

# Mining

*Contributing editors*

**Michael Bourassa and John Turner**



2018

GETTING THE  
DEAL THROUGH 

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DEAL THROUGH 

# Mining 2018

*Contributing editors*

**Michael Bourassa and John Turner**  
**Fasken**

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# Preface

## Mining 2018

Fourteenth edition

**Getting the Deal Through** is delighted to publish the fourteenth edition of *Mining*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia and the Democratic Republic of the Congo.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Michael Bourassa and John Turner of Fasken, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
June 2018

# Mozambique

João Afonso Fialho and Catarina Coimbra VdA Legal Partners

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## Mining industry

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

The mining industry arguably represents one of Mozambique's most important sectors and stands at the forefront of the country's development efforts. Mining is one of the principal drivers of the national economy and its contribution to the GDP continues to increase. Over the past few years, Mozambique has been developing a mineral export promotion programme, primarily aimed at augmenting its depleted foreign exchange reserves. Consequently, major industry players from South Africa, Russia, Australia, India and Brazil have acquired interests in various mining areas across the country, highlighting the significance of the mining sector.

A number of high-profile mining projects are currently under way, which are not only boosting the industry itself, but also the considerable development of infrastructure to facilitate the export of the mining output. The most visible expression of this anchor effect is the upgrade of the Nacala Corridor Railway – a project that has enhanced Mozambique's competitiveness in the region by connecting the country's inland area to the port of Nacala, East Africa's deepest natural port. In this context, investment opportunities for the provision of coal mining equipment and railway logistics and equipment are expected in the near future.

### 2 What are the target minerals?

Mozambique's geological make up is extremely varied. Being one of the largest producers of tantalite and beryllium, the country boasts strategic reserves of both these minerals. Mozambique also hosts one of the world's largest aluminium smelters, with an installed capacity to produce 560,000 tonnes of aluminium ingot a year.

Copper, iron ore and lead, as well as high-grade bauxite, are explored in the central part of the country. High-scale heavy mineral sands and titanium projects are being developed in that same region. The Mozambican province of Tete is known as one of the world's largest coal reserves, although its level of production has decreased in recent years. Graphite, apatite, ornamental rocks (such as marble and granite), bentonite and copper are also worth mentioning. Minerals used in battery technology or renewable energy have not been the object of particular interest by investors.

### 3 Which regions are most active?

Mozambique's most important mineral reserves are located in its central provinces of Tete, Manica and Niassa.

## Legal and regulatory structure

### 4 Is the legal system civil or common law-based?

Mozambique's legal system is civil law-based.

### 5 How is the mining industry regulated?

Mozambique's mining industry is primarily regulated at the national level by nationwide laws (enacted by Parliament) and by implementing regulations (approved by the government). Mining agreements are often entered into by and between the government and holders of mining rights. There are no objective criteria defining when a mining

contract should be executed, but they are used for large-scale mining projects. A mining contract can provide for amendments and variations to or exemptions from the existing legislative requirements, taxes, custom duties and employment quotas regulating the country's mining industry.

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

Mining activities in Mozambique are governed by the Mining Law (Law No. 20/2014, of 18 August 2014) and by Mining Regulations (Decree No. 31/2015, of 31 December 2015). The existing legal framework aims to regulate the mining titles awarded for the exploitation of the country's mineral resources, the formalities instructing their concession and respective time frames, as well as the rights granted to investors who wish to engage in mining activities.

Other key statutes include:

- Health and Safety Regulations for Mineral Activity;
- Regulations on Mining Work;
- Environmental Regulations for Mineral Activity;
- Basic Rules for the Environmental Management of Mining Activity; and
- the Law on Taxation of Mineral Operations and its Regulations.

The industry's main regulatory bodies are the Ministry of Mineral Resources and Energy, which is essentially responsible for awarding mining rights, and the National Institute of Mines, which oversees mining activities.

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

Mozambique's mining legislation does not stipulate a specific classification system for the reporting of mineral resources and reserves.

## Mining rights and title

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

Mozambique's Constitution establishes the fundamental principle that all mineral resources found in the soil, subsoil or in water are the sole property of the state. This same principle is reproduced in the Mining Law. Holders of surface rights may, under no circumstances, be vested with title to minerals found in the subsoil, except if special mining rights are obtained from the state. Private prospecting, and the exploration and mining of mineral resources, is only permitted under mining licences awarded by the government (Ministry of Mineral Resources and Energy).

