

Mining 2021

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**Darrell Podowski, Brian Dominique, Brandon Manhas
and Lauren White**

Cassels Brock & Blackwell LLP

Lexology Getting The Deal Through is delighted to publish the seventeenth edition of *Mining*, which is available in print and online at www.lexology.com/gtdt.

Lexology 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 Lexology 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 chapter on Ireland, Nigeria and Uzbekistan.

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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.

Lexology 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, Darrell Podowski, Brian Dominique, Brandon Manhas and Lauren White of Cassels Brock & Blackwell LLP, for their assistance with this volume.



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MINING INDUSTRY

Standing

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

Mozambique has been on the global radar not only for its natural gas and coal reserves, but for its great deal of potential mineral reserves, which represents one of the most important sectors and stands at the forefront of the country's development efforts.

Over the past few years, major industry players from Australia, Brazil, India, Russia and South Africa have acquired interests in various mining areas across the country, highlighting the significance of the mining sector. Apart from the coal industry, which is one of the fastest growing industrial segment and Mozambique's main export, recent investments focusing on heavy mineral sands are expected to play a significant role in the country production.

Despite the above, the economy faced an economic slowdown in the last years due to the discovery of hidden debts, the climate-related shocks in view of the most recent tropical cyclones, as well as military instability in the northern region, especially Cabo Delgado. While covid-19 may have disrupted mining operations in terms of site closures and reduced export earnings, Mozambique still holds extensive opportunities to add in-country value to mining operations. According to data from the National Institute of Statistics, in 2017 and 2018, the real GDP growth rate stood at 3.7 per cent and 3.4 per cent, respectively, and in 2019, it was 2.2 per cent – the lowest growth over the past two decades. In 2021, GDP is poised to gradually recover after the last year's pandemic-induced contraction, partly thanks to reviving foreign demand, which should bolster exports of coal and aluminium.

Target minerals

2 | What are the target minerals?

Mozambique's geological make up is varied.

Ruby is one of the targeted minerals with production volume at 5.5 million and 2.1 million carats in the years 2017 and 2018, corresponding to 16.8 million and 7.8 million meticaís.

We also note that specific minerals associated with the new energy revolution have become important. Graphite mining in what is considered to be the largest high-grade deposit in the world, found in Cabo Delgado, is expected to climb over the next few years in response to the global energy transition. In fact, this sector holds extensive opportunities to add in-country value to mining operations due to the use of graphite in the production of lithium-ion batteries for electric vehicles. Further to this, several mining giants in Mozambique are introducing large-scale solar and battery installation to its mining sites, which will not only help reduce the site's consumption costs, but also reduce the greenhouse gases emitted under the mining activities.

Other target minerals are:

- copper in Niassa, Cabo Delgado, Nampula and Manica;
- gold in Niassa, Tete, Cabo Delgado, Nampula, Zambezia, Manica and Sofala;
- limestone in Gaza, Sofala, Maputo and Inhambane; and
- heavy mineral sands in Nampula, Zambezia, Gaza and Inhambane.

Regions

3 | Which regions are most active?

Mozambique's most important mineral reserves are located in the provinces of Tete, Manica, Nampula, Cabo Delgado and Niassa.

LEGAL AND REGULATORY STRUCTURE

Basis of legal system

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

Mozambique's legal system is civil law-based.

Regulation

5 | How is the mining industry regulated?

Mozambique's mining industry is primarily regulated by national laws (enacted by parliament) and by implementing regulations (approved by the government).

Mining agreements may be entered into by and between the government and holders of an exploration license and mining concession. There are no objective criteria defining when a mining agreement should be executed, but they are used for large-scale mining projects. A mining agreement 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 20/2014 of 18 August 2014) and by the Mining Law Regulations (Decree 31/2015 of 31 December 2015).

