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Global Practice Guides

# Mining

Mozambique – Law and Practice

Contributed by  
Henriques, Rocha e Associados

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# MOZAMBIQUE

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## **LAW AND PRACTICE:**

**p.3**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

# Law and Practice

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# MOZAMBIQUE LAW AND PRACTICE

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**Henriques, Rocha e Associados**, member of MLGTS Legal Circle as Mozambique Legal Circle (MLC), was founded by a group of lawyers of Mozambican nationality with the ambition of becoming a leading law firm in Mozambique. The firm provides legal advice to both national and international clients in a diversified range of areas: banking and

finance, capital markets, construction, public works, projects and infrastructure, corporate and commercial, energy and natural resources, foreign investment, litigation and arbitration, mining and extractive industry, oil and gas and project finance.

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## 1. General Structure of Mineral Ownership and Regulation

### 1.1 Ownership of Mineral Deposits

Under the Constitution of the Republic of Mozambique, all natural resources (which includes mineral deposits) located in Mozambican territory are property of the State. Similarly, the Mining Law, approved by Law 20/2014, of 18 July 2014, establishes that all mineral resources found in the soil and subsoil, internal waters, territorial sea, continental shelf and in the exclusive economic zone belong to the State.

### 1.2 Regulation of Mining Industry

The principal laws and regulations applicable to the mining industry in Mozambique are the following:

- the Constitution of the Republic of Mozambique (2004);
- the Mining Law (Law 20/2014, of 18 July 2014), which establishes the general guidelines relating to the extraction of mineral resources, including mineral water;
- the Mining Law Regulation (Decree 31/2015, of 31 December 2015), which establishes the applicable framework for prospecting, research, development, extraction and mining processing, as well as geological mapping, geological mining, metallurgical and scientific studies;
- the Mega-Projects Law, governing PPPs, large-scale projects and business concessions (Law 15/2011, of 10 August 2011), which establishes the legal framework conducive to, on one hand, a greater involvement of private partners and investors in pursuing investments in PPPs, large-scale

projects and business concessions, and, on the other hand, greater efficiency, effectiveness and quality in the operation of resources and other national property assets, as well as the efficient provision of goods and services to the community;

- the Mega-Projects Law Regulation (Decree 16/2012, of 4 July 2012) establishes the applicable procedures for contracting, implementing and monitoring PPPs, large-dimension projects and business concessions ventures;
- the Mining Taxation Law (Law 28/2014, of 23 September 2014), which establishes the specific tax regime for mining activities, applying to corporate entities or individuals registered in the Mozambican territory who carry out mining operations in Mozambique;
- the Mining Taxation Regulation (Decree 28/2015, of 28 December 2015) establishes the procedures that must be complied with by those carrying out mining activities to be eligible for the specific taxation regime and benefits;
- the Land Law (Law 19/97, of 1 October 1997) and the Land Law Regulation (Decree 66/98, of 8 December 1998, as amended) establish the terms for the constitution, exercise, modification and extinction of the right to use and benefit from the land (*direito de uso e aproveitamento da terra*, or DUAT);
- the Environmental Law (Law 20/97, of 1 October 1997, as amended) establishes the general framework for the

protection of biodiversity, providing for a correct use and management of the environment and its components;