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

Several sets of mining data, including geological and geochemical data, are available for consultation at the National Directorate for Geology and Mines by private entities considering investments in the mining sector. A detailed registry of mining areas and existing mining licences is also available. Nevertheless, mining data derived from prospecting and exploration activities may only be disclosed 90 days after the termination date of the respective mining title.

Mozambique has a Mining Registry Site launched by the Ministry of Mineral Resources and Energy. This online tool was created to ensure compliance with the standards set by the Extractive Industries Transparency Initiative and is essentially aimed at improving transparency in the mining sector. In addition, it has proved useful in promoting and boosting investment given that it provides potential investors with immediate and clear information on the areas open to mineral activities. It also provides a reference list of the various prospecting and exploration licences and mining concessions awarded. The Portal is regularly updated and can be viewed at <http://portals.fixicadastre.com/Mozambique/en/>.

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

There are seven types of mineral rights or licences available:

- prospecting and exploration licences;
- mining concessions;
- mining certificates;
- mining passes;
- mineral handling licences;
- mineral processing licences; and
- marketing licences.

Only one type of mineral right can exist over an area of land at any one time. The acquisition, modification, transfer and termination of mineral licences are subject to registration.

The most important licences for medium and large-scale projects are the prospecting and exploration licences (for the exploration phase) and the mining concessions (for the mining and production phase).

**Prospecting and exploration licences**

Prospecting and exploration licences are initially granted for two years in the case of construction minerals (renewable for an additional two-year period) and five years for all other minerals (renewable for an additional three-year period), for areas of up to 198 and 19,998 hectares respectively. These licences allow their holders to access the licensed area and to carry out all activities ancillary to prospecting and exploration, such as the construction of temporary structures and the removal or sale of samples and specimens.

Holders of prospecting and exploration licences must submit an annual report, until 28 February of each year, summarising the activities undertaken during the previous year, as well as a work programme and budget for the forthcoming year, until 30 March.

**Mining concessions**

Mining concessions are granted for up to 25 years, allowing the holder to extract minerals from the concession area and to carry out all activities ancillary to extraction, such as the construction of structures and the marketing of minerals. Applications for mining concessions must be addressed to the Minister of Mineral Resources and Energy and filed with the National Institute of Mines. Furthermore, these applications are always subject to prior opinion issued by the government of the relevant province.

Mining concessions are granted on an exclusive basis and may be extended once, for the same 25-year period. Before commencing

extraction activities, the holder of the mining concession must obtain an environmental licence and a DUAT (a form of land concession), as well as prepare a resettlement and compensation plan for the communities affected by the mining activities. These activities must then be launched within two years, and production within four years, of the awarding of the mining concession.

The mining production plan must include, among other elements: details of the ore deposit, design of the mine site, the operations schedule, the necessary infrastructure, expected dates for the start of development and commercial production, as well as environmental, health and safety plans.

**Mineral processing licences**

In Mozambique's Mining Law, mineral processing is defined as the mineral operations carried out to obtain mining ore, spanning the entire extractive industry chain. Mineral processing licences are granted for a period of 25 years and may be extended once for an equivalent period. Applications for this licence must be addressed to the Minister of Mineral Resources and Energy and filed with the National Institute of Mines.

**Mineral handling licences**

The Mining Law defines mineral handling as mineral operations carried out to recover useful ore components in order to then transform these into useful or profitable minerals using physical processes, excluding industrial transformation. Mineral handling licences are granted for a period of 25 years and may be extended once for an equivalent period. Applications for this licence must be addressed to the Minister of Mineral Resources and Energy and filed with the National Institute of Mines.

**Marketing licences**

When the entity selling or exporting minerals is not the same as that which produced or mined these minerals, a marketing licence is required. See question 33.

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

Prospecting and exploration licences are valid for up to two years in the case of construction minerals (renewable for an additional two-year period) and five years for all other minerals (renewable for an additional three-year period). In order to be granted an extension, an extension fee must be paid and the following documents must be submitted to the Ministry of Mineral Resources and Energy, at least 60 days prior to the termination date of the licence:

- a tax clearance certificate confirming that all mining taxes have been paid;
- a report detailing the activities carried out during the initial phase (including the investments made); and
- a work programme covering the extension period (with mention of the respective projected investment).

