be required to appoint a statutory auditor, if, at the end of any financial year, the S.A.R.L. Company exceeds at two of the following:

- its total assets exceed 180 million XPF;
- its total sales exceed 360 million XPF; and
- it employs more than 50 people.

Statutory Auditor

The Statutory Auditor (*Commissaire aux Comptes*) is appointed at the General Meeting (*Assemblée Générale*) of the shareholders for period of six years. At the end of this period, the Statutory Auditor may be reappointed.

Statutory Auditor reviews the accounting books of a company and is required to state their opinion regarding the fairness and accuracy of the accounts. The Statutory Auditor may also be required to provide their opinion on the various statements included in the annual report prepared by the board of directors (*Conseil d’Administration*) concerning the operations of the annual accounting period and the prospects of the company for the coming financial year.

If the company and any of its directors or shareholders have carried out transactions, the Statutory Auditor should receive notice from the *Conseil d’Administration* and issue a special report. The Statutory Auditor is required to ensure that the respective rights among the company shareholders have been and continue to be maintained. The Statutory Auditor may also be required to draft reports on

commercial activities including mergers, changes to share capital, and change of company type. This report is to be made available to the shareholders for comment before being submitted to the General Meeting for approval.

The Statutory Auditor is required to be a member of the National Auditors' Company (*Compagnie Nationale des Commissaires aux Comptes*). The Statutory Auditor should be qualified as a Chartered Accountant (*Experts-Comptables*) or have an equivalent professional qualification. The Statutory Auditor works under the supervision of the Ministry of Justice and have a duty to report to the Public Prosecutor any infringement made by the company which they become aware of during the course of their duties.



Mining law

Mining in New Caledonia

Shortly after New Caledonia became a French colony in 1854, various minerals including coal, gold, copper, cobalt, chrome and antimony were discovered. This discovery has provided New Caledonia with an industrial advantage in the South Pacific region and international economic and political significance which is disproportionate to its geographical size. Notably, nickel ore has been and remains the principal driver of New Caledonia's mining industry and represents a significant proportion of the world's nickel ore resources (estimated at approximately 25-40%).

On the offshore front, Australia, New Zealand and New Caledonia share a set of common geological structures within their maritime area, now dubbed the Tasman Frontier Region. Oil extraction sites have already been in operation in Australia and New Zealand.

In New Caledonia, the oil potential of west Caledonian offshore basins has now been proven, although knowledge about those basins is still to be developed further. The objective is to fill the knowledge gaps, particularly in terms of seismic data compliant with industry standards and deep-sea drilling data, by 2018.

In the same way, recent geological and geophysical data seem to confirm that New Caledonia EEZ could also shelter substantial deep mineralisation related to ferromagnesian encrusting, polymetallic nodules and massive sulphuric deposits.

Mining greatly influences New Caledonia's social and economic development. The extensive legal regulations that surround the exploration and exportation of resources, particularly nickel, is reflective of the important status of mining in New Caledonia. Excluding tourism, nickel ore and other derived metallurgical products represent approximately 97% of the total value of New Caledonian exports.

In January 2000, New Caledonia was granted independent authority from France over the regulation of chromium, cobalt, hydrocarbons and nickel. The Provinces, which are responsible for assessing the operations, environment and labour of the mining industry, are also responsible for decisions relating to the implementation of mining legislation. The Mines Board (*Conseil des Mines*) and the Mines Advisory Committee (*Comité Consultatif des Mines*) are responsible for co-ordinating the Provinces.

Mining regulations were recently codified in New Caledonia. On 18 March 2009, Congress passed a new Mining Law establishing the Mining Code which became operational on 30 April 2009. The introduction of the Mining Code resulted in New Caledonia's mining regulations being contained in a singular legislative instrument, the Mining Code. The Mining Code is yet to be translated into English.

The Mining Code has the following objectives:

- A streamlining mining regulation;
- Upheaving New Caledonia's foreign investment conditions to provide more conducive investment conditions for foreign investors;
- Establishing mechanisms that provide for cooperation and open discussion between mining operators, authorities and local communities;
- Developing an environmental protection framework which will include an environmental approval process and rehabilitation obligations;
- Supporting the export of metallurgically transformed products and laterites; and
- Preserving resources through the creation of provincial technical reserve.

In addition to the Mining Code, New Caledonia recently passed a mining resources development scheme (*Schéma de mise en valeur des richesses minières*) (Scheme). The Scheme provides for various undertakings to be commenced in the three Provinces in order to:

- provide clarity and transparency of the various administrative procedures in attempt to provide a context that facilitates industrial development;
- enhance mining industry participants knowledge of New Caledonia's resource potential by developing an inventory of resources;
- conserve the natural environment by developing adequate administrative, technical and financial tools; and
- implement schemes for the long term management of mining profits.

The Mining Code is the initial legislative instrument implemented by the Scheme. Further regulations are expected to be passed.

The Mining Code is the initial legislative implementation of the scheme and further regulation is expected to be passed.

The Direction of the Mines and Energy in New Caledonia (*Direction de l'Industrie, des Mines et de l'Energie de la Nouvelle Calédonie*)

(DIMENC), is an agency established with the New Caledonian Mines and Geology Department and is responsible for regulation and administration of the mining sector. Since the adoption of the Mining Code, DIMENC has been elevated to being the central body for the implementation of mining regulation, the regulation of mining operations and the usage of mineral resources with regard to environmental protection.

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Division of powers between the different levels of government in New Caledonia

Article XIII of the French Constitution provides that New Caledonia possesses its own legal structure and that Provinces are granted autonomous powers over a number of different matters, including mining. The autonomous powers of the Provinces have continued to expand significantly in recent years.

Situation from 13 November 1954 to 1 January 2000

Decree No. 54-1110 of 13 November 1954 provided the French State with authority to rule on specified mining activity which included the mining of Nickel, Cobalt, Chromium, Hydrocarbon radioactive substances and Potassic Salt. The presidents of each of the Provinces were granted authority over the mining activities of other minerals within their Province.

Throughout this period, the Mine and Energy Services Department (*Services des Mines et de l'Energie*) was the regulatory body for mining in New Caledonia. The Mine and Energy Services Department had a mixed mandate but was specifically established to exercise the authority of both the French State and the Provinces, as applicable. Additionally, the Mine and Energy Services Department was delegated State authority by the High Commissioner.

Situation Since 1 January 2000

As a result of the Nouméa Accord (1998) and the Organic Law (1999), New Caledonian mining rules and regulations are a complicated combination of both private and administrative laws. Below sets out the existing regulatory framework for mining in New Caledonia.

The French State

The role of the French State in the regulation of mining in New Caledonia has, for the most part, being transferred to New Caledonia. Indeed, on 30 April 2009, a new Mining Law, the Mining Code became operational. The Mining Code contains majority of New Caledonian mining regulations. Despite this, the French State only retained authority over substances that may be utilised for research regarding, and development of, atomic energy (Article 19 of Decree No. 54-1110 of 13 November 1954 reforming the regulation of mineral substances in overseas territories).

Notwithstanding this, the French State continues to demonstrate substantial influence throughout the mining industry as the High Commissioner maintains a position on each mining consultative body and is therefore able to influence decisions made concerning mining. Furthermore, the French State's tax incentive schemes enable France to influence how the mining sector operates at the state level.

New Caledonia Government and the mining institutions

The organisation of mining regulations is undertaken through the following institutions.

The Congress: reviews draft regulations passed by the New Caledonian Government and regulates exploration and mining rights, the management and conservation of natural resources in New Caledonia's exclusive economic zone and the mining for hydrocarbons, nickel, chromium and cobalt.

The Government: DIMENC is the government body responsible for regulation of the mining sector. DIMENC oversees and promotes the mining industry in New Caledonia from a perspective of sustainable development. DIMENC is the primary body that administers mining applications. Additionally, DIMENC was heavily involved in the drafting of the Mining Code.