- the Environmental Regulation for Mining Activities (Decree 26/2004, of 20 August 2004), which establishes the rules to prevent, control, mitigate, rehabilitate and compensate for the adverse effects that mining activities may have on the environment;
- the Guidelines for Environmental Management of Mining Activities (Ministerial Order 189/2006, of 14 December 2006), which aims at minimising environmental damages and negative socio-economic impacts resulting from level 1 mining activities;
- the Mining Health and Safety Regulation (Decree 61/2006, of 26 December 2006) defines the measures to be implemented to guarantee the health and safety conditions of workers in the mining sector;
- the Commercialisation of Mineral Resources Regulation (Decree 20/2011, of 1 June 2011, as amended), which sets the rules applicable to the commercialisation of mineral resources carried out by individuals or corporate entities;
- the Resettlement Process Regulation (Decree 31/2012, of 8 August 2012) establishes basic rules and principles for the resettlement process to achieve Mozambique's social and economic development and ensure that the affected population has a better quality of life and social equity;
- the Policy of Corporate Social Responsibility for the Extractive Industry (Resolution 21/2014, of 16 May 2014), which promotes the implementation of mechanisms to ensure corporate social responsibility programmes in the extractive sector of mineral resources;
- the Regulation of Employment of Foreign Citizens in the Petroleum and Mining Sector (Decree 63/2011, of 7 December 2011), which establishes the legal regime applicable to national and foreign employers and employees who intend to work in the petroleum and mining industries; and
- the Labour Law (Law 23/2007, of 1 August 2007), which sets out the general framework regulating the professional relationship to be established between employee and employer.

The mining industry is regulated by specific legislation, different from that applicable to the oil and gas sector. However, some legal diplomas have been approved aiming at addressing both sectors due to its transversal application, as indicated above.

### 1.3 Administration of the Mining Industry

The Council of Ministers, which represents the highest governmental body in Mozambique, is responsible for the primary regulation of the mining sector and within its powers has created the Alta Autoridade da Indústria Extractiva, an entity recently established whose composition, status, powers, skills and organisational structure are still to be defined by the Council of Ministers. It shall operate as the controller of mining activities.

Under the tutelage of the Ministry of Mineral Resources and Energy (MIREME; [www.mireme.gov.mz](http://www.mireme.gov.mz)) — which is responsible for mining activities and the regulation of the guidelines for public and private sector participation in the prospecting and exploration of mineral resources and their derivatives, including the attribution of mining concessions — the following entities have been created:

- the National Directorate of Mines, which is entitled to draft the policies for the development of the mining sector and follow up their implementation, including the promotion of the registration and update of the mining cadaster (*cadastro mineiro*);
- the National Institute of Mines, an entity that shall review all the processes for the attribution of mining licences and promote, together with the other relevant public bodies, the supervision of all mining activities in Mozambique aiming at developing the sector; and
- the General Inspection of Energy and Mineral Resources, which works as a supervisory entity that shall oversee compliance by the operators with the Mining Health and Safety Regulation.

## 2. Required Authorisations and Permits

### 2.1 Requirements to Conduct Prospecting

The prospecting and research of mineral resources is subject to the prior approval of the government.

A prospecting and research permit may be attributed to legal entities incorporated and registered according to Mozambican law and it entitles the permit-holder access to the licence area and the exclusive right to conduct prospecting and research activities. The permit-holder is also entitled to obtain, remove, transport and export samples that do not exceed certain limits and volumes for the purposes of laboratory testing as well as the right to occupy land and build temporary facilities or camps necessary for prospecting and research purposes, and to use water, wood and other materials needed for such a purpose, provided it acts in compliance with the applicable laws in force.

The validity period of a prospecting and research permit is (i) two years for mineral resources for construction, which may be renewed once for an additional two-year period, and (ii) five years for all other mineral resources, including mineral water, which may be renewed once for a further three years.

### 2.2 Requirements to Conduct Exploration

In order to conduct exploration activities (ie, extract mineral resources), the interested parties must enter into an agreement with the government, which will result in the attribution of a mining concession.

A mining concession may be attributed to legal entities incorporated and registered according to Mozambican law for a period of 25 years, which may be renewed for further periods based on the economic lifespan of the mine and the compliance with all legal duties by the concession right holder.

A mining concession entitles its holder access to the concession area and to carry out, on an exclusive basis, extraction, development and processing of the mineral resources discovered in the prospecting phase; to construct any facilities or infrastructures necessary for the purpose; to use water, wood and other materials required for operating activities; to store, transport and process the necessary mineral resources and contaminating waste; and to sell or otherwise dispose of mineral products resulting from mining operations.