Provided that the above requirements have been met and that the licence holder has complied with all its obligations under the existing prospecting and exploration licence, the Ministry of Mineral Resources and Energy may, subject to the opinion of the National Institute of Mines, approve extension of the licence for the time period requested (ie, the Minister is not legally granted discretion to refuse the awarding of extensions for other reasons). In accordance with the Mining Law and the Mining Regulations, the transfer of prospecting and exploration licences from one company to another, as well as the direct or indirect transfer of the licence holder's shares, may be requested only two years after the start of the respective mineral activities and is subject to prior approval by the Ministry of Mineral Resources and Energy. The Ministry's approval is, in turn, conditional on compliance with certain requirements, such as the payment of a transfer fee and clear demonstration of the assignee's technical and financial capacity.

**12 What is the typical duration of mining rights?**

The duration of mining rights depends on the mining right in question (see questions 10 and 11).

Pursuant to Mozambique's Mining Law, a mining right can be revoked when its holder fails to remediate, within 60 days of the government's prior notification, the following situations:

- failure to pay specific taxes;
- failure to comply with any provision or regulation set out in the mining contract that foresees the revocation of the mining right;
- bankruptcy, agreement or composition with the creditors (except if a guarantee has been registered over the mining facilities);
- transformation or dissolution of the mining company without the government's prior approval; or
- indebtedness to the state.

The Mining Regulations also allow for the immediate revocation of mining rights in the following situations:

- failure to pay the surface or production tax, for more than 90 days past the due date;
- failure to carry out mining activities or to file the respective annual works report within 24 months following the issuance of the prospecting and exploration licence; or
- failure to start the mining production within 48 months following the granting of the mining concession, or 24 months following the issuance of the mining certificate, as applicable.

Additionally, the Mining Law establishes other grounds for the revocation of each specific mining right.

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

The mining rights that may be acquired by Mozambican nationals are distinct from those that may be acquired by foreign parties:

- mining passes (for more basic, artisanal mining activities) and marketing licences may only be granted to Mozambican nationals or to Mozambican companies wholly owned by Mozambican individuals;
- mining certificates (for small-scale mining operations) may only be granted to Mozambican nationals or to Mozambican companies majority-owned by Mozambican individuals; and
- mineral processing and handling licences, prospecting and exploration licences, and mining concessions may only be granted to companies incorporated under the laws of Mozambique – however, these companies can be foreign-held, subject to the mandatory participation of Mozambican nationals, as detailed ahead.

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

Mozambique has an independent judicial system and observes the fundamental principles of rule of law and due process. The protection and enforcement of mining rights can be effected through the local courts, although these courts often lack the necessary expertise of technical mining issues. Litigation in Mozambican courts has the additional problem of being expensive and time-consuming.

International arbitration represents a viable alternative to the local courts. Mozambique is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention), having deposited its instrument of accession with the United Nations Secretary-General on 10 June 1998. As is permitted by the New York Convention, when Mozambique acceded thereto it declared that it would only apply the Convention to the recognition and enforcement of awards made in the territory of another contracting state, based on reciprocity. As such, only arbitral awards made in contracting states benefit from the more favourable recognition and enforcement regime set out in the New York Convention. Awards made in non-contracting states will be subject to a (more burdensome) judicial review and confirmation process before they can be enforced.

### **15 What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?**

Under Mozambican law, all land belongs to the state. Investors in mining activities cannot, therefore, buy or own land being used for the implementation of a mining project. They may, however, be granted

the right to use and exploit that land (through the means of a DUAT). A DUAT provides its holder with legal certainty that it will be authorised to use a certain area of land for the purposes for which the DUAT was granted, such as mining. DUAT holders may also be owners of any buildings, facilities or other immovable assets built on the land covered by their DUAT.

When mining rights are granted in relation to an area of land subject to an existing DUAT, the holder of the granted rights must pay compensation to the respective DUAT holder. In cases where a DUAT is awarded over a populated area and the population must be resettled, a relocation plan must be drawn up and due compensation paid to those affected.

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

The state's right to participate in mining projects is not provided for in Mozambique's mining legislation, but rather in Law No. 15/2011, of 10 August 2011 (the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, also commonly known as the Mega-Projects Law) and Decree No. 16/2012, of 4 July 2012 (the Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, also commonly known as the Mega-Projects Regulations).

