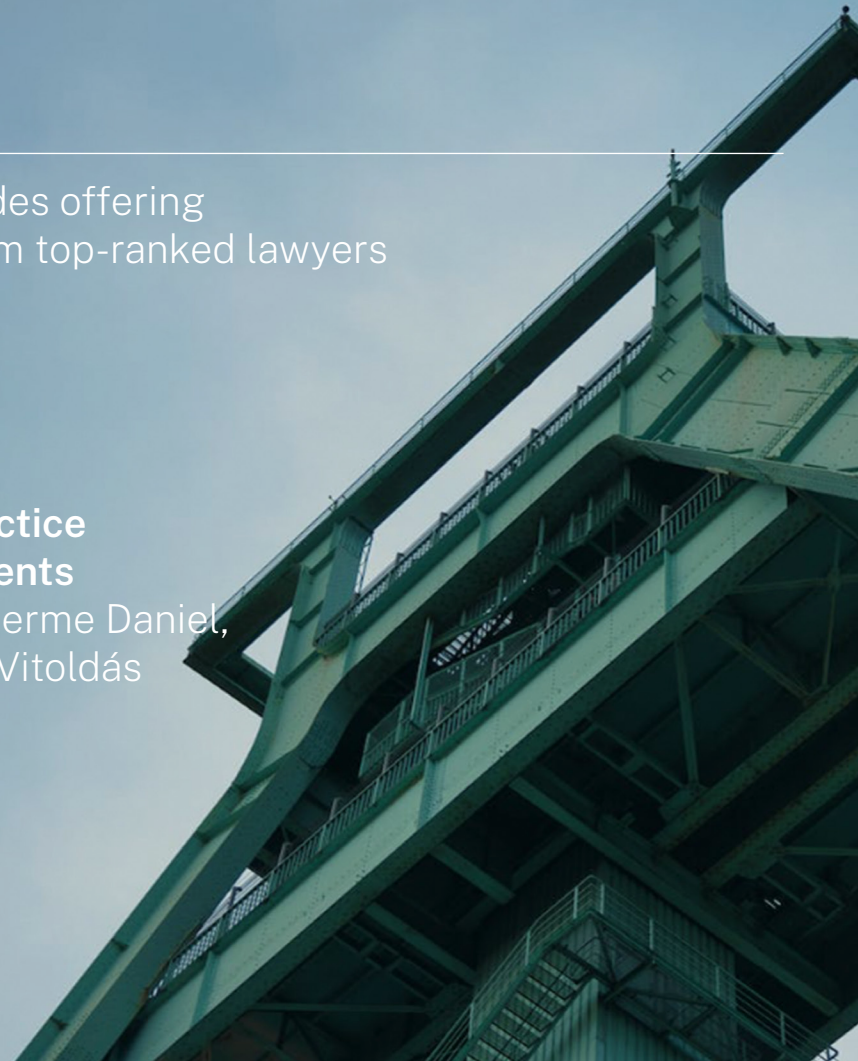

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Mozambique: Law & Practice and Trends & Developments

João Afonso Fialho, Guilherme Daniel,
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VdA



MOZAMBIQUE



Law and Practice

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MOZAMBIQUE LAW AND PRACTICE

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1. Mining Law: General Framework

1.1 Main Features of the Mining Industry

Promotion of Mozambique's mineral wealth has been actively encouraging investment in the mining industry, one of the country's most rapidly growing industries and one of the principal drivers of its economy. Mozambique is endowed with large and diverse mineral deposits, which include coal (high-quality coking coal and thermal coal), graphite, iron ore, titanium, apatite, marble, bentonite, bauxite, kaolin, copper, gold, rubies and tantalum.

The mining sector expects overall growth in the coming years, as a result of the anticipated increase in the production of heavy sand (geared towards minerals used in a wide range of industrial applications, such as zirconium, ilmenite and titanium) and coal, the latter being the country's most-extracted mineral, making Mozambique a key player in the global coal markets. Being among the world's largest producers of graphite, Mozambique's graphite deposits are expected to continue playing a pivotal role in the global demand for electric vehicles, which reaches new heights every year. Ruby mining also plays a huge role in the Mozambican economy, with Mozambique producing prolific quantities of rubies of all grades. In June 2023, a 55.22-carat ruby named "Estrela de Fura", mined in Montepuez, Mozambique, broke the record as the largest and most valuable gem of its kind ever sold, grossing USD34.8 million in an auction in New York. Increased investments in industrialisation, use of automation in mining activities, and advancements in the logistics and transportation sectors, are also expected to not only maximise opportunities in the mining sector, but also have a profound impact on the economic landscape.