Before beginning the mining works in the concession area (besides going through the environmental approval process and the attainment of the DUAT), the concessionaire must seek the approval of the compensation package to the local communities and resettlement plan.

### 2.3 Requirements to Conduct Mining

In addition to the prospecting and research permit, and the mining concession referred to above, the Mining Law provides for five other types of permits relating to mining activities, which are:

- a mining certificate, which is to be obtained by those wishing to carry out small-scale operations, being granted for ten years, extendable for equal periods, according to the economic lifespan of the mine;
- a mining pass, which is to be obtained by those wishing to carry out artisanal mining operations, being granted for up to five years and extended successively for equal periods in accordance with the economic lifespan of the mine;
- a mining treatment permit, although the holders of a mining concession, a mining certificate or a mining pass may engage in mining treatment activities without the need of requesting this specific permit, which shall apply for those that do not hold any of the permits above;
- a mining processing permit, although this does not allow for the processing of radioactive minerals, which requires a separate authorisation; and
- a commercialisation of mining products permit, although the holders of a mining concession, a mining certificate or a mining pass may engage in the commercialisation of mining products without the need of requesting this specific permit.

An authorisation must also be attained if the applicant wishes to engage in (i) the extraction of mineral resources for the construction of public works; (ii) geologic investigation; and (iii) the removal of fossils and archaeological finds.

### 2.4 Environmental Requirements to Conduct Exploration and Mining

Aiming at preventing environmental damage, the applicable legislation determines that those wishing to carry out mining/exploration activities are, after submitting the application for the issuance of mining permits or authorisations, subject to an environmental assessment to determine the environmental impact of such activities. This assessment allows the authorities to determine if these will result in a more complex or simpler environmental plan.

The mining activities are classified below.

- Category A (mining concession): an environmental impact study must be carried out.
- Category B (mining activities in quarries, prospecting and research activities for pilot experiment purposes and activities conducted under a mining certificate): demands for a simplified environmental impact study.
- Category C (mining activities carried out under a mining pass and non-mechanised prospecting and research activities environmental management programme): an environmental management plan must be put in place.

Thus, to conduct exploration/mining activities, the holder of the mining concession is required to obtain an environmental licence (due to the impact of these activities, Category A), issued for a period of five years, subject to an evaluation by the government every five years.

The competence over the environmental impact assessment is shared between MIREME and the respective directorates: the Environmental Impact Assessment Authority (the Ministry of Land, Environment and Rural Development (MITADER) through the National Environmental Impact Assessment Directorate/Direcção Nacional de Avaliação de Impacte Ambiental) and the Provincial Directorates for Coordination of Environmental Action (Direcções Provinciais para a Coordenação da Acção Ambiental).

## 3. Duties and Rights Derived from a Mining Title or Concession

### 3.1 Rights Granted by Mining Title to Holder

The holders of mining titles have the right to:

- a) obtain or consult with the competent public authorities that oversee the geological and mineral information available regarding the area covered by the mining title;
- b) obtain the collaboration of the administrative authorities for field work and for the establishment of easement rights;

c) request, with right of preference, the inclusion in the mining title of the minerals, the associated minerals or others that may have been found;

d) use the surface water and groundwater near the concession area that are not in use or under other specific mining title without prejudice to the rights of third parties and always complying with the legislation in force applicable to the mining sector;

e) build and implement the infrastructure and facilities required for the execution of geological and mining activities;

f) use, in compliance with the law, the limited areas for the implementation of mining facilities, buildings and equipment;

g) modify, in accordance with the plans approved and work programmes, and to the extent necessary, the natural configuration of the concession areas;

h) undertake mining activities necessary for the implementation of the work plans approved, subject to no limitations other than those determined by law or in the concession agreement or in an order issued by the ministry overseeing the mining sector;

i) extract, transport and benefit from the mineral resources;

j) dispose and commercialise extracted mineral resources;

k) recover, through the results of the mining exploration, all investment expenses incurred with reconnaissance, prospecting, research and evaluation; and

l) be compensated for losses arising from actions that may limit the exercise of mining rights, as established by the law or in the concession agreement.