Pursuant to the Mega-Projects Law, contracts must permit the participation of public or private Mozambican corporate persons in the share capital of the project in question or in the capital of the consortium, according to terms to be negotiated and agreed upon by the parties. The Mega-Projects Regulations goes a step further, setting out that as consideration for the granting of exploitation rights over natural resources, the state reserves the right to negotiate a gratuitous participation of no less than 5 per cent of the share capital, during any of the project's phases.

With regard to the listing of project companies, and in accordance with the Mega-Projects Law, contracts must provide for a participation in the project or consortium's share capital which is to be reserved, via the Stock Exchange and on commercial market terms, for the economic inclusion of Mozambican nationals, regardless of whether foreign investment is involved. The participation rate should range between 5 and 20 per cent of said capital. Participation may be guaranteed by the state or by another public entity designated by the state, meaning that at an initial stage the relevant participation is transferred to the state or to other such entity. Alternatively, participation may be guaranteed by the project vehicle, which unconditionally undertakes to then dispose of it at a later date.

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

Mozambique's Mining Law establishes, as a general principle, that expropriation can only take place for justified public interest reasons and that the expropriated party will always be entitled to receive fair compensation.

### **18 Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?**

Mozambique's Land Law (Law No. 19/97, of 1 October 1997) establishes the existence of fully protected areas and partially protected areas. Fully protected areas are reserved for nature conservation and state military activities, whereas partially protected areas include:

- sea and river beds;
- the continental platform;
- an area of 100 metres from the coastline or river banks, or both;
- an area of 250 metres bordering dams and man-made lakes, as well as railways and an area of 50 metres adjacent thereto;
- highways and an area of 50 metres adjacent thereto;
- a two-kilometre band along the country's borders;
- airports and an area of 100 metres adjacent thereto; and
- military facilities and an area of 100 metres adjacent thereto.

No rights may be awarded over fully or partially protected areas, but special licences can be obtained for specific and limited activities.

**Duties, royalties and taxes**

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

Mozambique’s Law on the Taxation of Mineral Operations (Law No. 28/2014, of 23 September 2014, as amended by Law No. 15/20017, of 28 December) and the relevant Regulations (approved by Decree No. 28/15, of 28 December 2015) introduced significant changes to the tax regime applicable to the mining industry. The special regimes governing production tax, corporate income tax and fiscal benefits for the mining sector, previously dispersed across several legal instruments, are now consolidated in this single instrument.

VAT and customs duties apply throughout the entire lifecycle of mining projects, but duties, royalties and taxes vary in accordance with the operational phase of the project. In this respect, note that Decree No. 78/2017, of 28 December, which approves the new VAT Refund Regulations, provides for a special regularisation regime applicable to the oil and mining sector. Under this regime, oil and mining companies – at the production stage – are allowed to settle their invoices without VAT provided that among other requirements their exports exceed 75 per cent of the annual turnover of the preceding year. A regularisation document will need to be issued in order to allow suppliers to correct the VAT initially charged.

**Surface tax**

Holders of prospecting and exploration licences, mining concessions and mining certificates are required to pay surface tax calculated in accordance with the fixed amount per hectare of land contained in the mining title.

**Amount annually payable in meticaís per hectare**

Mining title	Rate
Prospecting and exploration licences	
Years 1 and 2	17,50 MT/ha
Year 3	43,75 MT/ha
Years 4 and 5	91 MT/ha
Year 6	105 MT/ha
Years 7 and 8	210 MT/ha
Mining concession	
Years 1 to 5	30 MT/ha
From year 6 onwards	60 MT/ha
Mining certificate	
Years 1 to 5	30 MT/ha
From year 6 onwards	50 MT/ha

**Production tax (royalty)**

Individuals or companies developing mining activities must pay a production tax (royalty) calculated based on the value of the mineral extracted, as follows:

- diamonds – 8 per cent;
- precious metals, precious and semi-precious stones and heavy sand – 6 per cent;
- sands and stone – 1.5 per cent; and
- base minerals, coal, ornamental rocks and other mineral products – 3 per cent.

This value is informed by the sale price of the previous consignment of the respective mineral or, if the mineral has never been sold, its market value. Production tax is to be paid at the end of the month during which the mineral was extracted. A 50 per cent reduction is foreseen in the law for mining products used in the development of local industry.

