



May 2011  
2011五月

China  
中国

## 莫桑比克矿产开发

### 一、简介

莫桑比克通过一系列的经济改革成为过去10年经济增长最快的国家之一。拥有丰富的矿产使得莫桑比克的经济具备很大发展潜力。

莫桑比克的丰富矿产资源包括石油，黄金，矿泉水，煤炭，天然气和大理石。

虽然这些矿产资源的开发已经吸引了众多主要跨国公司，数百万美元的投资，例如巴西的Vale do Rio Doce公司，但矿业仅占国家GDP的2%。

### 二、法律框架

莫桑比克现行矿产资源法律制度（主要由2002年6月26日第14/2002号“矿产法”和12月26日第62/2006号法令“矿产法规”及其附录组成）确立了矿产开发方面的基本原则和程序。其内容主要是规范各种矿产开发权和许可证，及其权利归属和颁发程序和期限。

#### A) 采矿权及其授权许可

矿产开发需要权利人持有相应的采矿权，不同的采矿权赋予权利人或投资者开展不同开发活动的权利。矿产资源的勘测，探矿，调查和开发权都是通过以下采矿权和许可证的方式获得：

- (1) 勘测许可证
- (2) 探矿和调查许可证
- (3) 采矿特许证
- (4) 采矿证
- (5) 采矿资质

#### (1) 勘测许可证

任何个人或公司，无论是莫桑比克国民或外国人，只要具备合法资质和实际运营能力，都可以获得勘测许可证。该许可证需通过申请获得且不得以任何方式进行转让。有效期最长为2年且不能延长。

许可证有效期间，持有人放弃该许可证的，可提前90天通知相关负责部门的部长。许可证包含的作业范围不得超过100,000公顷。

许可证持有人获得进入特定勘测区域开展勘测作业（但该权利不具有排他性），和获得、取走样品的权利。同时，权利持有人还有依法占有土地并修建勘测活动所必需的暂时设施，使用水源、林木和其他勘测活动所需的材料。

该勘测许可证的申请需向矿产资源部提出，递交至国家矿山局或管辖该勘测区域的省矿山局。如申请满足了颁发许可证的所有要求，矿产资源部应在递交申请的10天内通知申请人批准决议。

许可证持有人需进行实际有效的勘测活动，并履行告知和报告义务。

### (2) 探矿和调查研究许可证

探矿和调查研究许可证最长有效期为5年，可再延长5年。该许可证可由任何具备法律资质的莫桑比克或外国的个人或公司申请获得，且可依相关程序予以转让。

该许可证的申请也需向相关部门提出，同时递交至国家矿产局或管辖该作业区域的省矿山局。探矿许可证的作业范围不得超过25,000公顷。申请递交后，如无需补充其他材料，主管当局应当在10日内告知申请人申请决议。

多个探矿许可证申请人就同一块作业区域提出申请许可的，应当由国家矿产局主持公开招标程序。公开招标程序的进行，规则，期限和招标书的条款条件都由国家矿产局决定。

该许可证持有人对作业区域内的矿产资源有独家勘查权，并开展必要活动的权利，包括：收集、取得和出口样品。另外还有进行检测和加工试验的权利，及在获得许可的情况下，将勘查所得的样品出卖的权利。许可证持有人有权占有土地并在其上修建必要的暂时性的设施，利用水资源和林木及其他开展探矿活动必须的资源。

许可证持有人应当根据项目规划来开展探矿和调查研究活动，并对投资情况进行年度汇报。

### (3) 采矿特许证

采矿特许证仅可由在莫桑比克依法成立的法人持有。

该特许证的申请也需向相关部门提出，同时递交至国家矿产局或管辖该作业区域的省矿山局。由探矿和调查研究许可证持有人或其他利益当事人提出的申请，如满足颁发特许证的要求无需再补充其他材料，则有关主管当局应在10日内告知申请决议。

如探矿和调查研究许可证持有人已履行其探矿义务后申请的，有关主管当局应立即颁发采矿特许证。

采矿特许证有效期以矿床的开采期或经济可行性为准，但最长不得超过25年，最长可再延长25年。采矿许可证项下区域不得超过必要的采矿作业区域。

在实际开展采矿作业前，开采人需在获得采矿特许证3年内取得环境许可证和土地使用收益权（DUAT），否则该采矿特许证将被撤销。

采矿特许权人有权独自占有使用土地，并在其上修建必要的设施，依法利用水资源和林木及其他开展开采活动必须的资源，开采已经探矿确认的矿产资源。采矿特许权人还可使用部分区域进行耕种和放牧以自给，也可用来存放、运输、加工矿产和处理垃圾。也可以出卖或处置矿产产品，但要缴纳相关税款。该特许权可依法予以转让。