Mining title-holders also benefit from the protection of the State in terms of guarantee of the repatriation of funds, upon presentation by the title holder of tax discharge certificates. This guarantee includes:

a) repatriation of profits and dividends resulting from eligible investments;

b) royalties or other indirect compensations for the investment associated with the assignment or transfer of technology or other rights;

c) depreciation and interests on loans contracted in the international financial market and applied in investment projects in the country;

d) repatriation of foreign capital invested; and

e) amounts corresponding to the payment of obligations to other non-resident entities; for example, the import of products and services.

### 3.2 Duties Acquired by Title Holder

The title-holder has, among others, the obligations indicated below:

a) not to proceed with any mining activities prior to obtaining the relevant mining title;

b) to carry out social, economic and sustainable development actions in the areas of the mining concession;

c) to secure employment and technical training for national citizens, especially those residing in the concession area;

d) to adopt the best methods to stimulate and increase efficiency, always respecting the economic market conditions, environmental protection and rational use of resources;

e) to register all the geological mining investigation activities carried out;

f) to allow the control and supervision of its activity by the competent authorities, including access to the registry of technical, economic and financial data related with the activity undertaken;

g) to release, progressively, the initial area covered by the holding permit according to the Mining Law and its regulation;

h) to observe the approved exploration plan, complying with the applicable legal framework and the best mining operations methodologies;

i) to comply with the timeframes for the execution of mining operations and the ones established for the production programme, maintaining the exploration activity, except if the suspension is authorised or imposed, or when determined by reasons of force majeure;

j) to comply with the provisions contained in the environmental impact study;

k) to develop the necessary actions following the environmental impact study approved by the competent authorities;

l) to promote public health and security according to national and internationally applicable legislation;

m) to provide information related to the soil and environment characteristics; and

n) to repair, according to the law, the damages caused to third parties by the exercise of mining activities.

### 3.3 Rights Acquired by Title Holder

Under the Constitution of the Republic of Mozambique and the Land Law, the land is owned by the State and cannot be sold or otherwise disposed of or encumbered. Nevertheless, the law provides for a lesser real right known as the use and enjoyment of land right (DUAT), which allows use of the land.

Therefore, the title-holder may only be allowed to hold a DUAT, entitled to carry out its activities exclusively within the area attributed. DUAT holders may transfer it inter vivos or by legacy. This transfer includes infrastructures, buildings and improvements thereon, and is done by public deed, with prior authorisation of the proper State authorities. In the case of urban properties, the DUAT of the land is transferred together with the property and permission does not have to be requested. It should also be noted that the holder of the right may place a mortgage on the real property and improvements thereto. The DUAT is granted for the same period of the mining title and its acquisition is proven through a title deed.

### 3.4 Duties Acquired Towards Landowners

Given that the land is owned by the Mozambican State, all acts relating to the DUAT (including acquisition, modification, transfer and termination) are subject to registration. Registration must take place at the Land Registry of the area where the properties are located within 15 days, in the order of their presentation, except in cases of urgency, where registration must take place within five days. The registration is proved by certificate.

Obtaining authorisation under the DUAT does not waive the need to license the exercise of the planned economic activity in accordance with the legislation applicable to the sector.

Lastly, DUAT holders are also subject to payment of an authorisation fee and an annual charge of a value that depends on whether the investor is Mozambican or foreign, the location of the land, its size and the purpose of the use of the land.

### 3.5 Duties of Title Holder at End of Life

Mining operations should not terminate or be abandoned without the title-holder complying first with a mine closure plan approved by the relevant authorities.

Title-holders may be required, in certain circumstances, to issue performance bonds or other guarantees to cover de-commissioning costs.

In cases where the law requires the title-holders to provide a performance bond to cover the cost of rehabilitation and mine closure, its value shall be reviewed every two years by MIREME.