Mozambique's economic growth and integration is also driven by its location, as the country is situated in a prime position in the region with extensive opportunities for trade, bearing in mind that it has landlocked neighbours, such as Zimbabwe and Malawi.

1.2 Legal System and Sources of Mining Law

Mozambique's legal system is civil law based. The key legal framework for mining activities in Mozambique is the Mining Law (Law 20/2014, of 18 August 2014, as amended), which establishes the general principles governing the award and exercise of mineral rights, and the Mining Law Regulations (Decree 31/2015, of 31 December 2015, as amended), which establish the rules for prospecting and exploration operations, development, processing and mining, as well as geological mapping, geological mining, and metallurgical and scientific studies.

In addition to the above, the mining sector is also governed by:

- the Regulations on the Marketing of Mineral Products (Decree 20/2011, of 1 July 2011, as amended);
- the Regulations on the Marketing of Diamonds, Precious Metals and Gems (Decree 63/2021, of 1 September 2021);
- the Regulations on the Inspection Activity of Mineral Resources and Energy (Decree 34/2019, of 2 May 2019);
- the Mining Labour Regulations (Decree 13/2015, of 3 July 2015);
- the Regulations on the Employment of Foreign Citizens for the Petroleum and Mining Sector (Decree 63/2011, of 7 December 2011);

- the Technical Safety and Health Regulations for Geological and Mineral Activity (Decree 61/2006, of 26 December 2006, as amended);
- the Regulations on the National Salvage and Rescue System for the Extractive Industry of Mineral Resources (Decree 32/2019, of 29 April 2019);
- the Environmental Regulations for Mineral Activities (Decree 26/2004, of 20 August 2004);
- the Basic Rules on Environmental Management for Mineral Activities (Ministerial Order 189/2006, of 14 December 2006);
- 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 and republished) and its Regulations (Decree 28/2015, of 28 December 2015, as amended);
- model declarations necessary for compliance with tax obligations under the Regulations of Taxation and Fiscal Benefits Regime of Mineral Operations (Ministerial Order 37/2020, of 30 July 2020); and
- the VAT Refund Regulations (Decree 78/2017, of 28 December 2017, as amended) which provide for a special value-added tax regime for petroleum and mining companies in the production stage.

1.3 Ownership of Mineral Resources

According to the Mozambican Constitution, all mineral resources found in the soil, subsoil, inland waters, continental shelf and exclusive economic zone are the sole property of the state. This principle also emerges from the Mining Law

and the Mining Law Regulations, which establish the rules for the award of, access to and exercise of mineral rights by private entities.

1.4 Role of the State in Mining Law and Regulations

The Mozambican State, as the original owner of mineral resources, acts as a grantor-regulator of mineral rights and is responsible for promoting the evaluation of existing mining potential, awarding mineral rights and overseeing the conducting of mineral activities.

State participation is not expressly established in the Mining Law, which only sets forth that the state should progressively increase its participation in mining projects. However, according to the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions and relevant regulations, which apply to large-scale mining projects, the state reserves the right to negotiate a free carried participation of no less than 5%.

1.5 Nature of Mineral Rights

The Mozambican Constitution establishes that all mineral resources found in the soil, subsoil, inland waters, continental shelf and exclusive economic zone belong to the state. Mineral rights (for exploration, mining, marketing and beneficiation of minerals) are awarded by the state by means of a licence or contract under the terms and requirements set out in the Mining Law and the Mining Law Regulations. The awarding of mineral rights does not include land rights over the concession area.

1.6 Granting of Mineral Rights

Mineral rights are awarded by the Ministry of Mineral Resources and Energy or the provincial governor, depending on the nature of the operations, by means of a licence or contract.