DIMENC ensures neutral and uniform treatment of mining applications in New Caledonia, which provides New Caledonia with both consistency and stability. DIMENC is also required to balance the interest of each of the Provincial Presidents that have individual interest and concerns regarding the mining industry in New Caledonia.

Consultative bodies

The Consultative Committee on Mines (*Comité consultatif des mines*);
The Mines Board (*Conseil des mines*).

The three Provinces

Since 1 January 2000, the Provinces have been responsible for the regulation and exercise of rights covering exploration, exploitation, management and the conservation of biological and non-biological natural resources of inland waterways (including harbours and lagoons including waterways adjacent to the territorial waters). The Provinces are also responsible for processing mining applications within their Province to the extent that they do not concern radioactive substances.

Rather than establishing their own mining departments, the Provinces have delegated their authority to DIMENC. DIMENC is the entity responsible for processing mining applications and exercising a supervisory and labour inspection role over mining operations.

The Mining Municipal Commissions (*Commission Minières Municipales*)

The Mining Municipal Commissions were established by an Ordinance of 1982 and further defined by Decree 83-885 of 28 September 1983. The Mining Municipal Commissions are primarily responsible for liaising with the population of New Caledonia. In exercising these function, the Mining Municipal Commissions periodically visit mining sites located in their communes in order to: (i) keep the public informed of the status of a mining project; and (ii) confirm any accomplishments on the mine site by the miners.

The Mining Municipal Commissions are concerned with the transparency of mine operators' work towards the populous areas located close to the mine site. The Mining Municipal Commissions have no authority in relation to mining, rather their role is as informative bodies that liaise with the Consultative Committee on Mines and the Mines Board on mining matters that affect their respective communes.

Applicable law

History of the Mining Regulation

The rules and regulations governing mining in New Caledonia arose from Decree 54-1110 of 13 November 1954, *Reforming the Rules Governing Mineral Substances in the Overseas Territories* and pursuant to Deliberation No. 128 of 22 August 1959 which set out the application of the legal regime as it applies to mineral substances in New Caledonia.

Decree 54-1110 of 13 November 2004 has been subsequently amended and complemented by various later texts as a response to the need for stricter government control over mining due to its significance and impact for both the French State and New Caledonia. Decree No. 69-4 of 3 January 1969 and Application Decree No. 69-598 dated 10 June 1969 established the authority of the French State in relation to nickel, chromium and cobalt. Decree No. 73-109 dated 22 July 1973 sets out controls on companies authorised to conduct mining activities.

It is important to note that these former texts did not include any provision for environmental protection and post-mining rehabilitation. Currently, environmental issues relating to mining operations are governed at the provincial level. Legislative provision for environmental protection and rehabilitation is a major component of the new mining legislation.

Mining Code

On 18 March 2009, the new Caledonian Congress passed a new mining law, establishing a Mining Code. The Mining Code became law on 30 April 2009. The Mining Code aims, among other things, to homogenise and simplify the laws and principles regulating the administration of mining matters into a single cohesive code.

The Mining Code aims to facilitate a investor friendly environment for foreign investors and foreign miners and conducive operating environment for mining operators. Accordingly, the Mining Code extinguished the nationality requirement for directors and boards of foreign companies operating in New Caledonia.

The new Mining Code also includes an inventory of New Caledonia's mineral resources, extraction prospectives and an industry overview (regarding, for example, logistics mechanisms and infrastructure) as well as a framework of principles for the export of metallurgical transformed products and laterites.

Other changes adopted by the Mining Code include the establishment of a variety of mechanisms for open dialogue and coordination between mining operators, authorities and local communities and establishing an environmental protection framework, which includes an environmental approval process and rehabilitation obligations.

Regarding the allocation of authorities, the Mining Code contains the following main elements.

- **Officialisation of DIMENC's role**
DIMENC to remain the administrative agency for the regulation of the mining sector and to continue to control mining activities with the authority of the Provinces.

- Modification of the composition of the Mining Municipal Commissions

The operation of the Mining Municipal Commissions demonstrated the need for an institution that manages the relations between the mine operator, the local population, and DIMENC. As a result, the Mining Code introduced the ability to modify the Mining Municipal Commissions and investing them with specific information gathering powers applying to mine operators for the purpose of advising DIMENC with any relevant findings and recommendations.

The legal framework applicable to quarries

Quarries and mines are dealt with separately under New Caledonian law. Pursuant to Article 2 of the Decree dated 13 November 1954, a quarry includes peatland and all deposits of building or soil improvement material for the cultivation of soil and other analogous material, with the exception of phosphate, nitrate, alkaline salts and other associated salts. Conversely, a mine includes deposits of all other mineral resources.

Personal Mining Authorisation and Exploration Permit

Personal Mining Authorisation (*Autorisation Personnelle Minière*) (APM)

APMs were originally introduced in the 1950s with a view to protecting local resources and local enterprise. Currently, the use of APMs has evolved and they are issued to any applicant wishing to undertake mining operation, provided that they satisfy all regulatory requirements.

The Mining Code (Articles Lp121-1 to Lp121-13) does not change the continued use of APMs or the conditions under which they are granted.

Purpose of an APM

An APM does not grant a right to its holder to prospect or mine in relation to the minerals covered by the APM. An APM permits its holder to:

- be identified as a mining operator;
- qualify for a right to prospect;
- apply for new exploration permits;
- request either the transfer of existing exploration permits to an Exploitation Permit or Mining Concessions;

- lease their Mining Concessions (Amodiation); and
- export ore.

Term of validity of an APM

APMs are granted for a term of five years and can be renewed for a further five years.

Application process

DIMENC is responsible for processing APM applications and issuing an APM.

Generally speaking, it will take approximately six months from the date of application for an applicant to receive an APM.

In order to be granted an APM, an applicant must demonstrate sufficient financial resources and technical skills to enable it to conduct mining operations on the tenements subject to the APM.

Limits on APMs

An APM is granted by the President of the Province and is only valid for the Province where the specific mining tenement is located.

Generally speaking, an APM will only be granted covering the prospecting zone for a Class A Exploration Permit, which is a 100 square hectare area.

Refusal

APMs may be refused or cancelled without providing grounds to the applicant or APM holder. However, an APM will generally be refused or cancelled if the applicant or APM holder fails to meet the financial or technical requirements.

The refusal or cancellation of an APM does not provide the applicant or APM holder with any right to damages or compensation. The cancellation, restriction or expiry of an APM does not effect any Exploration Permits, Exploitation Permits or Mining Concessions granted.

Upon receipt of an APM, the holder may apply for mining titles.

Exploration permits

The Provinces previously issued three different types of Exploration Permits which are dependent on the mineral that is subject to the Exploration Permit Application. These are:

- Ordinary Exploration Permit (*permis ordinaire de recherche*) (PORs) for manganese, iron, etc;
- Class A Exploration Permit for chromium, nickel and cobalt; and
- Class B Exploration Permit for gold etc.

An Exploration Permit for the minerals covered under the Ordinary and Class B Exploration Permits has never been issued in New Caledonia.

The new Mining Code (articles Lp 122-1 to Lp 122-10) provided for a single type of Exploration Permit to be issued which covered all minerals. This type of Exploration Permit is identified by the acronym PR (*Permis de Recherche* – Exploration Permit).

A Class A Exploration Permit is granted for a period of three years and is renewable twice.

An Exploration Holder may apply for an Exploitation Permit (*permis d'exploitation* or PEs) or a Mining Concession (Mining Titles) upon the completion of tests that prove the resource. An Exploration Permit expires upon receipt of a Mining Title.

Mining titles

Mining Titles grant their holder exclusive rights to prospect, explore and mine mineral deposits covered by the Mining Title.

Mining Titles are composed of Exploitation Permits and Mining Concessions as they both grant the holder the right to undertake mining operations. A Mining Title grants its holder the exclusive the right to carry on “operations consisting in extracting mineral substances for commercial purposes”.

