

New Mozambique Mining Law

On 18 August 2014 the new Mozambique Mining Law - Law no. 20/2014 - was published. It entered into force on the same day.

The new legal regime aims to ensure increased competitiveness and transparency, as well as safeguarding national interests and enhancing the State's intervention in this sector.

Under this legislation the "Reconnaissance License" (*Licença de Reconhecimento*) ceases to exist and two new types of licenses are introduced: the Mining Treatment License (*Licença de Tratamento Mineiro*) and the Mining Processing License (*Licença de Processamento Mineiro*). The available mining titles now are:

- (i) Prospecting and Research License;
- (ii) Mining Concession;
- (iii) Mining Certificate;
- (iv) Mining Pass;
- (v) Mining Treatment License;
- (vi) Mining Processing License;
- (vii) Marketing of Mineral Products License.

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In addition to "authorizations" for (a) extract mineral resources for the construction of public interest works, (b) geological resources and (c) the removal of fossils or archaeological finds.

It should be emphasized that, according to this Law, granting mining titles observes, on one hand, the priority principle, determined by the date and hour of the request's entry before the relevant authority and, on the other hand, the proposal that offers the best conditions and advantages for the Mozambican State.

The rules of "local content" of each mining agreement were also reinforced, thus the following clauses are now mandatory:

- (i) Participation of the State in the mining enterprise;
- (ii) Minimum local content;

- (iii) Local employment and a technical and professional training plan;
- (iv) Corporate social responsibility practices;
- (v) A memorandum of understanding between the Government, the company and the communities;
- (vi) A dispute settlement mechanism;
- (vii) A means by which mining area communities are involved and benefit from the enterprise.

To enter into a mining agreement resulting from an open tender, there shall be due payment of the financial offer and the mining agreements shall be published in the Republic's Bulletin (*Boletim da República*), after obtaining prior approval from the Administrative Court.

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In addition to changes in allocation and deadline rules, the rules for transferring and withdrawing mining rights were also modified, now being expressly included in the above mentioned rules for indirect transfers – by the transfer of shares or participating interests – which are hence also subject to the Government's approval.

The concern for safeguarding national interest is evident in several other provisions of this new Law, including:

- (i) Those that refer to subjecting mining activity to inspections, to providing a guarantee of financial performance under terms to be regulated;
- (ii) To establishing that all data obtained in relation to titles or mining agreements are the State's property;
- (iii) It should be noted that the new Law mentions that the State Budget Law shall determine what percentage of the revenues obtained from mining is assigned to the State, that shall then channel the sum to the development of local communities.

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Another new feature of the Law is the creation of two new entities with responsibility in the mining sector: the National Institute of Mines and the High Authority of the Extractive Industry. The National Institute of Mines, acting under the Ministry for the Mineral Resources, shall have the capacity to propose development policies for the mining sector and to assist in the implementation of such policies, besides having the power to grant licenses.

The High Authority of the Extractive Industry, which shall be implemented within 12 months, shall be an entity with administrative, juridical and financial autonomy, acting under the Council of Ministers which shall define its bylaws, powers, composition, incompatibilities, capacity, operation and organic structure.

The rights obtained under mining agreements, agreements entered into with the Government and mining concessions granted before this Law entered into force, shall remain in force, but their holders have the right to opt for the new rules within 12 months. The holders of reconnaissance licenses, prospecting and research of mineral resources for construction, mining certificates and mining passes must request the regularization of their rights obtained under Law no. 14/2006, 26 June, 180 days from the date the new Law entered into force.

Law no. 20/2014 entered into force when it was published on 18 August 2014, having expressly revoked Law no. 14/2002, 26 June, and other legislation that contravenes; the Government must approve the new Law's regulation within 90 days from its publication.