According to the Mining Law and the Mining Law Regulations, mineral rights may be granted by means of any of the following mineral titles:

- a prospecting and exploration licence;
- a mining concession;
- a mining certificate;
- a mining pass;
- a mineral handling licence;
- a mineral processing licence; and
- a marketing licence.

Mineral rights can be awarded further to an application (on a first come, first served basis) or through a public tender procedure. The awarding of mineral rights is subject to publication in the Official Gazette.

1.7 Mining: Security of Tenure Mineral Titles

Prospecting and exploration licence

Prospecting and exploration licences are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. These licences allow holders to carry out geo-scientific and geo-technical activities to assess the potential of mineral resources, with the aim of discovering, identifying, and determining the characteristics and economic value of the respective minerals. Prospecting and exploration licences are granted for two years in the case of construction minerals (renewable for an additional two-year period) for an area not exceeding 198 hectares and five years for other minerals (renewable for an additional three-year period) for an area not exceeding 19,998 hectares. Requests for extensions should be submitted at least 60 days prior to the due date of the licence (a fee is charged if the application is made less than 60 days prior to the due date).

Mining concession

A mining concession, which may or may not follow a prospecting and exploration licence, is awarded to a legal person with technical and financial capacity that is incorporated and registered in Mozambique. Mining concessions allow holders to carry out operations and works related to the development, extraction, treatment, processing, as well as disposal of mineral products. These are granted for 25 years (renewable for a further 25 years, not exceeding 50 years in total). Requests for extensions should be submitted at least 365 days prior to the due date of the concession (a fee is charged if the application is made less than 365 days prior to the due date).

Before commencing extraction activities in the awarded area, the holder of the mining concession is required to obtain:

- an environmental licence;
- the right to use and exploit the land (known as “DUAT”); and
- approval of a resettlement and compensation plan for the communities affected by the mining activities (if applicable).

Mining certificate

Mining certificates are issued for small-scale artisanal mining activities and are awarded to Mozambican nationals, whether natural or legal persons with proven technical and financial capacity, for a period of ten years (renewable for additional ten-year periods). Small-scale mining operations are considered to be those that:

- in the case of the extraction of mineral resources for construction purposes, do not exceed gross annual production of 100,000 tonnes;

- in the case of exploration for precious metals, do not exceed gross annual production of 12 kg;
- in the case of gems, do not exceed gross annual production of 250 kg; and
- do not have underground works of more than 20 m deep, or galleries of more than 50 m in length, and employ 15 workers or less on the production front.

Mining pass

Mining passes are also issued for small-scale artisanal mining activities and are awarded in designated areas to Mozambican nationals, whether natural or legal persons with proven technical and financial capacity, for a period of five years (renewable for additional five-year periods) for the direct benefit of the communities.

Mineral handling licence

Mineral handling licences allow activities to be carried out to recover useful constituents of ore in order to turn them into usable or profitable mineral products by physical processes, excluding industrial processing. These are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. They are awarded for a period of 25 years (extendable once for an equivalent period, but not exceeding 50 years in total).

Mineral processing licence

Mining processing consists of mining operations along the extractive industry chain to obtain the mining concentrate. These licences are awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. They are awarded for a period of 25 years (extendable once for an equivalent period, but not exceeding 50 years in total).

Marketing licence

A marketing licence grants its holder the right to market the mineral products specified in the licence within the relevant area of operation. These are valid for a period of five years (extendable for an equivalent period). A marketing licence is only required where the entity selling or exporting the minerals is not the same as the producer.

Transfer of Mineral Titles

According to the Mining Law Regulations, mineral titles may be transferred under the following terms:

- a prospecting and exploration licence, mining concession, mineral handling licence and mineral processing licence are only transferable between legal persons incorporated and registered in accordance with Mozambican legislation;
- a mining certificate is only transferable to a national natural or legal person domiciled in Mozambique; and
- a mining pass may only be transferred to a national natural person or legal person established between nationals.

The transfer of mineral titles or shares (whether direct or indirect) in a company holding mineral titles is subject to the prior approval of the Ministry of Mineral Resources and Energy and may only be requested two years after the start of the respective mineral activities. The application must be accompanied by a report on the activities carried out and a tax discharge certificate issued by the tax authority.