Exploitation permits

Exploitation Permits were originally established by a law dated 16 June 1927. Although it is still possible to obtain an Exploitation Permit in New Caledonia, no Exploitation Permit has been issued in New Caledonia since 1999. As a result, the Mining Code did not refer to Exploitation Permits and Mining Concessions remain the appropriate Mining Title in New Caledonia.

Mining concessions

Mining Concessions are granted for a period of at least six years and not exceeding 50 years.

Legal framework

A Mining Concession is a complex legal instrument comprising statutory and contractual elements. A Mining Concession grants its holder a real property right, guaranteeing its holder the highest property and security right that can be granted under French civil law.

The holder of a Mining Concession (le Concessionnaire) is granted a mining right that varies from a real property right as the Mining Concession is not only concerned with the surface area of the tenement.

Administrative courts in New Caledonia have exclusive jurisdiction to construe the meaning of Mining Concession instruments.

The Mining Code (Articles Lp 131-1 to Lp 131-14) did not result in the legal framework affecting Mining Concessions to be varied. Rather, the main contribution of the Mining Code was its application to the payment of rent for the tenement (calculated with reference to the acreage of a mining tenement).

Refusal to grant a concession

DIMENC may refuse to grant a Mining Concession without providing grounds for such refusal. DIMENC can also refuse the transfer of a Mining Concession between entities on public interest grounds. This concept of “public interest” is narrowly defined in French case law, which acts to limit the risk that the transfer of a Mining Concession will be refused in New Caledonia.

Procedure for granting APMs and mining titles

The Mining Code contains the relevant procedure and documentation that an applicant must undertake or provide when seeking to obtain an APMs and Mining Title. Applications must be translated into French and must be signed by the applicant, or a director of the relevant company. The main aspects of these requirements are provided below:

Identification of the company

Any application must state:

- the name (first and surname), profession, nationality, ordinary and elected domicile of the applicant; or
- the company name, share capital and registered office of the company; and
- the name (first and surname), profession, nationality and ordinary domicile of any agent of the applicant (whether individual or company).

Nationality of the company and directors and address

Unless an exemption is otherwise granted by the President of the Provincial Assemblies, legal entities carrying on mining activities in New Caledonia (whether directly or indirectly) must be incorporated

under the laws of a Member State of the European Union. Directors and Officers of a company carrying on mining activities in New Caledonia are not required to meet specified nationality requirements.

An APM or a Mining Title may only be granted to a person residing in New Caledonia or to a company which has a registered office or branch in New Caledonia.

Application procedure for an APM or Mining Title

Different procedures exist for an application for an APM or Mining Title. Generally speaking, the applicant is required to provide extensive technical and financial documentation for either application. The Mining Code details the specific documentation required to be provided for either application.

- For an APM, the applicant must provide information which includes:
 1. geographical details of the relevant tenements;
 2. CVs of project managers and information related to activities undertaken by the company during the three-year proceeding which justify the applicant's mining experience; and
 3. financial statements.
- For an Exploration Permit, the applicant must provide a Feasibility Study and other Environmental Studies, together which outline the quality of the mining resources on the tenement and the relevant environmental activities the applicant will undertake. An application for an Exploration Permit will take approximately 45 days. During this period, competing applications for an Exploration Permit and comments may be submitted to the relevant Government entity.
- An application for a Mining Concession requires submitting of various technical and geological documentation, which includes reports explaining details of any exploration or mining work carried out on the relevant tenements up to the date of the application.

Further declarations

Companies holding a Mining Title must, on a yearly basis, provide the President of the Provincial Assembly copies of its financial statements and any report submitted to shareholders. Additionally, such companies must keep the President of the Provincial Assembly notified of:

- any amendment to its corporate structure, including changes to its constitution, shareholder or directorship;

- any person or company who, either directly or indirectly, holds a partial or full right to production;
- any information which may affect the technical or financial ability of the company;
- provide details of any acquisition of shares which result in any one shareholder holding more than 1% of the share capital of the company; and
- provide details of any person appointed as either a member of the Board of Directors, Managing Director, auditor or representative of the company that is not French or a EU citizen.

Lease of Mining Titles (Amodiation contract)

Definition of the Amodiation contract

Amodiation is the process whereby a holder of a Mining Title leases their Mining Title to a third party. Amodiation is only possible for Exploitation Permits and Mining Concessions. Exploration Permits cannot be leased to a third party.

Amodiation encompasses the entire surface area of the tenement and any mineral resource that the Mining Title covers.

Amodiation is a unique leasing arrangement in the sense that the value of the leased asset, the Mining Title, is reduced over the term of the lease as a result of minerals being extracted from the Mining Title.

Need for administrative authorisation

Amodiation must be approved by the relevant administrative assistant before the holder of a Mining Lease may transfer it to a third party.

Sub-amodiations are prohibited. Approval for amodiation is not concerned with mine or the financial terms of the amodiation contract between the holder of the Mining Title and the potential lessee

Authorisation of amodiation may granted by the Competent Public Authority (which is either the Government's Representative, President of the Province Assembly or the President of the Provincial Assembly's Bureau) and, if approved, notification of the approval will be published in the *Journal Officiel de la Nouvelle-Calédonie* (Legal Gazette of New Caledonia).

The application for amodiation must be undertaken jointly by both the existing holder of the Mining Title and the proposed lessee. The application must include the following information:

- an up-to-date copy of the constitution of the proposed lessee and a copy of its most recent audited balance sheet;

- a list of managers, directors and associates in office at the date of application, specifying their name, nationality, occupation and domicile; and
- a properly executed and valid amodiation contract.

Upon completion of the initial review, the Competent Public Authority will request an opinion from Mines Board and the Mines Advisory Committee. These opinions will be presented to the applicant, whom will be granted a period of eight days to respond to any questions or concerns that the Mines Board or the Mines Advisory Committee may have.

The authorisation and renewal procedures (see below) in relation to an amodiation contract may take up to approximately 10 months from the date of the initial application. Upon receipt of authorisation, the proposed lessee must inform the provincial government's representative of any changes that may have occurred to their constitution, share capital or directorship or management.

The holder of a Mining Lease and the proposed lessee may contest any refusal of amodiation before the Administrative Court within three months of notification.

Length of the Amodiation contract

Authorisation of amodiation is granted for a period of three years. However, an amodiation contract itself is generally has a term of approximately 10 years. On this basis, an authorisation of amodiation can be renewed every three years. There is no limit to the number of renewals that can be made.

Procedure and consequences of the renewal

The process of applying for a renewal of amodiation is the same as applying for amodiation. If an application for renewal of amodiation is filed prior to the expiry of the previous authorisation, the duration of amodiation is extended until the decision of the Competent Authority is finalised.

Renewal of authorisation of amodiation has no effect on the rent paid under the amodiation contract. As previously stated, this is a commercial matter. Generally speaking, amodiation contracts will stipulate that commercial terms, including rent review, will be renegotiated at each renewal application.

Rights of the original mining title holder in the event of amodiation

The holder of the amodiated Mining Title are obliged to undertake their contractual requirements. It is normally the case the beneficiary of an amodiated contract may enjoy the surface area

which comprises the Mining Title in peace, free from disturbance of the original holder of the Mining Title. If the original holder of the Mining Title does not comply with this requirement, the beneficiary is entitled to litigate (including by way of summary proceeding) in order to put an end to this disturbance.

The original holder of the Mining Titles, may upon receipt of prior administrative authorisation, sell their Mining Title to a third party provided that the sale will not interfere with the terms of the amodiation contract, including the rights of the beneficiary.

The original holder of the Mining Title will normal require the potential lessee to provide a guarantee, which will normally be in the form of a pledge or mortgage.