## 4. Environmental

### 4.1 Principal Environmental Laws

The principal environmental laws applicable to the mining industry are the following:

- the Environmental Law (Law 20/97, of 1 October 1997);
- the Environmental Regulation for Mining Activities (Decree 26/2004, of 20 August 2004); and
- the Guidelines for Environmental Management of Mining Activities (Ministerial Order 189/2006, of 14 December 2006).

### 4.2 Bodies of Environmental Competence

Within the government, the supervision and assessment of the environmental impact of mining activities is mainly carried out by MIREME and MITADER ([www.mitader.gov.mz](http://www.mitader.gov.mz)), which are entitled to implement the National Environmental Management Programme as determined by the Environmental Law.

Several agencies have been created, under the tutelage of the ministries referred to above.

- The National Council for Sustainable Development (Conselho Nacional de Desenvolvimento Sustentável): responsible for sectoral policies related to the management of natural resources.
- The Advisory Board (Conselho Consultivo): has the competence to monitor and advise on specific projects under the Environmental Regulation for Mining Activities.
- The Leading Committee (Comité Orientador): whenever level 3 mining activities — ie, mining activities that do not fall under level 2 (mining operations in quarries or any other activities of extraction, exploration of other mineral resources for construction and prospecting, research and other mining activities that involve mechanised equipment) or level 1 (described in 16) — reach the stage of the feasibility study and if it proves necessary, the ministries indicated above will set up a Leading Committee to ensure the environmental management of that specific project.
- The National Institute of Mines (Instituto Nacional de Minas): the mining regulatory authority, supervised by MIREME, which is competent to promote, support and control small-scale mining, taking into account the mini-



misation of negative environmental and social impacts resulting from the exercise.

### 4.3 Environmental Obligations

The mining activity must be carried out with respect to the environmental protection obligations, which are established by the:

- a) laws and regulations on the use and enjoyment of mineral resources as well as environmental protection and preservation rules, including socio-economic and cultural aspects;
- b) good mining practices to ensure the preservation of biodiversity, minimise waste and loss of mineral resources and protection against adverse effects to the environment; and
- c) technical safety rules in accordance with specific regulation.

The Environmental Regulation for Mining Activity establishes norms aiming to prevent, control, mitigate, rehabilitate and compensate for the negative effects that mining activity may have on the environment. In accordance with the regulation, the mining operator, in addition to being responsible for damage to the environment as a result of the mining operations, must also take into account certain obligations that cover the following areas: (i) the management and use of water, and (ii) the standard air quality levels and emission of gases, whenever toxic substances or harmful dust are at stake. As an example, it is also an obligation of the mining operator to implement preventive measures to limit the emission of dust into the atmosphere through the use of water or other appropriate methods to contain the dust.

Additionally, the Guidelines for Environmental Management of Mining Activities specifically addresses level 1 mining activities (small-scale mining operations, as well as reconnaissance, prospection and research activities that do not use any mechanised equipment). This diploma establishes obligations related to:

- the location of the facilities;
- the costs of cleaning and repairing damages caused by mining activities;
- erosion control;
- the conservation of fuels and contaminated materials;
- the maintenance areas of vehicles and equipment;
- the storage of toxic substances;
- the control of dust and noise; and
- the disposal of toxic waste, among others.

## 5. Miscellaneous

### 5.1 Special Rules or Taxes

As mentioned above, mining titles and rights can only be granted to Mozambican individuals and/or corporate entities incorporated and registered according to Mozambican Law, which, in turn, can be owned by foreign entities/individuals.

Also, the Mining Law provides for another local content rule, aiming at promoting the development of the local economy as it establishes that foreign individuals or corporate entities providing services to mining operations shall be associated with Mozambican single or collective legal persons in accordance with the regulation.

### 5.2 Restricted or Excluded Zones

In accordance with the Mining Law and Mining Law Regulation, the Mozambican territory is divided into several areas.