Revocation of Mineral Rights

According to the Mining Law and Mining Law Regulations, mineral titles can be revoked in the

following situations, among others (specifically previewed for each type of mineral title):

- failure to pay specific taxes;
- 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; and
- indebtedness to the state.

Immediate revocation may occur in the following cases:

- 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 submit the respective annual works report within 24 months following the issuance of a prospecting and exploration licence; and
- failure to start mining production within 48 months following the award of a mining concession, or 24 months following the issuance of a mining certificate, as applicable.

2. Impact of Environmental Protection and Community Relations on Mining Projects

2.1 Environmental Protection and Licensing of Mining Projects

The environmental laws applicable to mining activities are primarily regulated by the Environmental Law, the Environmental Regulations for Mining Activity and the Basic Rules on Environmental Management for Mining Activity. According to the Environmental Regulations for Mining

Activity, mining operations are classified into three levels, as follows.

Level I Activities

These refer to small-scale mining operations, including prospecting and exploration using non-mechanised methods, and are subject to the Basic Rules on Environmental Management for Mineral Activities (Ministerial Order 189/2006 of 14 December) 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.

Level II Activities

These refer to mining activities 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. Mining operations falling under Level II activities must submit an environmental management plan and an emergency and risk situation control programme which may arise from the implementation of a specific project. The environmental management plan must be submitted together with the request for issuance of the mining title and must include:

- the location and basic description of the project;
- the methods and procedures of mining operations;
- main impacts on the environment and mitigation measures;
- a monitoring programme; and
- a programme for the rehabilitation of the affected area and/or closure of the mine.

Level III Activities

These are the mining operations involving mechanised methods, not classified as Level I and Level II activities. Mining operations falling under this level – typically mining concessions – require an environmental impact assessment (EIA) in order to obtain an environmental licence, which is issued by the Ministry of Land and Environment. The resulting EIA report, which contains the assessment findings, must also include an environment management programme, as well as an emergency and risk situation control programme. The environment management programme should contain an environment monitoring programme and a mine decommissioning and closure programme, and is required to cover a five-year period.

The Mining Law also generically classifies mining activities in three categories, each having environmental obligations as referred to under the Environmental Regulations for Mining Activity:

- Category A activities are those carried out under a mining concession and require an EIA;
- Category B activities are mining activities in quarries, prospecting and research activities for pilot projects and mining certification, and these require a simplified EIA; and
- Category C activities are mining activities carried out under a mining pass or an exploration licence which do not involve mechanised methods, and require an environment management plan.

Although the Ministry for Land and Environment acts as the country's environmental regulator, the Inspectorate-General of Mineral Resources and Energy is not only responsible for monitoring and conducting inspections of mineral activities, but also for controlling and supervising compli-

ance with the legal provisions, regulations and standards applicable to mining operations, including the technical standards applicable to environmental protection.

Furthermore, according to the Environmental Regulations for Mining Activity, the Ministry of Mineral Resources and Energy may designate inspectors for a specific project, who will be responsible for ensuring compliance with the applicable environmental legislation, without prejudice to any inspection actions carried out by other ministries.

2.2 Impact of Environmentally Protected Areas on Mining

The Land Law defines fully protected areas and partially protected areas. Fully protected areas are reserved for nature conservation and state military activities. The following are partially protected areas:

- sea and river beds;
- the continental shelf;
- an area of 100 m from the coastline or river banks, or both;
- an area of 250 m bordering dams and man-made lakes, as well as railway infrastructure and an area of 50 m adjacent to it;
- highways and areas of 50 m adjacent to them;
- a 2 km-wide band along the country's borders;
- airports and an area of 100 m adjacent to them; and
- military facilities and an area of 100 m adjacent to them.

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

2.3 Impact of Community Relations on Mining Projects

The government has a duty to protect local communities where mining activities are authorised and to promote socio-economic development for their well-being.

Holders of mineral rights must respect the rights of local communities and contribute to the preservation of socio-cultural aspects of these communities. Where mining activities are to be carried out in a populated area, the local population should be resettled, for which a relocation plan must be prepared, and due compensation must be paid to those affected by the mining activities.

Holders of mineral rights are also incentivised to hire Mozambican workers residing in the areas surrounding their mines, to promote job creation and the transfer of know-how and capabilities to local communities.