Generally speaking, the original holder of a Mining Title will provide in the amodiation contract that any renewal of amodiation is subject to their prior written consent.

Export control and procedures

The Mining Code

Before the implementation of the Mining Code, domestic and foreign transactions related to nickel ore required authorisation. The Mining Code aimed to simplify nickel ore transactions and therefore resulted in authorisation of domestic transactions not being required.

Under the Mining Code, foreign transactions still require authorisation from the relevant Government entity. The procedure for obtaining such authorisation can be summarised as follows.

- The applicant will draft an export government contract and lodge an authorisation application to the DIMENC.
- Documents will be reviewed by DIMENC and then by the Advisory Mining Committee. The Advisory Mining Committee will provide a recommendation regarding the application.
- The Mining Board will give a second recommendation (generally speaking, this will support the recommendation provided by the Advisory Mining Committee).
- Taking into consideration the recommendations provided by the Advisory Mining Committee and the Mining Board, the Government will either approve or reject the authorisation application for a foreign transaction.

The total timeframe to obtain a Personal Mining Authorisation is approximately nine months.

Limitation of ore export

The Mining Code encourages transformation of mineral resources in New Caledonia in order to localise the added value within the territory. Subordinate legislation (arrêté No 2010-1007 dated 23 February 2010) materialised the Mining Code's objective by two means:

1. Sale affecting the sustainable exploitation of NC mining resources

It is prohibited to sell (non transformed) nickel ore to an operator whose head office is outside New Caledonia when such a sale would affect the "sustainable exploitation of NC mining resources."

The test to determine what would affect the "sustainable exploitation of NC mining resources" varies. According to the latest Government's decree 'arrêté n° 2011-3057/GNC dated 14 December 2011, it is prohibited to export non transformed nickel ore with an average nickel content above 2.3%. The content of nickel ore exported cannot exceed 2.35% (article R132-4-1).

2. Geographical Mining Reserve (RGM)

In order to supply local transformation units, the Government of New Caledonia can set up RGM where the ore produced is not available for export (article Lp 132-2).

In February 2010 (arrêté n° 2010-1007/GNC dated 23 February 2010), the Government established three RGMs:

- "sud latéritique";
- "Tiébaghi";
- "Koniambo".

Provincial technical reserve

The "provincial technical reserve" is a new feature provided by the Mining Code which aims to preserve resources.

An area of land not subject to a Mining Title may be listed as a provincial technical area by the Provincial Assembly for a maximum period of 15 years, renewable once for a period not exceeding 10 years (Articles Lp 123-1 and Lp 123-2).

As a consequence of an area of land being listed as a provincial technical area, no search permit or any concession may be granted (Article Lp 123-3).

During the period of time a provincial technical area is valid, the Provincial Assembly may issue an invitation to tender for mining projects. Depending on the results of the tender process, the

Provincial Assembly can either confirm the listing or issue a search permit once the project and the bidder have been selected and approved (article Lp 123-5).

The Provincial Assembly may, at any time, un-list an area that is subject to an application for an exploration permit for direct operation projects, or for a project of ore supply to metallurgical plants based in New Caledonia.

Once the bidder is selected and approved, he can enter into an agreement with the Province for completion of the project. The agreement will dictate conditions under which the project is to be carried out. This agreement must provide for, among other things:

- the guarantees required from the approved bidder and the terms and conditions of the Province's support;
- an agenda for operation;
- the number of jobs created, and
- environmental undertakings (article Lp 123-7).

Mine Police

The "Mine Police" is a feature of the Mining Code. This institution is responsible for monitoring mining projects from an environmental perspective.

The Mine Police has been granted with broad powers which include, monitoring mining operations, environmental protection, rehabilitation of zones damaged by mining operations and administrative control (Article Lp 142-1). In addition, the Mine Police is also empowered with the ability to discharge administrative and criminal penalties. The provisions of the Mining Code establish the following.

- The opening of a plant must be preceded by an impact study and the opening of a research centre by an impact notice.
- An applicant wishing to start a research or operation project must be granted authorisation from the President of the Provincial Assembly (Article Lp 142-9).
- Mining companies must rehabilitate a mining site damaged by its activity, taking into account the fundamental characteristics of the surrounding environment.
- If a mining company fails to rehabilitate the environment, the President of the Provincial Assembly may order rehabilitation at the mining company's expense. A financial guarantee, by way of bank guarantee or ongoing contributions, is required to secure the rehabilitation of a mining site.

The “polluter pays principle” is enshrined in article Lp 142-12. Violators will be prosecuted and will incur administrative (Article Lp 151-1) and criminal (Article Lp 151-2) penalties.

Violators may be convicted for a period not exceeding two years’ imprisonment and may be required to pay a fine of XPF 3,579,000 if, broadly speaking, they, inter alia: operate a mine without the proper authorisations, commit an infringement of occupational health and safety regulations or do not follow Mine Police’s prescriptions. In addition, any person which does not cooperate with the Mine Police’s agent, proceeds to search without authorisation, or refuses to communicate geological data or samples to the administration, may be condemned to one year’s imprisonment and a fine of up to XPF 1,789,000.

Violators’ personal mining authorisations may be withdrawn and violators may be banned from any application for a Mining Title for a period of three years.

The President of the relevant Province Assembly controls the Mining Police.

Native titles and declaration on rights of indigenous peoples

Native titles

In New Caledonia, customary law exists alongside the French civil law. There is a distinction between property located in customary land which is governed by the rules of customary law, and property located outside customary land, which is governed by the rules of French civil law. Under the mandate of the Nouméa Accord, the ordinary law courts of New Caledonia are able to hear disputes in relation to customary land with the assistance of customary assessors. The courts can impose sanctions and penalties, as well as interrupt or suspend production or use of mining sites.

As a consequence of the interaction between customary law and French civil law, three types of land tenures coexist in New Caledonia: private property, public domain and customary land. If customary lands are inalienable, private property and public domain are permeable categories.

Land claims in New Caledonia have been rare in the past few years. In 2005, only 136 were yielded to private entities or individuals.

Declaration on rights of indigenous people

On 13 September 2007 the declaration on rights of indigenous peoples was adopted by the United Nations General Assembly.

This declaration has been adopted by 144 States including France, four States voted against (The USA, Australia, New Zealand and Canada), 14 States abstained (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine).

The declaration affirms that indigenous people's ancestral lands and territories constitute the basis of their collective existence, of their cultures, of their spirituality and to some extent of their resources.



Environmental law

Division of legislative and regulatory powers in environmental law matters

The Organic Law provides for a division of legislative and regulatory powers between the French State, the institutions of New Caledonia, and the Provinces of New Caledonia.

In its current form, New Caledonian environmental law is contained and distributed between laws and regulations of the French State, New Caledonia institutions and the Provinces.

A Consultative Committee was created in January 2006 in order to advise New Caledonia and its Provinces on sustainable development and environmental matters. The Consultative Committee is also responsible for monitoring the environmental polices undertaken by the Provinces.

Competence of the French State

The Organic Law does not provide the French State with jurisdiction of environmental matters. Rather, the extent of the influence of the French State in New Caledonia regarding environmental matters is found in general environmental legal documents, including for example, the French Environmental Code.

Competence of New Caledonia

Pursuant to article 22, 39 and 211 of the Organic Law, New Caledonia institutions have jurisdiction over the following environmental matters:

- Regulation of health and safety issues;
- Regulation and exercise of exploration, operation, management and conservation rights of natural, biologic and non biologic resources in New Caledonia's exclusive economic zone;
- Regulation of hydrocarbons, nickel, chromium and cobalt;
- Guiding principles of urban planning and land registry rights;
- Zoo sanitary and phytosanitary regulations'
- Settlement of a mining resources development scheme which includes the drafting guiding principles regarding environmental protection and orientations of industrial development required for a rational operation of mining to ensure sustainable development; and

- settlement of an urban planning and development scheme in New Caledonia in which concerns infrastructure, environment, equipment, services of territorial interest and economic, social and cultural development.