Other key legal statutes include:

- the Technical Safety and Health Regulations for Geological and Mineral Activity (Decree 61/2006 of 26 December 2006);
- the Mining Labour Regulations (Decree 13/2015 of 3 July 2015);
- the Environmental Regulations for Mineral Activities (Decree 26/2004 of 20 August 2004);

- the Basic Rules on the Environmental Management for the Mineral Activities (Ministerial Order 189/2006 of 14 December 2006);
- the Regulations on the National Salvage and Rescue System for the Extractive Industry of Mineral Resources (Decree 32/2019 of 29 April 2019);
- the Regulations on the Marketing of Mineral Products (Decree 20/2011 of 1 July 2011);
- the Regulations on the Marketing of Diamonds, Precious Metals and Gems (Decree 25/2015 of 20 November 2015);
- the Regulations on the Employment of Foreign Citizens for the Petroleum and Mining Sector (Decree 63/2011 of 7 December 2011);
- the Regulations on the Inspection Activity of Mineral Resources and Energy (Decree 34/2019 of 2 May 2019);
- the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Law 15/2011 of 10 August 2011);
- the Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (Decree 16/2012 of 4 June 2012);
- the Taxation and Fiscal Benefits Regime of Mineral Operations (Law 28/2014 of 23 September 2014, as amended by Law 15/2017 of 28 December) and its Regulations (approved by Decree 28/15 of 28 December 2015); and
- the VAT Refund Regulations (Decree 78/2017 of 28 December 2017), which provides for a special value added tax regime for mining companies in the production stage.

The industry's main regulatory bodies are the Ministry of Mineral Resources and Energy, which is essentially responsible for the execution of the government's policy in geological research, exploration of mineral and energy resources and awarding mining rights, the National Institute of Mines, which oversees mining activities, also responsible for the administrative procedures in the licensing process and the Inspectorate-General of Mineral Resources and Energy, which is responsible for monitoring and conducting inspections to mineral activities.

Classification system

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

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

MINING RIGHTS AND TITLE

State control over mining rights

- 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 as one of its fundamental principles that all mineral resources found in the soil, subsoil or water are the sole property of the state. This same principle is reinforced in the Mining Law (Law 20/2014 of 18 August 2014).

Holders of surface rights may not 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 mineral titles awarded by the Ministry of Mineral Resources and Energy.

The government may subject the award of mineral rights to a public tender in cases where (1) the area is believed to have mineral potential following a geological study, (2) the area has already been subject to prior mining operations, (3) the area is reserved for mineral activities and (4) in fully or partially protected areas. Furthermore, according to the Mining Law, where the development, use and exploitation of certain mineral resources is considered as being of public interest for the national economy, the Government may also declare that certain areas in which the mineral resources are located be reserved for the purpose of preserving such land for mineral titles, reserving it only for compatible activities.

Publicly available information and data

- 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, or securities commission regulating public companies, 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 of Geology and Mines by private entities considering investments in the mining sector.

A detailed registry of mining areas and existing mineral titles is also available.

The Ministry of Mineral Resources and Energy has launched an online mining registry 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 available to mineral activities. It also provides a reference list of the various prospecting and exploration licences and mining concessions awarded. The website is regularly updated and is available at <http://portals.landfolio.com/Mozambique/en>.

Acquisition of rights by private parties

- 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 or more senior tenure? What are the requirements to convert to a mining licence?

Mining rights are awarded by the Ministry of Mineral Resources and Energy on a first come, first served basis (without prejudice to the rules on public tender that may apply). The following are the main mineral titles one can be awarded:

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

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

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. In addition to reporting any discovery of minerals through the National Institute of Mines within 24 hours of discovery, holders of prospecting and exploration licences must submit an annual report by 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

The Mining concessions, which may (or not) emerge from a prospecting and exploration license, are granted for 25 years (renewable for a further 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. Before commencing extraction activities, the holder of the mining concession must obtain (1) an environmental licence (2) a licence to use and exploit the land (DUAT), as well as (3) the approval of 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, from the awarding of the mining concession. The mining production plan, which is submitted under the application for mining concessions, 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; and
- environmental and health and safety plans.

Mineral processing licences

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. Large-scale processing operations must be initiated within 24 months and small-scale operations within 12 months, from the date of the issuance of the licence.

Mineral handling licences

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. Large-scale handling operations must be initiated within 24 months and small-scale operations within 12 months, from the date of the issuance of the licence.

Marketing licences

A marketing licence is required whenever the entity selling or exporting the minerals is not the same as the producer.

Renewal and transfer of mineral licences

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

Both the renewal and transfer of mineral licences is subject to government approval.

Holders of prospecting and exploration licences must apply for an extension at least 60 days prior to the due date of the licence, being subject to the payment of a fee (when applied within less than 60 days) and submission of the following documents to the Ministry of Mineral Resources and Energy:

- 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 period requested.