采矿特许权人的义务包括：递交矿物提炼计划；在获得环境许可证或土地使用收益权（DUAT）的24个月内开展开采作业；在36周内开展采矿生产作业；同时遵守关于生产作业的安全保障规则。如果权利人未履行这些义务，特许权将被撤销。

### (4) 采矿证

采矿证的有效期为2年（有正当理由可延长2年），持有人可以是莫桑比克国民或在莫桑比克成立的法人（过半股份由莫桑比克国民持有），或者依法规定的合资企业，或有运营实力的家族。

采矿证的作业范围不得超过500公顷。

该采矿证的申请也需向国家矿产局或管辖该作业区域的省矿山局提出。如无需再补充其他材料，则有关主管当局应在15日内告知申请决议。该采矿证可依法定程序予以转让。

采矿证持有人的权利有：在作业区域范围内，排他性地占有使用土地并开展小规模采矿作业；建造必要的暂时性的采矿开发设施；依法使用水资源，林木及其他开展开采活动必须的资源。采矿证持有人还有权出卖或处置采矿作业所得的矿产产品，并申请采矿特许证。

采矿证持有人的义务包括：生产作业的安全保障义务；遵守环境保护规则，如果因采矿作业而对土地或房产造成损害，则需赔偿；递交提炼矿物计划并启动采矿作业的义务。如果违反上述义务，则采矿证将被撤销。

### (5) 采矿资质

该类许可证仅颁发给具备开展采矿作业能力和完全民事行为能力莫桑比克国民。

采矿资质允许持有人开展小型采矿作业，且不可转让。

另外，莫桑比克矿产法还规定了诸多例外情况，依据这些规定，莫桑比克政府可根据矿床规模大小与探矿和调查研究许可证持有人或采矿特许权人签订采矿合同

## B、税务、收益和投资优惠政策

莫桑比克允许买卖由各种采矿活动而得的原始矿物产品。

采矿作业有各种可适用税项，其中比较重要的包括：（1）产品税，以矿产产品的交易额或商业、工业使用量为基数进行计算；（2）地表年税，由勘测许可证、探矿和调查研究许可证和采矿特许证或采矿证权利持有人，以相关特许证所覆盖的作业范围的面积为基数计算。

产品税按提炼的矿产品征收，地表年税根据许可证的不同种类，所采矿种和矿区大小来征收。

根据2007年6月27日第13/2007号法律，以下事项5年内，予以免除税收：1）进口用于探矿和调查研究或开发矿山的设备和2）进口特定的产品。

莫桑比克国内外投资者都可以享受到直接投资优惠政策，莫桑比克国家也保证保护投资者的权益和财产。稳定的税收制度也让矿产许可证持有人受益。

值得注意的是，如要享受上述提及的税收优惠政策和相关利益，直接投资的投资额不得少于5万美元。

本通讯旨在向客户及同事介绍一些普遍和抽象的概述。它不应该被用来作为作出决策和专业法律意见的基础。本通讯的内容未经作者明确统一不得复制或全部内容。如果需要有关此主题的详细信息，请联系：Manuel Silva Gomes (manuel.silvagomes@plmj.pt) or Ana Oliveira Rocha (ana.oliveirarocha@plmj.pt).

12/15F, Guohua Plaza, No.3 Dongzhimennan Avenue, Dongcheng District, Beijing 100007, PRC (headquarters)

T. (+86) 10 5813 7799 . F. (+86) 10 5813 7788 (12/F) . www.dachenglaw.com

# EXPLOITATION OF MINERAL RESOURCES IN MOZAMBIQUE

## I. INTRODUCTORY NOTE - OVERVIEW

Mozambique has one of the fastest growing economies over the past decade, following a series of economic reforms. Endowed with rich, abundant and extensive natural resources, Mozambique's economy presents huge potential.

The Republic of Mozambique is enormously rich in mineral resources, including oil, gold, mineral water, coal, natural gas, and marble.

Even though exploitation of these resources is attracting multi-million dollar investments from major worldwide multinationals such as the Brazilian "Vale do Rio Doce", it still renders a minor 2% contribution to the country's GDP.

## II. LEGAL FRAMEWORK

The main legal framework currently in force in the Republic of Mozambique setting forth the basic rules and procedures for the exploitation of mineral resources (Law no. 14/2002, of 26 June ("Mining Law") and Decree no. 62/2006, of 26 December, together with its appendixes, enacting the "Mining Law Regulations"), essentially seeks to define and regulate the various mining titles and authorisations for the development of mining activities and the attribution of rights and procedures thereto related and respective time periods.