Competence of the Provinces

Pursuant to article 20 of the Organic Law, the Provinces of New Caledonia have jurisdiction over any matter not specifically assigned to the French State or to the government of New Caledonia.

As a result, other than provided for above, the Provinces have general authority over all environmental matters.

Environmental legislation

Legal framework

New Caledonia's environmental legal framework is founded in international law, French law, New Caledonian law and the laws of each Province. No specific environmental code has been developed in New Caledonia. However, both the Northern and Southern Provinces of New Caledonia have adopted their own environmental codes.

A number provisions contained in the environmental code of the Northern Province may have an indirect impact on mining activities. This code provides for protected areas and natural spaces which may ban or limit the implementation of certain mining activities.

International law

New Caledonia is a party to the United Nations Environment Programme. As part of this program, the 1986 Convention for the Protection of the Natural Resources and Environment of the South Pacific region (the Noumea Convention) entered into force in 1990. It has two Protocols:

1. Protocol for the Prevention of Pollution of the South Pacific Region by Dumping, signed in Noumea on 25 November 1986.
2. Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, signed in Noumea on 25 November 1986.

Under this Convention, the Parties agree to take all appropriate measures to prevent, reduce and control pollution of the Convention area (art. 5). Particularly pollution from vessels (art. 6), land-based sources (art. 7), exploration and exploitation of the sea bed (art. 8), airborne pollution (art. 9), dumping (art. 10) and the testing of nuclear devices (art. 12). They are designed to ensure that the implementation of this Convention does not result in increased pollution in the marine environment outside the Convention area (art. 5.2). They prohibit the storage of radioactive waste in the

Convention area (art. 11) and agree to take all appropriate measures to protect and preserve rare ecosystems and endangered flora and fauna and their habitat, in the Convention area (art. 14). Parties are to cooperate in taking all necessary measures to deal with pollution emergencies in the Convention area (art. 15).

French law

The Environmental Charter, inserted in the French Constitution provides a general framework and guiding principles that are applicable to New Caledonia.

Furthermore, the French Environmental Code contains specific provisions applicable in New Caledonia. These provisions include the following subjects.

- Authorisation of legal action for environmental protection associations.
- Marine waters and waterways open to shipping, subject to specified laws enacted by New Caledonia and its Provinces.
- Implementation of a Protocol on environmental protection based on the Antarctic Treaty signed in Madrid on 4 October 1991.
- Emit the effect of Greenhouse gases.

New Caledonian Law

Classified installations

Industrial installations that are likely to present dangers or inconveniences for the well-being, safety or health of local residents, public health, agriculture, the preservation and conservation of the environment, sites and monuments are subject to an authorisation or a declaration from the Government, depending on the seriousness of the hazard or inconvenience they may create.

Industrial installations which require authorisation or a declaration from the Government are listed in nomenclatures specific to each Province (Classified Installations).

Mining activities do not belong to these nomenclatures. However, certain installations related to mining activities, which may include treatment facilities of nonferrous minerals, grinding of stone, pebbles, ores and other natural or artificial products may be subject to authorization or declaration (generally dependent on the power of the machines used on site).

DIMENC and the Provinces have responsibility for the implementation of the Classified Installations regulations.

Authorisation or declaration

Operation of installations listed as a Classified Installation are subject to obtaining of prior authorisation (Operating Permit) from the President of the Provincial Assembly.

The operator of installations listed as a Classified Installation must file a declaration file and must comply with general prescriptions determined by the relevant Province.

DIMENC ensures the instruction and the follow up of the authorisation and declaration applications.

The authorisation procedure

The procedure for the authorisation of a Classified Installation is regulated by each Provinces. Generally speaking, the operator must submit an application to the President of the Provincial Assembly, containing the following information:

- The identification of the applicant;
- The location of the installation;
- The nature and volume of the activities and the process which will be undertaken;
- Several maps depicting the surroundings and the location of the installation;
- An Environmental Impact Assessment which contains:
 - an analysis of the initial state of the site land and its surroundings; and
 - an analysis of the predictable effects of the installation on its surroundings and the measures envisaged by the applicant to suppress, limit and compensate for the inconveniences of the installation and for the conditions of restoration of the installation after operation;
- A Danger Risk Assessment which indicates:
 - the dangers that the installation may present in case of an accident and the appropriate measures contemplated to reduce its probability and its effects; and
 - the emergency measures the applicant intends to set up in case of an accident.

An application is also subject to a public inquiry in the town where the industrial installation will be operated. The application is also presented to DIMENC and other relevant public authorities for their opinion. The authorisation will delivered by the President of the Provincial Assembly upon consideration of each opinion sought.

In order to operate an Industrial Installation, the applicant must file with the President of the Provincial Assembly an application which contains their identity, the location of the installation and the nature and the volume of activities the operator intends to undertake.

The functioning of a classified installation

Once the authorisation has been obtained or the declaration acknowledged by the competent authority, the operator must prevent pollution and protect health and the environment in accordance with the technical rules.

The authority for the control of classified installations is DIMENC. In this capacity, DIMENC may:

- conduct inspections of the installations. Depending on the breaches (if any), an inspection may result in a warning or a formal notice of violation;
- process complaints; or
- conduct inquiries in case of incidents or potential accidents.

The installations are also subject to additional regulations set out by each Province which relate to, for instance, disposal of used oils, used batteries, or noise pollution.

The closure of a classified installation

In each Province, the operator is required to notify the President of the Provincial Assembly when an installation has ceased and thereafter and must rehabilitate the site to a condition that presents no dangers or inconveniences to the protection of the environment.

DIMENC is responsible for the closure of the classified installation, as well as its remediation procedure.

In the Northern Province, in the event of the sale of a site on which classified installations have been operated, the seller has an obligation to inform the purchaser of the dangers resulting from past operations.

Waste disposal

Transboundary movements of hazardous wastes

Transboundary movements of wastes that might present hazards for human health and the environment are regulated by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention). Pursuant to a New Caledonian Decree dated 25 November 2003, the Basel Convention applies in New Caledonia.

The following obligations arise from the Basel Convention.

- Ensure that the generation of hazardous wastes is reduced to a minimum.
- Ensure the availability of adequate disposal facilities for the management of hazardous wastes.
- Co-operate in activities with other states and organizations in order to improve the environmentally sound management of such wastes and to prevent illegal traffic.

The regulation of waste disposal

Each of the Northern and the Southern Provinces have adopted a general regime designed to protect the environment. Generally speaking, this regime aims to prevent and reduce the production and dangers of waste as well as to promote recycling.

The general regime provides that any person producing or holding hazardous waste likely to damage the environment must avoid any hazardous effects on the environment.

Additionally, a number of other regulations adopted by each Province provide specific rules. These rules apply particularly to used oils or used batteries. Producers of hazardous products are responsible for its management in order to ensure the protection of the environment.

Management structures of waste disposal

The Provinces establish management structures for the disposal of waste within their territory. Entities may receive funding to implement structures to reduce pollution.

The fund is financed by a supporting tax for actions against pollution which is composed of additional taxes charges on certain imported products including pneumatics, storage batteries, lubricating oils which are likely to generate when used strong environmental nuisance and risks for public health.

Water

The prevention of water pollution

The Government of New Caledonia has implemented a legislation which is broadly designed to prevent water pollution. The policy reason is to ensure that water remains unpolluted for use as drinking water for the local population with other uses of industry, agriculture, or mining activities.

The discharge of waste which may endanger public health, fauna and flora and likely to call into question the economic and tourism development of coastal regions is forbidden.

Air

No specific regulation on the discharge of pollutants in the air exists. However, the regulation of classified installations may include specific rules in order to prevent air contamination.