In accordance with the Mining Law and the Mining Regulations, the transfer of prospecting and exploration licences, 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.

Duration of mining rights

12 | What is the typical duration of mining rights? Is there a requirement to relinquish a portion of the mining rights to the government after a certain number of years?

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. Extensions must be requested within 60 days prior to its due date.

Mining concessions are granted for 25 years and may be extended once, for another 25-year period. Extensions must be requested within 365 days prior to its due date.

Mineral processing licences and mineral handling licences are both granted for a period of 25 years and may be extended once for another 25-year period. Extensions must be requested within 180 days prior to its due date.

Pursuant to the Mining Law, a mining right can be revoked when its holder does not remediate the following situations (among others):

- failure to comply with any regulation or provision 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;
- indebtedness to the state;
- 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 award of the mining concession, or 24 months following the issuance of the mining certificate, as applicable.

Acquisition by domestic parties versus acquisition by foreign parties

- 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?

There is a distinction in the Mining Law between the mining rights that may only be acquired by Mozambican nationals and those that may be acquired by nationals or foreign parties, as follows:

- 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 (these companies can be foreign-held, subject to the participation of Mozambican nationals).

Protection of mining rights

- 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 (the New York Convention), having deposited its instrument of accession with the United Nations Secretary-General on 10 June 1998. Upon the accession, Mozambique 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. Awards attained in non-contracting states will be subject to a (more burdensome) judicial review and confirmation process before they can be enforced.

Surface rights

- 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 or does the holder of the mineral tenure have priority over surface rights use?

Under Mozambican law, the land is property of 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 the land by 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 activities. DUAT holders may also be owners of buildings, facilities or other immovable assets built on the land covered by their DUAT.

When mining rights are awarded over an area of land subject to an existing third-party DUAT, the holder of the mining rights must pay a compensation to the respective DUAT holder. In cases where a mining right 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.

Participation of government and state agencies

- 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 15/2011 of 10 August 2011 (the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, commonly known as the Mega-Projects Law) and Decree 16/2012 of 4 July 2012 (the Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, 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 go a step further, setting out that as consideration for the award of exploitation rights over natural resources, the state reserves the right to negotiate a free carried participation of no less than 5 per cent of the share capital, during any of the project's phases.

Regarding the listing of project companies, contracts must provide for a participation in the project or consortium's share capital which is to be reserved, through 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 per cent and 20 per cent of the 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 special purpose vehicle, which unconditionally undertakes to then transfer it at a later date.

Government expropriation of licences

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

The 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, to be assessed on a case-by-case basis.

Protected areas

- 18 | Are any areas designated as protected areas within your jurisdiction and which are off-limits to mineral exploration or mining, or specially regulated?

The Land Law (Law 19/97 of 1 October 1997) differentiates fully protected areas and partially protected areas. Fully protected areas are reserved for nature conservation and state military activities. Partially protected areas include:

- sea and river beds;
- the continental shelf;
- 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 to it;
- highways and areas of 50 metres adjacent to them;
- a two-kilometre wide band along the country's borders;
- airports and an area of 100 metres adjacent to it; and
- military facilities and an area of 100 metres adjacent to it.

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

Duties, royalties and taxes payable by private parties

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

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 included in the mining title.

Amount annually payable in meticals per hectare

Mining title	Rate
Prospecting and exploration licences	
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 results from 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.

Tax advantages and incentives

- 20 | What tax advantages, tax credits and incentives are available to private parties carrying on exploration and 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; and
- customs duties payable on imported equipment not expressly classified under Class K in the Customs Schedule, but which is considered equivalent to it (a comprehensive list of which can be found annexed to the Law on the Taxation of Mineral Operations).

At the production stage, mining companies 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.

Tax stabilisation

- 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 exchange of a 2 per cent annual increase in the production tax rate.

Carried interest

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

The Regulations on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions (commonly known as 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 the award of exploitation rights over natural resources.

Transfer taxes and capital gains

- 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.

Distinction between domestic parties and foreign parties

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

No.

BUSINESS STRUCTURES

Principal 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 with 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.

Local entity requirement

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

According to Law 15/2011 of 10 August 2011 (the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, commonly known as the Mega-Projects Law), mining contracts must provide for a participation in the project or consortium's share capital, to be reserved, through 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 per cent and 20 per cent of the capital.