**Windfall profits tax**

Mining concessions or mining certificates with a pre-corporate income tax net return in excess of 18 per cent are subject to a windfall profits tax levied on the accumulated net cash flow. The statutory rate of the windfall profits tax is set at 20 per cent.

**Corporate income tax**

Corporate income tax – a profit-based tax – is payable at a rate of 32 per cent.

**20 What tax advantages and incentives are available to private parties carrying on mining activities?**

Mining projects are exempt (for a period of five years after the start of mining activities) from:

- customs duties payable on imported equipment (for both the prospecting and exploration, and mining or production phases) classified under Class K in the Customs Schedule;
- customs duties payable on imported equipment not expressly classified under Class K in the Customs Schedule, but which is considered equivalent thereto (a comprehensive list of which can be found annexed to the Law on the Taxation of Mineral Operations); and
- mining companies – at the production stage – are allowed to settle their invoices without VAT provided that among other requirements their exports exceed 75 per cent of the annual turnover of the preceding year.

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

A fiscal stabilisation regime may be negotiated between the government and the holders of mineral rights, as established in article 58 of the Law on the Taxation of Mineral Operations. This stabilisation period has a maximum duration of 10 years, which may be extended until the term of the concession in return for a 2 per cent annual increase in the production tax rate.

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

The Mega-Projects Regulations establish that the Mozambican state reserves the right to negotiate a free participation of no less than 5 per cent during any phase of a mining project, as consideration for its awarding of exploitation rights over natural resources.

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

The transfer of mineral rights or licences is subject to a 32 per cent capital gains tax.

According to the Law on the Taxation of Mineral Operations, capital gains are due whenever the underlying transaction concerns mining assets or rights located in Mozambican territory, regardless of where the transaction actually takes place (ie, even if it is concluded at the (offshore) parent company level). In addition, Law No. 15/2017, which amended Mozambique’s Law on the Taxation of Mineral Operations, provides that the gains or losses resulting from the tax on transfers (either onerous or free of charge) of stakes in the mining sector are not deductible.

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

No.

**Business structures**

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

There is generally little difference between a branch and a subsidiary in Mozambique. The main differentiating factor is the tax efficiency associated to the repatriation of profits. Dividends distributed by a local company to its shareholders are subject to withholding tax, whereas the repatriation of profits by the local branch of a foreign company is not.

Other key differences include:

- a subsidiary is a separate legal entity, whereas a branch is not legally autonomous from the foreign company that set it up – namely, its head office;
- the liability of a company’s shareholders is limited to the amount of its share capital, whereas a foreign company is fully responsible for any liabilities arising from its branch’s activities;



- at least one other shareholder (or two more, depending on the type of company) is required to incorporate a Mozambican company; in the case of a foreign entity branch, the appointment of a local representative is the sole requirement;
- given that a branch and its head office represent the same legal entity, the respective company's corporate matters are governed by only one jurisdiction: typically the country where the company has its registered offices, which determines the company's personal law;
- conversely, corporate documents issued by the foreign company at the head office level (minutes of shareholders' meetings, board resolutions, powers of attorney, etc) will always be subject to a more cumbersome and expensive process, usually involving translation and several stages of legalisation; and
- branch registration costs are broadly similar to those of incorporating a local company, although the latter are slightly higher.

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

Yes. In accordance with the Mega-Projects Law, contracts must provide for a participation in the project or consortium's share capital, to be reserved, via the Stock Exchange and on commercial market terms, for the economic inclusion of Mozambican nationals, regardless of whether foreign investment is involved. The participation rate should range between 5 and 20 per cent of said capital.

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

Mozambique has entered into double taxation treaties with the following countries: Botswana, India, Italy, Portugal, the Special Administrative Region of Macao (China), Mauritius, South Africa, the United Arab Emirates and Vietnam.

Mozambique has established bilateral investment treaties with Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Luxembourg, Mauritius, the Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, the UK, the US, Vietnam and Zimbabwe.

### **Financing**

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

Mozambique's banking sector and capital markets remain underdeveloped and lack the necessary liquidity to finance medium or large-scale mining projects. As such, financing for mining activities is mainly secured through corporate loans provided by foreign banks or through shareholders' loans. A common alternative financing option involves listing the licence holder's parent company (typically in the London Alternative Investment Market), thus passing the flotation proceeds down to the Mozambican company actually implementing the mining activities.