The Northern Province's Environmental Code provides that an environmental impact assessment must be prepared by the applicant seeking to operate a Classified Installation. The environmental impact assessment must indicate, when necessary, the origin, the volume and the seriousness of air pollution. Furthermore, the regulation on waste management provides an obligation to manage waste which is potentially hazardous to the environment also applies to wastes which are likely to cause air pollution.

DIMENC is also the government entity that is responsible for monitoring the quality of the air.

Biological diversity

A number of protected areas have been established by the Government of New Caledonia and the Provinces which broadly aim to protect biological diversity and prevent any activity, occupation or settlement that may be incompatible with this objective, including for example, mining and quarrying activities and the operation of classified installations.

New Caledonian Lagoon

The New Caledonia Barrier Reef surrounds Grande Terre, New Caledonia's largest island, as well as the *Ile des Pins* and several smaller islands, reaching a length of 1,500 kilometers (930 mi).

In January 2002, the French Government proposed listing New Caledonia's reefs as a UNESCO World Heritage Site. UNESCO listed New Caledonia Barrier Reef on the World Heritage List under the name The Lagoons of New Caledonia: Reef Diversity and Associated Ecosystems on 7 July 2008. The Lagoons were listed under three UNESCO categories: 1. Superlative natural phenomena or natural beauty. 2. Ongoing biological and ecological processes. 3. Biological diversity and threatened species.

Inclusion in the UNESCO World Heritage is both a recognition and a guarantee of preservation of many endemic molluscs, but also of critical marine habitats such as mangroves and sea grass beds, and a large number of marine wildlife and plant species.



Immigration

Business immigration legislation

The French State and New Caledonia share powers relating to immigration into New Caledonia for business purposes. Broadly, French regulations address immigration issues, whereas New Caledonian regulations are concerned with the protection of local employment and work permits. The Industrial Department is responsible for the enforcement of the relevant regulations.

New Caledonia is suffering from skill shortages, particularly in the mining industry. However, local employment laws have been reinforced recently following the Statute Law n°2010-9 dated 27th July 2010 extended with the decrees n° 2012/175 dated 9th January 2012 and n° 2012/325 dated 14th February 2012. As a result, foreign skilled workers are able to obtain a Business visa (without work permit) or Short Stay visas with a corresponding work permit (exemption applies when less than 30 days) or Long Stay visa, provided they meet the relevant French State and New Caledonian requirements. Nevertheless, the procedures to obtain a Short Stay Business visa are both complicated and time consuming.

Common visas applied for in New Caledonia include:

- Business visa (up to 30 days or 90 days depending on the applicant's citizenship) without a corresponding work permit;
- Short Stay visa (up to 90 days) with a corresponding work permit (exemption applies when less than 30 days); and
- Long Stay visa (more than 90 days) with a corresponding work permit.

A Business visa without a corresponding work permit entitles its holder to visit New Caledonia for business purposes including attending meetings and visiting clients. However, "work" itself is prohibited. Business trips are to be limited to a very short period of time. The Industrial Department determines whether a business trip will be classified as "work" or not.

In relation to the mining industry, the length of a Business visa with a corresponding work permit are determined by Local Statute Law 2002-021 dated 20 September 2002. Broadly, the length a visa will be granted for is dependent on the position of the particular applicant. An applicant in a managerial position will be granted a three year visa that may be further renewed for another year. A non-manager

application will be initially granted a one year visa that may be further renewed for an additional six months.

On-site controls and audits are undertaken by the Industrial Department. Severe penalties including criminal penalties may apply for a breach of immigration regulations.

Procedure

Obtaining a visa in New Caledonia (with or without work permit) is a complex process involving interaction between the New Caledonian Government, the French State Administration in New Caledonia (*Haut Commissariat* – DIRAG) and the French General Consulate in the country of residence of the applicant.

Obtaining a visa requires a number of forms to be carefully completed in French and providing accurate documentation (which may be required to be translated into French). French nationals and UE citizens do not need a visa.

The processing time for a New Caledonian visa is approximately:

- in the case of a Business visa or a Short Stay visa with a work permit: one month from filing the application (however may vary depending on the citizenship of the applicant); and
- in the case of a Long Stay visa with a corresponding work permit: two months from filing the application (however may vary depending on the citizenship of the applicant).

Upon the successful completion of the process, the applicant will be granted a visa, or in the case of a visa with a corresponding work permit for a period exceeding six months in New Caledonia, the applicant may have to apply for - in person - and obtain a resident permit (*carte de séjour*) and a work permit (*carte de travail*) within eight days upon arrival in New Caledonia from the DIRAG.

Permits are required to be renewed annually. This involves lodging an application with the DIRAG at least two months prior to the expiry date of the relevant permit. The applicant is permitted to remain in New Caledonia during the renewal application.

Citizens of countries which have a bilateral immigration treaty with France (e.g. USA and Canada) are exempt from the above mentioned procedure for the Business Visa. For example, Canadian citizens are entitled to enter into and remain in New Caledonia for a period not exceeding 30 days each six months.

Australian citizens can enter New Caledonia without a visa for less than 90 days. They will require a work permit if they are entering New Caledonia for business purposes.



Employment

Overview

Under Article 3.1.1 of the Nouméa Accord and Article 22 of the Organic Law, matters concerning labour law fall within the jurisdiction of New Caledonia.

The applicable legislation is dependent on whether the employer is a New Caledonian company employing locals or a foreign company employing foreign nationals.

General employment regime

Framework

The Industrial Code (*Code du Travail de la Nouvelle Calédonie*), published on 1 May 2008, provides the relevant legal framework applicable to New Caledonian companies employing locals. The Industrial Code is a comprehensive document that has consolidated all of the varied labor regulations applicable in New Caledonia.

In addition to the Industrial Code, specific territorial, industry, company or site requirements may apply to and affect workplace relations.

Summary of New Caledonian labour law

Majority of the Industrial Code is mandatory and therefore employment contracts must comply with the relevant requirements.

Under the Industrial Code, employers must comply with the following conditions and obligations.

- Maximum working hours, calculated on a daily, weekly and monthly basis. This is set at a maximum of 10 hours daily, 40 hours weekly and 169 hours monthly. Despite this, employers may obtain an overtime exemption from the Industrial Department of New Caledonia.
- Prohibition of discrimination based on sex, race, religion and pregnancy. A contract of employment that includes discriminatory provisions will be considered null and void.
- Prohibition of fines and other pecuniary sanctions in contracts of employment. A contract of employment that contains a financial penalty provision will be considered null and void and may expose an employer to criminal prosecution.

- Comply with equality between men and women.
- Comply with the minimum wage and payment of overtime hours (however this does not apply to senior executives). Specifically, employees are eligible to be paid at a rate of 1.25 or 1.5 of the normal hourly rate for any hours worked above 39 hours or 47 hours respectively per week.
- Prohibition of underage (16 years and below) work.
- Prohibition of working nights for people under 18 years of age.
- Comply with the rights of pregnant women.
- Comply with weekly rest day.
- Provide annual leave, which accrues at a rate of 2.5 days per month for a total of five weeks per calendar year.
- Comply with public holidays.
- Comply with occupational, health and safety rules and regulations.
- Comply with the right of employees to strike and other rights granted to employees under union law.
- Comply with termination notices.
- Comply with mandatory termination procedures.

Local employment

In July 2010, the Congress of New Caledonia passed a long awaited legislation for the protection of local labour (Loi du pays n° 2010-9 du 27 juillet 2010). This legislation is based on five fundamental principles:

1. Positive discrimination to favour employment of New Caledonian citizens or long term residents (priority person).
2. An employment procedure: jobs must be advertised for a set period of time, foreign employees may be engaged only when there is no priority person qualified to take the job.
3. A monitoring body advising on any litigious employment.
4. A table listing the various existing professional activities and the shortage in priority persons. The principle is: the harder it is to find a priority person qualified for the job, the shorter period the job must be advertised for.
5. Penalties in case of breach of the employment procedure and termination of the employee wrongfully engaged.