Bilateral investment and tax treaties

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 Botswana, India, Italy, Portugal, the Special Administrative Region of Macao (China), Mauritius, South Africa, the United Arab Emirates and Vietnam.

It has also established bilateral investment treaties with Algeria, Angola, Belgium, Brazil, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Luxembourg, Mauritius, the Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates, the United Kingdom, the United States, Vietnam and Zimbabwe.

FINANCING

Principal sources of 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.

Direct financing from government or major pension funds

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.

Security regime

30 | Please describe the regime for taking security over mining interests.

Movable 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 to them (a mortgage) must be documented in the form of a public deed and duly registered with the property registry.

In addition, pursuant to Law 19/2018 of 28 December 2018 (which establishes the legal framework for securities over movables and creates the Central Registry for Security over Movables), holders of mining rights may create security interests over mineral resources already extracted or to be extracted, the latter being limited to the purpose of funding the relevant exploration or extraction. The terms of the security must be agreed upon in writing.

The admissibility of a direct security over mining interests is highly debatable. 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, and it has full discretionary powers to approve or refuse the enforcement of the collateral.

RESTRICTIONS

Importation 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 manufactured in Mozambique.

Standard conditions and agreements

- 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.

Mineral restrictions

- 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.

Import of funds restrictions

- 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?

The Mining Law (Law 20/2014 of 18 August 2014) 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. As a rule, foreign exchange operations must undergo a licensing process, which consists of approval or registration by the Central Bank of Mozambique.

ENVIRONMENT

Principal applicable environmental laws

- 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 the Environmental Law (Law 20/97 of 1 October 1997), the Environmental Regulations for Mining Activity (Decree 26/2004 of 20 August 2004) and the Basic Rules on the Environmental Management for the Mining Activity (Ministerial Order 189/2006 of 14 December 2006).

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

Environmental review and permitting process

- 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 – small-scale mining operations including prospecting and exploration using non-mechanised methods-, the mining project will merely be subject to the provisions established under the Basic Rules on Environmental Management for Mining Activity (Ministerial Order 189/2006, of 14 December), which are aimed at mitigating any environmental damage 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 that 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 (EM) plan and an emergency and risk situation control programme.

The EM plan should comprise 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 these. 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 and Environment 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 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 Mining Law (Law 20/2014 of 18 August 2014) also contains a provision, although somewhat generic, on environmental matters. Mining activities are similarly classified into three different levels (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.

Sustainability

- 37 | Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

The government of Mozambique is committed to the global strategy for decreasing greenhouse gases and has passed green policies to support green programmes and projects from private and public entities that aim to contribute to the control and reduction of greenhouse gas emissions (Decree 23/2018 of 3 May).

In addition, the National Sustainable Development Fund, created by Decree 6/2016 of 24 February, supports and finances programmes that have sustainable priorities, such as: environmental management, adaptation and mitigation of climate change; sustainable management of forests; conservation of biodiversity; and land management and land use planning.

Closure and remediation process

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

Under the Mining Law, mining operations must not be closed without the execution of the closure programme. This programme is normally included in the EM plan, for activities falling under Level II, and in EM program (EIA) for Level III activities. 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.

Restrictions on building tailings or waste dams

39 | 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 to prevent contamination of the location where the 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 Regulations on the National Salvage and Rescue System for the Extractive Industry of Mineral Resources and Technical Safety and Health Regulations for Geological and Mining Activities (approved by Decree 32/2019 of 29 April 2019 and Decree 61/2006 of 26 December 2006, respectively) also contain relevant health and safety provisions with respect to mining activities.

HEALTH AND SAFETY, AND LABOUR ISSUES

Principal health and safety, and labour laws

40 | 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 Labour, approved by Decree 13/2015 of 3 July 2015, and by the Technical Safety and Health Regulations for Geological and Mining Activities, approved by Decree 61/2006 of 26 December 2006. The Labour Law (Law 23/2007 of 1 August) also applies on an ancillary basis.

The Ministry of Labour and Social Security as well as the Inspectorate-General of Labour are the main regulators.

Management and recycling of mining waste

41 | 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?

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 to ensure that the location where waste is deposited is not contaminated. The deposit of hazardous waste on the soil and subsoil is forbidden.