There are also protective local content provisions in the Mining Law and the Mining Law Regulations aimed at protecting local entrepreneurs and promoting local businesses so that they benefit from a statutory preferential right in procurement procedures for the provision of goods and services to the mining industry.

2.4 Prior and Informed Consultation on Mining Projects

Local communities must be informed before commencement of any exploration activity and/or temporary resettlement. Local communities also need to be consulted before the commencement of mining operations so as to safeguard local communities' rights and ensure their involvement in the mineral projects developed in their area of residence. Such consultation is also mandatory before the holder of mineral rights is

granted the right to use and exploit the land for the purpose of mining activities (DUAT), under the Land Law and the Land Law Regulations.

2.5 Impact of Specially Protected Communities on Mining Projects

Mozambique has no established classifications of indigenous peoples or protected communities, hence no specific legislation regulating such matters has been approved in Mozambique.

2.6 Community Development Agreement for Mining Projects

Community development agreements are previewed under the Guide on the Implementation of the Corporate Social Responsibility Policy for the Extractive Mineral Resources Industry, a statute which applies to all actions and initiatives related to corporate social responsibility in the extractive industry of mineral resources, especially regarding social investment, to ensure that extractive companies contribute to local economic and sustainable development.

As part of corporate social responsibility actions, the holder of mineral rights must establish social investment plans which may take the form of a memorandum of understanding or local development agreement, depending on the stage the mining project is at and the size of the mining operation.

2.7 Environmental, Social and Governance (ESG) Guidelines and Regulations

ESG policies are incorporated in various scattered legal statutes. The Mining Law and the Mining Law Regulations enshrine certain industry-specific ESG principles, but express ESG regulations are yet to be developed for the mining sector.

The “E”

Mining activities are by nature subject to stringent environmental rules. In Mozambique, in addition to the general environmental laws and regulations, holders of mineral rights are also subject to industry-specific environmental regulations until mine closure and rehabilitation.

At a national level, the government of Mozambique is invested in promoting green policies to support green programmes and projects by private and public entities that aim to contribute to the control and reduction of greenhouse gas (GHG) emissions. The government has also approved the Regulation for Programmes and Projects Inherent to the Reduction of Emissions from Deforestation and Forest Degradation Conservation and Increase of Carbon Reserves (based on the UN’s REDD+ framework), which aims to define sustainability rules in the reduction of GHG emissions.

The “S”

The general principle of worker protection, both in the sense of privacy and in the guarantee of the protection required for specific work such as mining, is embodied in both general labour legislation and in the legislation governing mining labour relations.

The various local content rules found in the Mining Law and the Mining Law Regulations also play a pivotal role in creating the best social practices for the development of mining activities in the country, to the benefit of local communities.

The “G”

Companies operating in Mozambique are increasingly adopting anti-corruption measures within their organisations, through the implementation of programmes and procedures that

aim to make employees aware of situations conducive to corruption and the associated risks. Investment from foreign investors that is subject to strict anti-bribery and anti-corruption laws (eg, the FCPA and UK Anti-Bribery Act) has also contributed to a marked increase in the implementation of high standards of control of corruption.

It is also worth mentioning that Mozambique has recently made a number of amendments to domestic legislation on the prevention of money laundering and financing of terrorism, including in the mining sector. The purpose of the legislation is to remedy important gaps, deficiencies and inaccuracies, so as to enable compliance with international standards for combating money laundering and the financing of terrorism.

2.8 Good and Bad Examples of Community Relations/Consultation Impacting Mining Projects

Positive developments in mining projects include the growing awareness of the potential risks that mining activities have on the environment, biodiversity and the climate, and a greater tendency for environmental issues to be an integral part of the strategy of mining projects, seeking to introduce mechanisms that minimise the environmental risks resulting from such activities.

However, there continues to be insufficient communication between the government/mining companies and resettled communities, as well as a lack of accessible and responsive mechanisms for problems faced by resettled communities. As an example, local communities resettled due to coal operations in the past have reported that the resettlement resulted in significant and sustained disruptions to basic rights protected under the constitution, namely, access to food, water and work.