The table listing the various existing professional activities and the shortage in priority persons is drawn by unions and approved by the Government. The first table was adopted by the Government in January 2012 (Arrêté n° 2012-175/GNC du 9 janvier 2012). For example, an employer cannot employ a truck driver who has not

at least 10 years of residency in New Caledonia. At the other end of the spectrum, there is no residency requirement to employ a meteorologist. This table is meant to be revised periodically and at least twice a year.

Administrative bodies

The Industrial Department (*Direction du Travail et de l'Emploi*) is the administrative body in New Caledonia, which monitors and administers the application of labour law. Regarding the mining sector, the Industrial Department delegates some of this control to the DIMENC.

The Ordinance of 13 November 1985 and the decree of the *Conseil d'Etat* of 28 January 1986 relating to the control of the labour legislation and rules in New Caledonia (integrated in articles LP 711-1 et seq. of the Labour Code) provides that Industrial Department inspectors are granted with powers to, among others, access a work place to undertake inspections.

Foreign companies employing foreign nationals

Together, the Local Statute Law 2002-021 dated 20 September 2002 and the Deliberation 307 dated 27 August 2002 (integrated in articles LP 621-1 et seq. of the New Labour Code) established specific employment regulations dealing with foreign companies operating in the mining sector and employing foreign nationals (i.e. bring their own staff to New Caledonia).

These employment regulations are mandatory and therefore foreign companies must ensure that they are complied with. The employment regulations take precedence over the terms and conditions and the applicable foreign law governing the contracts of employment.

Broadly, the regulations deal with:

- working hours;
- discrimination;
- prohibition of financial penalty to employees;
- wages;
- working condition for women, children, and youth;
- weekly day off;
- public holidays and annual leave;
- occupation health and safety; and
- unions.

The specific regulations, were established in 2002 which marked the beginning of the development of the international mining projects in New Caledonia. Despite the absence of case law and administrative notes in relation to this specific regulations, these regulations are viewed more favourable than the general legal framework applicable to New Caledonian companies employing locals.

Generally speaking, foreign companies which employ foreign nationals and operate in the New Caledonian mining sector are generally not subject to the Territorial or Industrial awards that apply in New Caledonia unless they elect to be.

Employment contracts

Companies hire employees by signing a Permanent Employment Contract (*Contrat a Duree Indeterminee*) known as a "CDI". A CDI can only be terminated in specified circumstances and in strict accordance with mandatory law and procedure.

In the mining and construction industries, a industry specific employment contract has been establish which is known as the Permanent Project Contract (*Contrat a duree indeterminee de Chantier*). Under a Permanent Project Contract employees are hired for a permanent period limited to the duration of the project or to a specified phase of a project. Permanent Projects Contract require drafting which allows for greater flexibility in relation to the termination of employees, whether at the end of a project or at the end of a specified phase of a project.

In other specific circumstances, companies are entitled to use a fixed term contract (*Contrat a Duree Determinee*) (CDD), or temporary employment contract known as a (*Contrat de travail temporaire*) (CTT) to hire employees.

Industrial regulations in New Caledonia generally provide greater protection for employees and are more onerous on employers than in Common Law jurisdictions including Australia, USA or Canada. On this basis, employees in New Caledonia will not hesitate to seek damages before the Labour Courts (*Tribunal du Travail*) in cases of irregular or unfair dismissal.

Industrial or site awards and union activity

Industrial awards

The Congress Deliberation No. 277 of 23 and 24 February 1988 relating to industrial awards sets out the legal framework of industrial or site awards (site agreements, professional or

inter-professional awards) by completing Ordinance No.85-1181 (integrated in articles LP331-1 et seq. of the New Labour Code). This text provides a framework for the application, negotiation and of industrial awards.

Similar to the case in France, in New Caledonia, industrial awards and industrial agreements signed between unions, workers and employers are part of the labour law. Foreign companies need to be aware of the applicability of industrial awards and industrial agreements to foreign nationals working in New Caledonia.

Union activity

Significant union activity is undertaken in New Caledonia. There are approximately 10 unions of significant influence. Majority of unions operating in New Caledonia are local unions (a number of branches of French metropolitan unions exist).

The following unions are the most developed in New Caledonia. Those highlighted in bold are unions operating in the mining sector.

- **CONFEDERATION SYNDICALE DES TRAVAILLEURS DE NOUVELLE CALEDONIE**
- (FSU-NC) FEDERATION SYNDICALE UNITAIRE DE NOUVELLE CALEDONIE
- (CGT FO) FORCE OUVRIERE
- (UCR FO) FORCE OUVRIERE
- (SAOEP) SYNDICAT AGENTS OUVRIERS ENSEIGNEMENT PRIVE
- SYNDICAT NATIONAL DE L'ENSEIGNEMENT TECHNIQUE AUTONOME ET ACTION
- SYNDICAT DES COMMERCANTS NEGOCIANTS NC
- SYNDICAT DES FONCTIONNAIRES
- SYNDICAT DES ENSEIGNANTS PUBLICS DE NOUVELLE CALEDONIE
- (SLUA) SYNDICAT LIBRE UNITE ACTION
- SYNDICATS DES TRAVAILLEURS DE DEMAIN
- (USOENC) UNION SYNDICALE DES OUVRIERS ET EMPLOYES DE NOUVELLE CALEDONIE
- (USTKE) UNION SYNDICALE DES TRAVAILLEURS KANAKS ET DES EXPLOITES.

Employee unions can create union sections, and name representatives in companies of more than fifty employees

Industrial disputes and strikes

Article 78 of the French Constitution and Ordinance No. 85-1181 provide employees with the right to strike (integrated in articles LP 371-1 et seq. of the New Labour Code).

Employees wishing to evoke the right to strike must apply for a formal notice (*préavis*) at least five days before any industrial dispute is initiated. The Labour Code provides that if a industrial dispute arises, a conciliation and mediation procedure must be undertaken. In the event of a particularly hostile dispute, such as the obstruction of a work site, employers can use expulsion summary proceedings in attempt to resolve the dispute by referring to the Tribunal of First Instance. In such a case, if the obstruction is recorded by the Judge, the court may authorise the use of public force to expel the strikers from the work site.

Organisational healthy and safety (OH&S)

OH&S is one of the only topics remaining partially un-codified. Guiding principles are contained in the Labour Code but specific regulations are scattered in different texts.

In October 2009 (Loi du pays n° 2009-7 du 19 October 2009), an Act was passed to standardise prevention procedures. The Act requires Employers to set up prevention plans identifying all the risks and proposing safety procedures. The following general principles are now codified:

- Avoid risks;
- Assess the risks that cannot be avoided;
- Adapt work and work pace to avoid monotony and its side effects on health;
- Take in consideration new techniques;
- Replace dangerous tools by non or less dangerous tools; and
- Prioritise global security procedure over personal security procedure.

The Labour Department is in charge of monitoring and enforcing these principles. The Labour Inspector can put the employer on notice to remedy a risky situation and allow an employee to leave his/her work station in case of imminent danger or stop the work.



Overview of the New Caledonian tax system

Article 22 of the Organic Act of 19 March 1999 specifies that taxation matters are the concern of New Caledonia and that the Congress has full legislative power. The personal income tax was introduced in New Caledonia in 1982 and the corporate tax was introduced in 1979.

Personal income tax (*impôt sur le revenu des personnes physiques*)

Liability to income tax

Individual Tax Residents in New Caledonia, regardless of their nationality, are liable to pay income tax on their worldwide income. Specific exemptions exist if a double tax treaty is applicable.

A non-resident of New Caledonia is only subject to tax on taxable income derived within New Caledonia only.

An individual will be considered a New Caledonian Tax Resident if:

- their household or their main living place is in New Caledonia,
- their primary profession is carried on in New Caledonia; and
- their main financial/economical interests are located in New Caledonia.