### A. MINING TITLES AND AUTHORISATIONS

The exploitation of mineral resources requires the issue of mining titles pursuant to the type of rights to be attributed to interested parties. Each Mining Title grants specific rights to third parties/investors to engage in a particular type of mining activity.

The rights of reconnaissance, prospection, research, and exploration of mineral resources are thus granted under one of the following mining titles or authorisations:

- a) Reconnaissance Licence
- b) Prospection and Research Licence
- c) Mining Concession
- d) Mining Certificate
- e) Mining Pass

#### (A) RECONNAISSANCE LICENCE

The Reconnaissance Licence can be granted for a maximum non-extendable 2 year term, to any individual or company, either Mozambican or foreigner, with the necessary legal capacity to develop such activity. This licence is granted at the interested party's request and may not be transferred by any means to any other party.

During the validity period of the licence, the holder may relinquish the reconnaissance are, subject to a 90 days prior notice addressed to the competent minister. The area for which the Reconnaissance Licence can be granted shall not exceed 100,000 hectares.

Under this licence its titleholder acquires the non-exclusive right of access to the area for reconnaissance, obtaining and taking samples included. This licence also entitles its titleholder to occupy the land and construct the necessary temporary installations to undertake reconnaissance works, the use of water, wood and of other materials necessary for these purposes also being permitted pursuant to the terms of the applicable laws.

Applications for Reconnaissance Licences shall be addressed to the Minister of Mineral Resources and must be submitted to the National Mining Directorate or the Provincial Directorate of Mineral Resources with jurisdiction over the respective area. The applicant will be informed of the decision regarding its submitted request within a maximum period of 10 days following a favourable order from the Minister and if all necessary requirements have been complied upon submission of the reconnaissance licence grant request.

The licence titleholder has to comply with information and reporting obligations and to effectively carry out the reconnaissance activities.

#### (B) PROSPECTION AND RESEARCH LICENCE

The Prospection and Research Licence can be granted for 5 year period - once renewable for the same maximum period of time -, to any individual or company, either Mozambican or foreigner with the necessary legal capacity. This licence may be granted following the interested party's request and may be transferred according to procedural rules thereto available.

The corresponding application shall be addressed to the relevant Minister, in addition to being submitted to the National Mining Directorate or the Mineral Resources Provincial Directorate accordingly to the jurisdiction over the intended area for which the Prospection and Research Licence can be granted shall not exceed 25,000 hectares. The applicant will be informed of the decision within a maximum period of 10 days following its adoption and if no further clarification is requested by the competent authority.

In the event of overlapping requests for the same area, the Prospection and Research Licence shall be awarded via public tender and the National Mining Directorate shall be responsible for conducting the process, establishing the rules, time periods and other terms and conditions applicable to the public invitation to tender.

Under the Prospection and Research Licence the applicant acquires the sole right to research the mineral resources covered by the licence and to undertake the necessary work for achievement of this objective; to collect, take and export exemplars and samples. Further, this licence grants rights such as conduction of tests and processing trials, as well as to - subject to authorisation -, sell exemplars and samples obtained from prospection and research activities. This titleholder is also entitled to occupy the land and construct the necessary temporary installations and to use water and wood as well as other materials as required for the development of the activities.

The licence titleholder must proceed to the activities of prospection and research as per submitted work programme while complying with the annual investment reporting obligations.

#### (C) MINING CONCESSION

The Mining Concession may only be granted to legal persons incorporated and registered in Mozambique.

The Mining Concession application shall be addressed to the competent Minister and submitted to the National Mining Directorate or the Provincial Directorate with jurisdiction over the intended area. The decision on the request, submitted by either a Prospection and Research licence title holder or by another interested third party, shall be notified to the applicant within a maximum period of 10 days if no further clarification is requested by the competent authority and all required documentation has been duly submitted.

The requested Mining Concession shall be granted immediately when the application ensues of a Prospection and Research Licence and the respective titleholder has fulfilled his obligations thereunder.

The Mining Concession shall be granted for a period that is based on the economic viability of the mine or of the mining operations, which may not exceed 25 years, subject to renewal for a maximum equal period of time. The mining concession area shall not exceed the area necessary for the mining operations.

Start-up of development or mining activities is conditioned to previous issue of an Environmental Licence and of a Land Usage and Benefit Authorisation (so-called "DUAT). Such licence and authorisation must be obtained within three years of the date of issue of the Mining Concession to prevent the Mining Concession from revocation.

The Mining Concession title grants its titleholder the right to exclusively use and occupy the land and to exploit the mineral resources identified in the research phase, undertaking all necessary operations and works, using the land and constructing all necessary infrastructures and installations for the pursuit of the mining exploration activities; using the water, wood and other materials necessary for these operations according to the legal provisions thereto applicable.