- i) Available area: all areas that have no mining titles, are not subject to public tender, have no ongoing request for the attribution of a mining title, or have not been declared as not available for mining activities.
- ii) Reserved area: all areas that have mineral resources that allow for simplified research and prospecting mining activities, exclusive for those holding a mining pass (*senha mineira*).
- iii) Designated area: all areas that have mineral resources that allow for simplified research and prospecting mining activities, exclusive for those holding a mining pass.

Pursuant to the above, mining titles are usually attributed for available areas and the public authorities must keep a mining cadaster in which information on the areas available for mining activities must be duly registered as well as that of areas in which it is prohibited to carry out any of these activities.

### 5.3 Rights of Indigenous or Ethnic Communities

The rights of local communities/the indigenous population resulting from the appropriation of their land by the mining corporations that wish to develop their projects in those areas are established in several legal diplomas, which must be analysed together.

Firstly, the Mining Law establishes that local communities must be consulted prior to the government granting mining titles and they are entitled to be informed prior to the commencement of the mining activities as well as of the need to be resettled.

Further to the above, the mining title-holders should respect the local communities and pay them compensation result-

ing from the damages caused by the mining activities. The amount of the compensation must be agreed between the community, the mining corporations and the government.

The Mining Law also establishes that the mining title-holders should (i) provide for good conditions to the local communities, whenever they need to be resettled to a different area; (ii) support the development of activities to be carried out by the local community that guarantees them healthy and safe food; and (iii) preserve the historical, cultural and symbolic heritage of the local community, among others.

Furthermore, the Resettlement Process Regulation aims to increase the socio-economic development of Mozambique and ensure that the resettled population has at least an equal or a better quality of life, taking into account the sustainability of territorial, environmental, social and economic aspects. This regulation also establishes the procedures for the preparation of the resettlement plan that the mining title holders need to comply with and the sanctioning regime for non-compliance with it.

In line with the Mining Law, the Policy of Corporate Social Responsibility for the Extractive Industry has been recently approved to ensure that the social and economic conditions in Mozambique, in general, and the local communities, specifically, would benefit from the extractive industry. This objective will be achieved through the encouragement of the mining corporations to include in their investment plans policies and programmes of corporate social responsibility.

## 5.4 Unilateral Termination of a Mining Title

The government may promote the revocation of mining titles if the title-holder:

- fails to pay the specific applicable taxes;
- does not comply with any regulatory or specific provision established in the Mining Concession agreement as long as such provision stipulates that the breach shall constitute grounds for the revocation of the mining title;
- becomes bankrupt or enters into an agreement with its creditors, unless a security has been registered over the mining installations;

- transforms or dissolves the company, unless prior consent had been obtained from the Minister for such transformation or dissolution, when the intended result is its merger or reincorporation; and
- is indebted to the State.

More specifically, the prospecting and exploration permit can be revoked if the title-holder does not (i) submit annual reports on prospecting and exploration, and investments carried out, and (ii) allocate the minimum budget agreed and does not carry out exploration in accordance with the approved work programme.

In turn, the mining concession can be revoked if its title holder fails to:

- demarcate and maintain the boundaries of the mining area;
- commence mining production within a maximum period of up to 48 months, starting from the date of the issuing of the mining concession;
- maintain the level of production defined in the mining plan and subsequent amendments approved by the competent entity;
- submit information and periodical reports of mining activities, as legally required, including those relating to production and commercialisation; and
- undertake the environmental recuperation of the area and the closure of the mine in accordance with approved plans.

## 5.5 Taxes of Royalties

Legal entities conducting mining operations in Mozambique are subject to the payment of general taxes, in addition to the specific taxes established for the mining industry. Although no payment of royalties is due, the investors will be subject to the following taxes:

- a) Income Tax (IRPC);
- b) Value Added Tax (VAT; applicable to sales, as debt rate being a creditable tax and exempt on exports);
- c) Tax over the Mining Production (IPM);
- d) Tax over the Surface (ISS);
- e) Tax over the Mineral Resource Income (IRRM);
- f) Other municipal taxes, if applicable; and
- g) Customs duties, if applicable.

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