Personal income tax is based on the combined income of a family group which includes husband, wife and dependent children for each financial year (1 January to 31 December).

Taxable income

Individual Tax Residents in New Caledonia are liable to pay income tax on their worldwide income. However, Individual Tax Residents domiciled in New Caledonia may be entitled to a tax credit on specified foreign sourced taxed revenue. Taxable income includes each of the following:

Wages, salaries and pensions (*traitements, salaires et pensions*)

This category includes wages, salaries, other employer benefits including housing or motor vehicles, and pensions. A 10% deduction for professional expenses is available but is limited to 800,000 XPF per year. Furthermore, a deduction of 20% is available after the 10% deduction limit is exceeded (limited to 1,900,000 XPF).

Real estate income (*revenus fonciers*)

This includes rental income received for land and building adjusted for related expenses including interest charges and work expenses. Additionally, a nominal deduction of 15% of gross rents received on urban real estate and 10% on rural real estate is permitted to cover administrative expenses, insurance and depreciation.

Commercial and industrial income (*bénéfices industriels et commerciaux*)

Revenues arising from business or industrial activities undertaken by an individual or company (including a *Société en Nom Collectif*) are taxable in the commercial and industrial income category.

Agricultural income (*bénéfices agricoles*)

Agricultural activities are taxed at a rate of 1/16 of revenues earned. However, individuals undertaking agricultural activities may elect to be taxed at the company tax rate.

Non-commercial income (*bénéfices non commerciaux*)

Non-commercial income includes fees received by people who, under the French law, are not carrying on a commercial activity. This includes doctors, accountants and architects. Under this category, taxable income may be determined either on a forfait basis of 2/3 of fees charged when total fees charged do not exceed 7,500,000 XPF, or if fees charged exceed this limit, on an actual income basis.

Dividends and interests (*revenus de capitaux mobiliers*)

Residents

Interest income and dividend income received from New Caledonian companies or banking institutions are not included in taxable income. Interest income is subject to a withholding tax rate of 8%. Income received from dividends is taxed at a rate of 13.25%.

Interest income and dividend income received by a resident from a foreign company will be taxable in the country of its origin.

Non-residents

Non residents do not pay withholding tax on interest income earned from New Caledonian companies or banking institutions.

Non-resident dividend income is subject to a withholding tax rate of 13.25%.

The taxable income is the sum of each specified taxable income category adjusted to account for any available deduction, which includes, for example, specific expenses borne by New Caledonian residents such as share investments, loan interests, wages for house employees, retirement plans, life insurance premiums and donations to charity.

Calculation of the income tax liability

In order to calculate the income tax liability for a family, a number of shares (parts) are established. Generally speaking, a single person is entitled to one share, a married couple to two shares and a dependent child gives the right to a half share.

The progressive scale (five different tax rates exist) of the income tax is subsequently applied to the total net income which is divided by the number of the family shares. On this basis, the number of family members greatly affects the tax payable as it is taken into account for assessing the final tax liability. The final tax liability equals the total of the tax liability applicable to each share. The result significantly limits the impact of the graduated taxation rates.

Corporate tax (*impôt sur les sociétés*)

Scope

The corporate income tax is applicable to each of the following:

- Public limited companies (*Société Anonyme*);
- Simplified joint stock companies (*Société par Actions Simplifiée*);
- Limited liability companies (*Société à Responsabilité Limitée*);
- Professionals such as lawyers, doctors or accountants who carry on their activities within a commercial company;
- Partnerships which carry on a commercial activity; and
- Companies which carry on a metallurgical or a mining activity.

Corporate tax liability

The taxable profits are those earned during each financial year (twelve month period). The financial year for a company is the period of 1 January to 31 December.

The general corporate tax rate is 30%. A higher corporate tax rate of 35% is applicable to entities undertaking mining activities. A reduced corporate tax rate is applicable for companies with a turnover of less than 200 million XPF and whose capital is entirely paid up for and at least 75% of its shares are held by natural people. In this instance a reduced corporate tax rate of 15% will be applied to taxable income earned not exceeding 5 million XPF.

Additionally, a solidarity contribution (*Contribution Additionnelle de Solidarite*) (CSA) is payable for high earning companies:

- if a company's taxable income is between 200 and 300 million XPF, an additional 5% tax is payable;
- if a company's taxable income is between 300 and 400 million XPF, an additional 10% tax is payable; and
- if a company's taxable income is above 400 million XPF, an additional 15% tax is payable.

The CSA is payable at the time the corporate tax liability arises.

The tax code imposes a minimum annual tax on corporate taxpayers which is distinct from company tax and payable before 31 May.

Dividends taxation (*Impôt sur le Revenu des Valeurs Mobilières* or IRVM)

The distribution of dividends to shareholders is subject to withholding tax at the rate of 13.25%. This withholding tax applies to dividends distributed regardless of company type. Dividend withholding tax applies to all dividends distributed, whether to individuals or companies, or whether to residents or non-residents (excluding a company located in France as a double taxation treaty effectively reduce the amount of withholding tax payable to 5%). Where the shareholder is a company, and the company makes its own distribution of dividends, this tax may be not payable for the portion of profits which corresponds to dividends initially received by the company and where withholding tax has already been paid once.

A company is required to provide the New Caledonian Tax Office with a withholding tax declaration upon the completion of the board meeting which decided on the distribution of dividends. The withholding tax must be paid by the company to the New Caledonian Tax Office no later than 30 days after the distribution of dividends. Shareholders may pay their withholding tax liabilities directly to the Tax Office.

Currently, a double taxation treaty only exists between New Caledonia and France. However, the withholding tax declaration may allow the shareholder in certain jurisdiction to claim a Foreign Tax Credit (FTC) and offset this FTC from its corporate income tax in New Caledonia.

Indirect taxation

Currently, there is no Value Added Tax (VAT) in New Caledonia. For the time being, there is a Tax on Services (*Taxe de Solidarité sur les Services* or TSS). This tax applies to all services performed for consideration including: supply of electricity or gas, bank loans, hire of goods, transport of passengers, entertainment activities, property works...(article LP 918 of the Tax Code). The rate is 5% of the invoiced price.

Tax incentives

Mining companies may benefit from various tax incentives for mining/metallurgical investment projects in New Caledonia on the basis of the New Caledonian Tax Code and the French Metropolitan Tax Code. The most tax efficient schemes include:

- the specific Metropolitan Tax Code provisions which focus on investments in French overseas territories. For instance, the provisions resulting from the Loi Girardin no 2003-660 of 21 July 2003 allow tax deductions from taxable income for companies investing in certain industrial sectors in New Caledonia; and
- the Law (*Loi du Pays*) no 001-009 of 17 July 2001, which relates to certain metallurgical investments and has introduced new tax incentives in the first Part of the Tax Code of New Caledonia.

Generally speaking, the tax incentives (mainly tax exemptions and a tax stabilisation regime) in New Caledonia concern both the creation of new metallurgical processing plants and the creation of additional equipment needed to operate the plants by non-metallurgical companies. The Law also provides specific tax incentives for metallurgical processing plants. Under certain circumstances full tax exemption may be granted for a period of 10 years, which may in some cases be increased to 15 years.

Mining royalty

The New Caledonian Government is currently reviewing a new mining royalty tax regime. Subject to various local consultations, this regime could be passed in 2014, if not withdrawn.





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ABOUT ADECAL

ADECAL is the economic development agency of New Caledonia. It acts as an interface, and a consultative and coordination body, to accompany new action and projects of benefit to New Caledonia. It is mainly funded by the French Government, the Government of New Caledonia and the three Provinces of New Caledonia.

ADECAL's mission is to promote New Caledonia's economic potential and promote inward investment. It is also in charge of external trade and regional cooperation. Lastly, it manages the exploration programme for New Caledonia's Exclusive Economic Zone, Zonéco.



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