Use of domestic and foreign employees

42 | 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. The hiring of foreign employees under the mining sector is made under the Decree 63/2011 of 07 December 2011 (Regulations on the Hiring of Foreigners in the Oil and Mining Sectors). 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 laborious 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 the 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. The employment of expatriates under the quota regime is only subject to a notification procedure before the authorities. Employers are required to notify the authorities within 15 days of the hiring 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 and Social Security. In such cases, employers must submit an application stating their denomination, head office and business sector, as well as identifying the expatriate in question, job position and the grounds on which the authorisation is requested.

Moreover, 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

Community engagement and CSR

- 43 | What are the principal community engagement or corporate and social responsibility (CSR) laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Ministry of Mineral Resources and Energy approved the Guide on the Implementation of the Corporate Social Responsibility Policy for the Extractive Mineral Resources Industry (Ministerial Order 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.

The main regulator at the national level is the Ministry of Mineral Resources and Energy. At the local level, the main regulatory bodies are the provincial government and the district administration.

Rights of aboriginal, indigenous or disadvantaged peoples

- 44 | 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. However, 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.

International law

- 45 | 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

Local legislation

- 46 | Describe any local legislation governing anti-bribery and corrupt practices.

The Anti-Corruption Law (approved by Law 6/2004 of 17 June 2004), as amended by the Mozambican Penal Code (approved by Law 24/2019 of 24 December 2019), 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 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.

Foreign legislation

- 47 | 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.

Disclosure of payments by resource companies

- 48 | 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 2009 and was declared compliant in 2012. According to the most recent report from the Mozambican EITI Coordinating Committee, which covers 2017 and 2018 and was published in February 2020, the implementation of the recommendations set forth in the EITI reports on Mozambique (eg the centralisation process of the collection monitoring system) is under way.

FOREIGN INVESTMENT

Foreign ownership restrictions

- 49 | Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

In the mining industry, foreign ownership is restricted by Law 15/2011 of 10 August 2011 (the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions, commonly known as the Mega-Projects Law), according to which a percentage ranging from 5 per cent to 20 per cent of a mining project's capital must be reserved for local participants.

INTERNATIONAL TREATIES

Applicable international treaties

- 50 | What international treaties apply to the mining industry or an investment in the mining industry?

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

It has also established bilateral investment treaties with Algeria, Angola, Belgium, Brazil, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Luxembourg, Mauritius, the Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates, the United Kingdom, the United States, Vietnam and Zimbabwe.

These double taxation treaties and bilateral investment treaties establish certain benefits also applicable to the mining industry.

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

Besides being a party to the Extractive Industries Transparency Initiative, Mozambique is also stepping forward to join the Kimberley Process in view of the most recent news on set up of warehouses for the certification of diamonds, precious metals and gems produced in the country in the coming year, as reported by the executive secretary of the Ministry of Mineral Resources and Energy's management unit for the Kimberley Certification Process.

UPDATE AND TRENDS

Recent developments

51 | What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

Despite ongoing market uncertainty due to covid-19, the country has emerged as a regional hub for energy investment and development on the continent, as foreign investors spearhead gas mega-projects and local service providers seek to access large-scale contracts. The growing natural resources sector in Mozambique has increased the necessity of sustainability practices, particularly relating to society and the environment. The Brazilian mining giant Vale recently announced its decision to revise its mining plan in Mozambique as it has decided to divest its coal business in a bid to focus on its core operations and in line with its aim of becoming carbon-neutral by 2050. In fact, the mining sector in Mozambique is able to open up opportunities in the midst of global clean energy transition by harnessing minerals required for the production of electric vehicles and lithium-ion batteries. This is the case of graphite mines in northern Mozambique, which are being positioned by its developers to take advantage of this market boom. According to the UNCTAD's World Investment Report 2020, foreign direct investment (FDI) inflows in the country decreased from US\$2.7 billion in 2018 to US\$2.2 billion in 2019 (-18.2 per cent), as FDI in mining contracted.

From 2020 to 2021, deal activity in Mozambique and on the overall African continent is expected to increase, as the sector continues to recover from covid-19 and FDI begins to flow.

While Mozambique still faces major challenges related to the local processing and transformation of some mineral resources as per the National Development Strategy (2015-2035), long-term efforts shall continue being made for the development of extractive resources in Mozambique, as it will strongly contribute to economic diversification and social development.

Coronavirus

52 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Mozambican government has passed several pieces of emergency legislation as a response to the covid-19 pandemic. However, no special industry programmes, laws or regulations have been approved.

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