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

Mining activities are typically financed by private parties, rather than by the government, its agencies and pension funds.

#### **30 Describe the regime for taking security over mining interests.**

Physical assets used in mining activities may be mortgaged, pledged or otherwise used as collateral to secure loans for the financing of mining operations – always subject, however, to the prior approval of the Ministry of Mineral Resources and Energy. As regards immovable assets, any security rights attached thereto – a mortgage – must be documented in the form of a notary deed and duly registered with the property registry.

The admissibility of a direct pledge or mortgage over mining interests is highly debatable. In practical terms, this type of direct and immediate security over interests is not typically implemented in Mozambique. From a legal standpoint, the creation and enforcement

of security rights over mining interests is always subject to authorisation by the Ministry of Mineral Resources and Energy. This means that the beneficiary of a security does not have an immediate right to execute the collateral in case of default of the underlying loan or financing arrangement – the intervention of the Ministry of Mineral Resources and Energy will always be required, it having full discretionary powers to approve or refuse the enforcement of the collateral.

### **Restrictions**

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

Mozambique's mining legislation does not establish specific restrictions on the importation of services and equipment. However, customs duties exemptions on the importation of equipment will only be granted if no equipment of comparable quality is produced in Mozambique.

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

No standard conditions and agreements are used, although nothing prevents the parties from instituting these should they wish to do so.

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

Entities extracting minerals under a mining licence may freely dispose of the output of their production. Nevertheless, a marketing licence is required when the entity selling or exporting the minerals is not the same entity that produced or mined them. This marketing licence is awarded by the National Institute of Mines.

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

Mozambique's Mining Law establishes that the state warrants mining licence holders' right to export and repatriate profits derived from mining activities – including the proceeds from the export or sale of minerals – but always subject to compliance with the applicable foreign exchange regulations and procedures. Both the import of funds and the repatriation of proceeds derived from the export or sale of minerals qualify as foreign exchange operations under the Foreign Exchange Law and the Foreign Exchange Regulations. Foreign exchange operations must undergo a licensing process, which consists of registration or approval by the Central Bank of Mozambique, by the country's foreign exchange authority, or by both.

Finally, there is an additional obligation to convert at least 50 per cent of the export proceeds into local currency.

### **Environment**

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

Environmental mining issues are largely regulated by Mozambique's Environmental Law (Law No. 20/97, of 1 October 1997), its Environmental Regulations for Mining Activity, and the Basic Rules on Environmental Management for Mining Activity.

The Ministry for Land, Environment and Rural Development acts as the country's environmental regulator.

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

Holders of mining rights must observe several environment-related obligations. For the purposes of defining the environmental requirements applicable to each case, mining operations are classified into three levels according to the scope, scale and sophistication of the equipment to be used.

If the activities foreseen are deemed to fall under Level I activities, the mining project will merely be subject to the Basic Rules on

Environmental Management for Mining Activity, which are aimed at mitigating any environmental damages or socio-economic impacts possibly arising from mining activities by ensuring that these respect simple methods intended to prevent air, soil and water pollution, as well as damage to flora and fauna, and to protect human health.

If the activities foreseen are deemed to fall under either Level II or Level III activities, the specific regime set out in the Environmental Regulations for Mining Activity will apply. Mining operations falling under Level II activities, including those carried out in quarries or which involve the extraction and mining of other mineral resources for construction, exploration and mining activities involving mechanised equipment, as well as pilot-projects, must mandatorily submit an environmental management plan (EM plan) and an emergency and risk situation control programme.

The EM plan should be comprised of a report on the initial conditions of the mining area, a monitoring programme, a rehabilitation programme or a mine decommissioning and closure programme, or all of the above. Once approved by the relevant authority, the EM plan is considered a statement of environmental liability with which the company is required to comply.

Mining operations falling under Level III activities – typically mining concessions – are subject to even stricter environmental requirements. More specifically, holders of a mining concession must obtain an environmental licence from the Ministry for Land, Environment and Rural Development before commencing operations. An environmental impact assessment (EIA) is mandatory to obtain this licence. The resulting EIA report, which details the assessment findings, shall also include an environmental management programme (EM programme), as well as an emergency and risk situation control programme. The EM programme, which should contain an environmental monitoring programme and a mine decommissioning and closure programme, is required to cover a five-year period.