3. Climate Change, Energy Transition and Sustainable Development in Mining

3.1 Climate Change Effects

Mozambique is still at an early stage in the creation of initiatives to combat climate change in the mining industry. One of the priorities of the Government's Five-Year Programme for 2020–2024 is strengthening the sustainable management of natural resources and the environment. In this context, consideration was given to the adoption of appropriate technologies, to ensure that activities related to the exploitation of natural resources minimise the negative impact on the environment and communities. To guarantee the sustainable management and use of air, land, water and subsoil resources and maintenance of biodiversity, in harmony with national development needs, the government has established the following strategic objectives:

- to improve planning and land-use planning and strengthen monitoring and enforcement in their implementation;
- to ensure the conservation of ecosystems, biodiversity and the sustainable use of natural resources;
- to strengthen the capacity for assessing and monitoring environmental quality, particularly in areas where development projects are implemented;
- to reduce the vulnerability of communities, the economy and infrastructure to climate risks and natural and anthropogenic disasters;
- to ensure the transparency and sustainability of mineral and hydrocarbon extraction; and
- to strengthen monitoring and inspection capacity in areas where mining activities occur.

3.2 Climate Change Legislation and Proposals Related to Mining

Climate change-related legislation is not yet being discussed in Mozambique specifically to address issues related to mining activities. However, it is worth mentioning that Mozambique has ratified several climate-related conventions, namely:

- the United Nations Convention on Climate Change, of June 1992;
- the Kyoto Protocol to the United Nations Framework Convention on Climate Change; and
- the Paris Agreement on Climate Change.

3.3 Sustainable Development Initiatives Related to Mining

One of the strategic objectives set out in the Government Five-Year Programme for 2020–2024 relates to ensuring the transparency and sustainability of the mining industry. Under this objective, the government will ensure (among other priorities):

- dissemination in several provinces of technologies and techniques that are environmentally safe and sustainable for artisanal mining;
- intensification of the tracing and controlling of mineral products, including combating trafficking and smuggling; and
- intensification of the control of exploitation of mineral resources, through inspection interventions in a systematic manner.

It is also worth noting that one of the pillars of the Mineral Resources Policy and Strategy contained in Resolution 89/2013, of 31 December 2013, is sustainability and environmental protection in the context of the mining industry.

3.4 Energy-Transition Minerals

Mozambique has not yet adopted specific legislative initiatives related to energy-transition minerals.

4. Taxation of Mining and Exploration

4.1 Mining and Exploration Duties, Royalties and Taxes

According to the Mining Law and the Taxation and Fiscal Benefits Regime of Mineral Operations and its Regulations, holders of mineral rights are subject to the following industry-specific tax regime.

Corporate income tax, which is a profit-based tax, is payable at a rate of 32%.

Surface tax should be paid by holders of prospecting and exploration licences, mining concessions and mining certificates on an annual basis and is assessed based on the extension of the concession, as follows.

- Prospecting and exploration licences:
 - (a) years 1 and 2 – MZN17.50/hectare;
 - (b) year 3 – MZN43.75/hectare;
 - (c) years 4 and 5 – MZN91/hectare;
 - (d) year 6 – MZN105/hectare; and
 - (e) years 7 and 8 – MZN210/hectare.
- Mining concession:
 - (a) years 1 to 5 – MZN30/hectare; and
 - (b) from year 6 onwards – MZN60/hectare.
- Mining certificate:
 - (a) years 1 to 5 – MZN30/hectare; and
 - (b) from year 6 onwards – MZN50/hectare.

Production Tax should be paid by natural or legal persons developing mining activities, calculated

based on the value of the mineral extracted, as follows:

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

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

4.2 Tax Incentives for Mining Investors and Projects

Pursuant to the Taxation and Fiscal Benefits Regime of Mineral Operations, the following exemptions are granted to mining projects during five fiscal years after the start of mining activities:

- customs duties payable on imported equipment (for the prospecting and exploration phase) classified under Class K in the Customs Schedule; and
- customs duties payable on imported equipment found in Annex II of the Taxation and Fiscal Benefits Regime of Mineral Operations, equivalent to the goods under Class K in the Customs Schedule.

A tax stabilisation regime may be negotiated between the government and the holders of mineral rights, with a maximum duration of ten years extendable until the term of the concession, in exchange for a 2% annual increase in the production tax rate.

