



## NEW MINING LAW IN MOZAMBIQUE – LAW NO. 20/2014, OF 18 AUGUST: UPSTREAM TO DOWNSTREAM

### I. BACKGROUND AND CHANGES FROM THE MINING LAW OF 2002

The Law no. 20/2014 of 18 August «the Mining Law»), which came into force on the same date and which repeals the Law no. 14/2002 of 26 June (the «2002 Mining Law»), and in force since the date of its publication (August 18), intends to bring the legislation on mining activity into line with the country's current economic situation, ensure greater competitiveness and transparency, preserve the environment, guarantee the protection of rights and define the obligations of mining rights holders. It also seeks to safeguard national interests and share benefits among communities.

The Mining Law contains a significant number of amendments to the previous framework. Among others, the acquisition by mineral rights holders of goods and services above a certain value, requires public procurement procedures. In selecting the best tender, preference must be given to local products and services.

The position of the State is strengthened by the establishment of regulatory and supervisory entities for the sector: (a) the Inspectorate-General of Mineral Resources, that shall supervise compliance with the regulations that govern mining activity and technical safety; (b) the High Authority of the Extractive Industry, to be established until 18 August 2015, which powers are yet to be defined; and (c) the National Institute of Mines, the regulatory entity responsible for the guidelines for the participation of the public and private sector in research, exploration, treatment, exportation and importation of mining products and their derivatives.

Below we provide a summary analysis of the procedures and requirements applicable to the access to the mining sector's activities, taking into account the widening of the scope of the new applicable legislation.

*The Mining Law contains a significant number of amendments to the previous framework. Among others, the acquisition by mineral rights holders of goods and services above a certain value, requires public procurement procedures. In selecting the best tender, preference must be given to local products and services.*

*Under the Mining Law, “mining and ore products” are defined in broad terms as any extracted rock constituted by a mineral or mineral aggregate containing one or more precious minerals.*

## II. SCOPE OF THE LAW, MINING TITLES, ACTIVITIES AND PROCEDURES

**Scope** - The Mining Law establishes the general principles for the use and exploitation of mineral resources, access to and the exercise of prospecting and research activities, development and production, processing and sale of mining products, including mineral water (and excluding hydrocarbons, which are subject to their own law).

Under the Mining Law, “mining and ore products” are defined in broad terms as any extracted rock constituted by a mineral or mineral aggregate containing one or more precious minerals, with formation in the earth’s crust, that can be economically exploited, with or without processing, in a solid, liquid or gaseous form.

**The role of the State** - access to mining activities is controlled by the State through its relevant institutions and bodies, including the above mentioned National Institute of Mining. The State is the owner of the mineral resources situated in the soil and subsoil, in inland waters, in the territorial sea, on the continental shelf and in Mozambique’s exclusive economic zone.

<sup>1</sup> Exploration licences and mining concessions can only be granted to legal entities incorporated in accordance with Mozambican Laws.

**Mining Licence Holders** - Except when there is an express provision to the contrary in the Mining Law, licences may be issued in favour of any Mozambican or foreign individual or legal entity<sup>1</sup> with the legal, technical and financial capacity to carry out the mining operations underlying the title in question. The law establishes a right of preference in favour of Mozambican nationals (individuals or legal entities) in the granting of rights related to mining activities.

## III. MINING LICENCES, ACTIVITIES AND PROCEDURES

**Public Procurement** - The law provides for the Government to use competitive tendering for mining activities and operations in areas: (i) that have been subject to geological study; (ii) with potential in mineral resources; (iii) that have been subject to prior mining activity; (iv) reserved to mining activity; and (v) of total or partial protection. In these cases, the Government may opt for the application of the Public-Private Partnerships Law (Law no. 15/2011, 10 of August). The award of licences or rights may also be done by means of direct award, as a measure of last resort.

The Mining Law establishes several types of mining titles: (i) the exploration licence; (ii) the mining certificate; (iii) the mining pass; (iv) the mining concession; (v) the mineral treatment licence, covering ore treatment activities and radioactive minerals; (vi) the mineral processing licence covering ore processing activities including radioactive minerals; and (vii) the trading licence of mining products, allowing the sale and purchase of mining products. Besides these permits, the law provides that the holder of an exploration licence or mining concessions

may have to enter into a mining contract with the Government, as described in more detail below.