The procedure to obtain an environmental licence involves a public consultation process with the local communities, during which the licence holder must ensure that these communities are given the opportunity to participate in the decision-making process. Before the environmental licence can be issued, the EIA report must be approved by the Ministry for Land, Environment and Rural Development following a technical review conducted by the same in cooperation with the Ministry of Mineral Resources and Energy. The environmental licence is valid for the term of the corresponding mining title, but is subject to review every five years and may be issued subject to recommendations and certain conditions. Moreover, the Environmental Regulations for Mining Activity encourage stakeholders to enter into a memorandum of understanding for a five-year period, in order to establish the parties' agreement on the methods and procedures to be applied in the management of environmental, biophysical, social, economic and cultural matters, both during the project and on decommissioning. Furthermore, an environmental management report outlining the results of the environmental monitoring, from a social, economic, cultural and biophysical standpoint, must be submitted each year to the Ministry for Land, Environment and Rural Development.

The Mining Law also contains a provision, although somewhat generic, on environmental matters. Mining activities are similarly classified into three different levels (called A, B and C), in accordance with criteria akin to that provided for in the Environmental Regulations for Mining Activity. The Law further states that Level A activities are subject to an EIA, Level B activities to a simplified EIA, and Level C activities to an EM programme.

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

The provision of a financial bond for Level II and III activities is required under the Environmental Regulations for Mining Activity. This financial bond may be provided annually, in the form of an insurance policy, bank guarantee or bank deposit. It is intended to cover any decommissioning costs of the operations in question.

### **38 What are the restrictions for building tailings or waste dams?**

Pursuant to the Environmental Regulations for Mining Activity, both holders of mining rights and operators must take appropriate measures for the disposal and treatment of mining waste products in order to

### **Update and trends**

The Coral LNG Project is expected to boost the Mozambican economy, as the World Bank estimated in a report that, by 2032, Mozambique could generate up to US\$9 billion in revenues from its natural resources, in particular coal and gas, as demand from India and China continues to grow.

Moreover, the recent investment in the Nacala Corridor Railway is expected to create investment opportunities for the provision of coal mining equipment and railway logistics and equipment.

Two projects are expected to enhance the investment in mining and processing of heavy sands deposits, the Moma Heavy Sands and the Corridor Sands. In the same vein, the gold industry is forecast by the Mozambican government to grow 1.1 per cent annually from 2016 to 2020 (a gold mining concession was recently awarded, with estimated reserves of 2.97 million ounces).

Decree No. 78/2017, of 28 December, which approves the new VAT Refund Regulations, establishes a more favourable VAT regime for mining companies at the production stage.

prevent contamination of the location where this waste is deposited. It is forbidden to deposit hazardous waste on the soil and subsoil.

In addition, mining areas, including facilities used for or related to mining activities carried out under mining rights, are subject to inspection by the Ministry of Mineral Resources and Energy, although the law does not establish a specific number of inspections. The Technical Safety and Health Regulations for Geological and Mining Activities (approved by Decree No. 61/2006, of 26 December 2006) also contain detailed health and safety provisions with respect to mining activities.

### **Health and safety, and labour issues**

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

Health, safety and labour issues are principally regulated by the Regulations on Mining Work, approved by Decree No. 13/2015, of 3 July 2015, and by the Technical Safety and Health Regulations for Geological and Mining Activities, approved by Decree No. 61/2006, of 26 December 2006. The Labour Law (Law No. 23/2007, of 1 August) also applies, but on an ancillary basis. The Ministry of Labour is the main regulator.

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

As mentioned in question 38, pursuant to the Environmental Regulations for Mining Activity, holders of mining rights and operators must take appropriate measures for the disposal and treatment of mining waste products in order to ensure that the location where waste is deposited is not contaminated. The deposit of hazardous waste on the soil and subsoil is forbidden.

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

No restrictions apply to the use of domestic employees in mining activities, except those related to minimum employment age, maximum work hours, mandatory rest days and similar matters.