4.3 Transfer Tax and Capital Gains on the Sale of Mining Projects

Gains resulting from the direct or indirect transfer (onerous or free of charge) of mining rights in Mozambican territory or involving real estate mining assets situated in Mozambican territory, regardless of where the transaction takes place, are considered as capital gains subject to a 32% capital gains tax. The tax must be paid within 30 days from the date of the transaction.

5. Mining Investment and Finance

5.1 Attracting Investment for Mining

In addition to the huge potential of the mineral deposits found in Mozambique and the vast variety of minerals that exist in the country, investors are usually moved to invest in the Mozambican mining sector by the simplified process of awarding mineral rights, security of tender, privileged geo-strategic location, protection of ownership and IP rights, the relaxed foreign exchange regulations and the investor-friendly industry-specific tax regime.

5.2 Foreign Investment Restrictions and Approvals in the Exploration and Mining Sectors

Investment in the mining industry is governed by the Mining Law and Mining Law Regulations, where there is no distinction between foreign and national investment, apart from access to and exercise of mineral rights on a small and artisanal scale, which is reserved for national individuals/entities.

Without prejudice to the above, it is worth noting that projects subject to the Law on Public-Private Partnerships, Large-Scale Enterprises and Business Concessions are subject to foreign ownership restrictions, namely, it is mandatory

that 5–20% of a mining project's capital must be reserved for national participants.

5.3 International Treaties Related to Exploration and Mining

Mozambique has entered into double taxation treaties and bilateral investment treaties establishing certain benefits that also apply to the mining industry. Double taxation treaties have been entered into with Vietnam, India, Portugal, Mauritius, Macao SAR (China), Italy, South Africa, the UAE and Botswana.

Bilateral investment treaties have been established 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 UAE, the United Kingdom, the United States, Vietnam and Zimbabwe.

A more targeted bilateral co-operation treaty for the mining sector was entered into between Mozambique and Angola in 2007, and later with Portugal in March 2014.

5.4 Sources of Finance for Exploration, Development and Mining

In Mozambique, financing for mining activities is mainly secured through private equity, shareholders' loans or direct loans from foreign banks. The implementation of streaming and royalty agreements is still significantly impaired by the existing foreign exchange and marketing regulations.

5.5 Role of Domestic and International Securities Markets in the Financing of Exploration, Development and Mining

The Mozambican financial market remains underdeveloped and unable to cope with the

investment amounts associated with large-scale projects. Foreign investors usually raise funds overseas through private equity or in international securities markets.

5.6 Security over Mining Tenements and Related Assets

According to the Mining Law Regulations, infrastructures, installations and other assets allocated to mining operations may be mortgaged, pledged or used as collateral to secure loans for the financing of mining operations, subject to the prior approval of the Ministry of Mineral Resources and Energy. Furthermore, according to Law 19/2018 of 28 December 2018 (which approves 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 increased demand worldwide for minerals used in battery technology is also expected to boost graphite mining in the country.

The under-developed manufacturing industry in Mozambique still presents challenges to the mining industry and makes for a difficult operating environment. The development of Mozambique's roads, railways and ports infrastructure needs to keep pace with the demand for its natural resources, in order for the country to achieve its forecasted growth and maintain a high development rate for the sector. This will not only optimise existing projects but also contribute to the viability of several planned projects.

6. Mining: Outlook and Trends

6.1 Two-Year Forecast for the Mining Sector

Mozambique's abundance of minerals makes the country a significantly attractive investment destination. According to the 2023 State Budget Economic and Social Plan ("PESOE"), the international market is open to trade in mineral resources, and companies in the mining sector have resumed their normal pace of production, as a result of the adaptation of mitigation measures aimed at reducing the negative impact of past events on global supply chains. PESOE has also indicated that there has been an increase in the production of gold, heavy sands, rubies and mineral coal.

Trends and Developments

Contributed by:

João Afonso Fialho, Guilherme Daniel, Ângela Viana and Helna Vitoldás
VdA

VdA is a leading international law firm with more than 40 years of history. Recognised for its impressive track record and innovative approach in corporate legal services, VdA offers robust solutions grounded in its renowned ethical and professional standards. The high quality of the firm's work is recognised by clients and stakeholders, and is acknowledged by leading pro-

fessional associations, legal publications and academic entities. VdA advises its clients in the development of their projects across the entire value chain of the mining industry. Through the VdA Legal Partners network, clients have access to seven jurisdictions, with broad sectoral coverage in all Portuguese-speaking African countries, as well as Timor-Leste.