We will now review the most important permits:

(i.) **Exploration licence:** issued to a legal entity incorporated and registered in Mozambique that demonstrates it has the technical and financial capacity for the purpose. The validity periods for licences are: (a) two years in the case of exploration of mineral resources for construction, renewable once for an equal period or, (b) five years in the case of exploration of other mineral resources, including mineral water, renewable once for three years;

(ii.) **Mining concession:** necessary for operations and works for mineral development, production, treatment and processing and the subsequent disposal of mineral products<sup>2</sup>. The mining concession may be granted for a period of up to 25 years, and may be renewed for an equal period, always taking into account the useful economic life of the mine and as long as the respective concessionaire complies with its legal duties. Before beginning the development or mining works in the concession area, (besides the environmental licence and the licence for the use and benefit of the land), the concessionaire must also obtain approval of the compensation and resettlement plan.

If the concession area, declared as available area, covers (in whole or in part) land occupied by families or communities and, therefore, requires their resettlement, the company is obliged to pay compensation to the people

<sup>2</sup> Considering that the trading licence will not be necessary for the purpose, in this case.

affected. In these cases, for the concession to be awarded, the mining contract must include a memorandum of understanding as to the resettlement conditions to be signed between the Government, the mining concessionaire and the local communities. The scope of this memorandum is to be determined by future regulations.

In a change from the provisions of the 2002 Mining Law, the concessionaire may relinquish the mining area that is the subject of the mining concession, in whole or in part, in accordance with the decommissioning plan of the mine.

**Mining contract:** holders of an exploration licence or a mining concession may have the right to negotiate a mining contract with the Government. They may also find they are under an obligation to negotiate and enter into such a contract. These contracts must contain certain mandatory clauses, including the participation of the State, obligations to ensure local employment ratios and professional training (known as “Local Content”), involvement of local communities and benefits of the project, incentives for the licence holder or concessionaire to add value to the ore and carry out social responsibility actions.

**(iii.)The mineral treatment licence, covering ore treatment activities including radioactive minerals:** attributed to a legal entity incorporated and registered in Mozambique, to carry

out mineral treatment operations. Besides this licence, the treatment of radioactive minerals requires an authorisation to be issued under the terms of the legislation applicable to atomic energy and to radioactive minerals; and

**(iv.)Trading licence for mining products:** for the trading of mineral products and is only attributed to Mozambican individuals or legal entities<sup>3</sup>.

**Transfer of mining titles:** as in other jurisdictions, the law specifically regulates inter vivos transfers of mining titles to take into account situations involving indirect transfers to third parties, assignment of participating interests in mining titles or mining rights, or transfer of stakes in the company that holds the respective title. In any case, the transfer may only occur after two years have passed from the start of the mining activity for which the mining title in question was issued and is subject to Government approval.

**Infringements:** carrying out mining activity without a title or other proper authorisation is now punishable with a fine, seizure of the extracted product or confiscation of the equipment used, according to the seriousness of the offence. Heavy criminal sentences from 2 years to 12 years have been established for unlawful research and extraction of minerals and trafficking of mineral products.

*As mentioned above, the new Mining Law came into force on August, 18 2014. However, there are still many issues that require regulation that is crucial and necessary for the new law to be applied in full.*

The Mining Law also includes a **stabilisation rule** under which the rights acquired pursuant to mining contracts (including concession contracts) under the 2002 Mining Law remain in force. The holders of these rights have until 18 of August 2015 to choose to have these existing contracts governed by this new law.

However, the holders of reconnaissance licences and licences for prospecting and research of mineral resources for construction and, among others, mining certificates must request the regularisation of the rights acquired under the 2002 Mining Law within 180 days of August, 18 2014. These rights may be declared extinct in favour of the State upon payment of compensation.

As mentioned above, the new Mining Law came into force on August, 18 2014. However, there are still many issues that require regulation that is crucial and necessary for the new law to be entirely applied.

<sup>3</sup> It seems that the Mining Law establishes that this Mozambican legal entity must be wholly owned by Mozambican citizens and rather than them simply having a majority stake.

This newsletter was prepared by a multidisciplinary team made up of lawyers from GLM and PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics. 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 send an email to [glm.geral@glm-advogados.com](mailto:glm.geral@glm-advogados.com) or [energy@plmj.pt](mailto:energy@plmj.pt).