Both labour and immigration issues must be taken into account when dealing with foreign nationals working in Mozambique. As a general rule, foreign employees are only entitled to work in Mozambique under an employment contract governed by Mozambican law and entered into with a Mozambican employer – either a Mozambican company, or the Mozambican branch of a foreign company. This employment contract is subject to the authorisation of the Ministry of Labour – usually quite a cumbersome process – or simply to a notification procedure.

An employer may have a specific number of expatriate employees, depending on the total number of employees at its service. Under this quota regime, a company with more than 100 employees may have 5 per cent of expatriate workers, a company with more than 10 and fewer than

100 employees may have 8 per cent expatriate workers, and companies with up to 10 employees can only employ one expatriate. Expatriates hired under this quota regime are only subject to a notification procedure before the authorities. Employers are required to notify the authorities when they hire an expatriate under the expatriate quota, within 15 days of his or her admission, through the submission of a model application approved for this purpose, together with additional documentation.

Expatriates may be hired in numbers exceeding the relevant expatriate quota, but this exception is subject to special authorisation issued by the Ministry of Labour. In such cases, employers must submit an application stating their denomination, head office and business sector, as well as identifying the expatriate in question, his or her job function and the grounds on which they are requesting this special authorisation.

Further important features of the labour regime can be summarised as follows: when a mining contract explicitly provides for the possibility of hiring expatriates in numbers exceeding the quotas established in the general regime, mining companies and their subcontractors are merely required to notify the labour authorities of the admittance of these additional expatriates.

### Social and community issues

#### 42 What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Ministry of Mineral Resources and Energy recently approved the Guide on the Implementation of the Corporate Social Responsibility Policy for the Extractive Mineral Resources Industry (Ministerial Order No. 8/2017, of 16 January 2017). This statute primarily aims to establish social responsibility initiatives to help promote the social, economic and environmental welfare of communities affected by mining projects.

Nationally, the main regulator is the Ministry of Mineral Resources and Energy, and locally, it is the provincial government and the District Administration.

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

No specific legislation regulates this matter in Mozambique. It should, however, be noted that if mining activities are to be carried out in a populated area, and the local population subsequently needs to be resettled, a relocation plan must be prepared and due compensation must be paid to those evicted.

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

Mozambique has not entered into any international treaties, conventions or protocols specifically related to CSR issues.

### Anti-bribery and corrupt practices

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

The Mozambican Penal Code (approved by Law No. 35/2014, of 31 December), as amended by the Anti-Corruption Law (approved by Law No. 6/2004, of 17 June 2004), criminalises both passive and active bribery and corruption practices. The applicable periods of imprisonment and fine amounts will depend on the type of offence committed and on the agent.

Pursuant to the Anti-Corruption Law and the Regulations on Public Works Contracts and the Supply of Goods and Services to the State (approved by Decree No. 15/2010, of 15 May 2010, as amended), all contracts to which government bodies are a party (as is the case of mining concession contracts) must include an anti-corruption clause.

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

Yes, particularly companies owned by foreign individuals or companies. It is common practice for these companies or individuals to apply the anti-bribery and anti-corruption legal regime in force in their own country of origin at their companies operating under the laws of Mozambique.

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

Mozambique has been a party to the Extractive Industries Transparency Initiative since 2012. The recommendations set forth in the EITI Reports on Mozambique concern, among others, the lack of a centralised government revenue collection monitoring system required to ensure the accuracy and transparency of records of payments made by mining companies to government entities. Within this context, the Mozambican EITI Coordinating Committee has set, as one of its main goals for 2016–2018, the improvement of government entities' and mining companies' accountability mechanisms in a bid to comply with the standards established by the EITI. However, no progress has been made thus far on the enactment of new regulations governing these issues.

### Foreign investment

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

In the mining industry, foreign ownership is restricted by the Mega-Projects Law, according to which a percentage ranging from 5 to 20 per cent of a mining project's capital must be reserved for local participants.

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**International treaties****49 What international treaties apply to the mining industry or an investment in the mining industry?**

Mozambique has entered into several double taxation treaties and bilateral investments treaties, which establish certain benefits also applicable to the mining industry. A complete list of these legal instruments can be found in question 27.

A more targeted bilateral cooperation treaty for the mining sector was entered into by and between Mozambique and Angola in 2007. A similar cooperation treaty was then entered into by and between Mozambique and Portugal in March 2014.

As already mentioned, Mozambique is also a party to the Extractive Industries Transparency Initiative.

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