Authors



João Afonso Fialho joined VdA in 2015. He is a partner and head of the oil and gas and natural resources practice. In the last 25 years, João has been involved in a variety of natural

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Guilherme Daniel founded GDA Advogados, an exclusive member of VdA Legal Partners in Mozambique, in 2016. In his capacity as founder, he is actively involved in matters

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MOZAMBIQUE TRENDS AND DEVELOPMENTS

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Mineral Resources

Mozambique has a large and diverse mineral resource potential. The last few years have seen an increasing number of natural resource discoveries, soon followed by new mining projects. Beside its prominent coal deposits which have been mined for some years now, Mozambique has other valuable mineral deposits in the Cabo Delgado, Nampula, Gaza and Tete provinces, which are potentially attractive to investors and continue to contribute to the country's economic development.

Mozambique has also been under the spotlight for its graphite supply. Mining companies operating in the country have concentrated their efforts on the northern region of Mozambique to take advantage of its graphite-rich deposits and meet the increasing demand for graphite for electric cars and other non-fossil-fuel systems, as well as for energy storage technologies.

The Mozambique government expects the extractive industry sector to grow by 18.6% in 2024, due to an increase in the production of minerals that are of global importance, such as heavy sands, tantalite, gold and coal, as well as graphite.

In addition, Mozambique's admission to the Kimberley Process Certification Scheme, which regulates the trade in rough diamonds, creates possibilities for the Mozambican diamond industry, giving investors the opportunity to further explore for diamonds in promising areas across the country.

Environmental Compliance

Environmental compliance is becoming a significant element of the natural resources sector. Mozambique is currently paving the way to be part of global climate-aligned development. In

view of the need to embrace sustainable practices and attract investments that are aligned with environmental initiatives, the country is moving towards developing a regulatory framework for the implementation of carbon markets aligned with the best international practices.

Climate Change Policies

Climate change is one of the government's top priorities. Speaking at the COP 28 UN Climate Change Conference, Mozambique's President Nyusi said that "the strategy's mission is to leverage Mozambique's abundant renewable and natural resources to accelerate the trajectory of low-carbon socio-economic development". In 2022, the president also addressed the COP 27 audience in a highly anticipated and well-attended panel discussion entitled "Mozambique in the driving seat of the Southern Africa energy transition". The panel discussed the key role that Mozambique will have in driving energy transition, noting that Mozambique is the only Least Developed Country (LDC) in the world that will be significantly exposed to the EU's planned Carbon Border Adjustment Mechanism (CBAM), mainly due to the large quantity of aluminium it exports to the EU.

Renewable Energy

The president further highlighted that Mozambique has unrivalled natural energy resources that could significantly contribute to a green energy transition, namely, Mozambique's unique hydropower resources. Some experts forecast that Mozambique's hydropower could make the country a regional hub for the production of green hydrogen, to contribute to the global decarbonisation of maritime transport and heavy industries. There is also huge potential for investment in other variable renewables in Mozambique, such as solar and wind.

Corporate Priorities

While climate-related risks and ESG-related matters are becoming increasingly important, companies are tending to revisit their corporate priorities in mining in order to find effective ways to operate over long-term periods. Although there is still some work to be done in order to surpass the challenges related to the local processing and transformation of some mineral resources, Mozambique should continue its long-term efforts to boost the development of its extractive resources, as this will strongly contribute to economic diversification and social development.

It is also worth noting that Mozambique is a compliant member of the international Extractive Industries Transparency Initiative (EITI), a voluntary initiative that works to enhance revenue transparency by verifying and publicising the revenues paid to member governments by extractive companies.

Finally, the government continues to focus on implementing measures to prevent and combat money laundering and the financing of terrorism and the proliferation of weapons of mass destruction, to strengthen the integrity of the domestic and international financial system. The introduction of standards has been felt across all sectors, including mining, through ad hoc amendments to the Mining Law Regulations.

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