The Mining Concession titleholder shall also be entitled to use parts of the area for agricultural and cattle breeding purposes for own consumption, while storing, transporting and processing mineral resources and disposing of any waste. The sale or otherwise disposal of the mineral products resulting from mining operations is also permitted, taxation being applicable. This Mining Concession title may be transferred pursuant to legally defined procedures.

Mining Concession titleholder duties include the submission of mineral extraction plan, the beginning of the mining development, compliance with the 24 month term counted from the date of issue of the last of the Environmental licence or of the DUAT and with the 36 months term counted from even date for beginning of mining production, as well as compliance with health and safety rules. The Mining concession may be revoked if such duties are not complied with.

#### (D) MINING CERTIFICATE

The Mining Certificate may be granted for a successively extendable 2 year period (if justifiable), to any individual or legal person incorporated in Mozambique (with a majority of its share capital held by nationals), as well as to a cooperation form of association – typified by law - or to a family capable of undertaking operations authorised under this mining title.

The Mining Certificate area shall not exceed 500 hectares.

The Mining Certificate request shall be addressed to the National Mining Directorate or to the respective Provincial Directorate according to jurisdiction held over the area at stake. The decision shall be notified to the applicant within a maximum period of 15 days if no further clarification is requested by the competent authority and all required documentation has been duly submitted. This title may be transferred pursuant to legally defined procedures.

The Mining Certificate shall grant the respective titleholder the following rights within the covered area to: occupy, use the land and undertake small-scale mining operations, on an exclusive basis; construct all necessary temporary infrastructures and installations for the pursuit of the mining exploration activities; use the water, wood and other materials necessary for these operations according to the legal provisions thereto applicable. The titleholder of the mining certificate is further entitled to sell or otherwise to dispose of the products resulting from mining operations, and to apply for a Mining Concession.

The Mining Certificate titleholder duties include health and safety duties, environmental compliance and compensation for any damages caused to the land or to properties as a result of the mining operations., the obligation to submit a mineral extraction plan and initiating the mining development. The Mining Certificate may be revoked if such duties are not complied with.

#### (E) MINING PASS

This title can only be granted to individual persons of Mozambican nationality with legal capacity enabling them to undertake the operations covered by this title.

Under this Mining Pass its titleholder acquires the right to undertake small-scale mining activities. The Mining Pass may not be transferred.

To note that the Mozambican Mining law further sets forth a broad provision for exceptional circumstances, according to which the Mozambican Government may execute a Mining Contract with a titleholder of a Prospection and Research Licence or of a Mining Concession when so required due to the project's dimension.

### B - TAXES, BENEFITS AND INVESTMENT INCENTIVES

Trade of Mozambican origin mineral products is allowed when the same results of the mining activity developed under the respective mining title.

Several taxes apply to mining activities, the most important ones being the (i) tax over production (royalties), based on the trade value of the mining product or on the value of its commercial or industrial use, and an (ii) annual tax on the surface, due by titleholders to a Reconnaissance Licence, a Prospection and Research Licence, a Mining Concession or a Mining Certificate, based on the area covered by the respective title or authorisation.

Taxes over production shall depend of the mineral extracted and surface tax shall be calculated based on the type of title, type of extracted minerals and on the dimension of the area.



**PLMJ**   
SOCIEDADE DE ADVOGADOS, RL  
A. M. PEREIRA, SÁRAGGA LEAL, OLIVEIRA MARTINS, JÚDICE  
E ASSOCIADOS

 DACHENG  
LAW  
OFFICES  
大成律师事务所

Tax benefits are foreseen under Law no. 13/2007, of 27 June, with a 5 year duration and applicable to exemption of customs rights (i) on the import of equipments for the prospection and research or exploration of determined minerals and (ii) on the import of determined goods.

Direct investment incentives may be applicable to national or foreign investors and guarantees of safety and legal protection over property of rights or assets are also guaranteed by the State of Mozambique, a tax stabilisation legal provision being set forth to the benefit of the mining title titleholder.

To note that, for the purposes of applicability of the afore mentioned benefits and investment incentives, direct investment must amount to, at least, 50,000 US dollars.

---

This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Luís Sáragga Leal** ([luis.saraggaleal@plmj.pt](mailto:luis.saraggaleal@plmj.pt)) or **Manuel Santos Vítor** ([manuel.santosvitor@plmj.pt](mailto:manuel.santosvitor@plmj.pt)).

---

Avenida da Liberdade 224, 1250 -148 Lisboa, Portugal (headquarters)  
T. (+351) 213 197 347 . F. (+351) 213 197 400 . [www.plmj.com](http://www.plmj.com)

---