

MOZAMBIQUE – Will the New Mining Law enter into force this year?

The New Mining Law was expected to be passed by Parliament this year. However, considering the timing and the apparent embryonic stage of the last official draft of the New Mining Law there is a possibility that it will suffer further changes in the months ahead and that it will pass in the Mozambican Parliament only at the beginning of next year.

The New Mining law is not expected to introduce many changes to the existing regime, but the proposed changes are important.

Introduction

A final draft of the proposal to amend the current Mozambican Mining Law¹ (a proposal that has been in discussion since 2011) has been submitted to the country's Council of Ministers and was originally expected to be passed by Parliament this year (the "**New Mining Law**").

However, the submission to the Council of Ministers was apparently not approved within the expected timeframe and there is a probability now that the New Mining Law will not be passed this year by the Mozambican Parliament.

The New Mining Law is not expected to introduce many changes to the existing legal regime, but the proposed changes are important. According to the explanatory statement issued alongside the last official draft of the New Mining Law dated 31 August 2012 (the "**Proposal**")², the New Mining Law aims to amend existing rules in distinct areas, giving mining activities a modern and adequate regulatory basis, so as to ensure greater competitiveness, guarantee the protection of rights and define the obligations of the holders of mining titles.

This memorandum provides a short overview of the main elements of the Proposal.

Mining agreements

The Mozambican State may exceptionally enter into mining agreements with the title holder of an exploration and prospecting licence or a mining concession licence ("**Mining Agreements**").

The following additional requirements are to be included in the Mining Agreements: (i) a local employment and staff training strategy; (ii) ore value adding incentives; and (iii) a pro bono/corporate responsibility plan.

Following the IMF's call for the Mozambican government to publish Mining Agreements, these will now be published in Mozambique's Official Gazette (*Boletim da República*), except for the commercial, strategic and competition clauses, which will remain confidential.

However, the Proposal does not mention who is obliged to carry out such publication obligation.

Key issues

- New mining titles including mining treatment and mining processing
- New timing requirements for exploration and prospecting and mining concessions licenses
- Restrictions on the transfer of mining rights and titles?
- Will the New Mining Law have impact on the current tax regime?
- Will existing rights be affected?

New mining titles

The Proposal sets out new types of mining titles, including:

- **Mining treatment** (*tratamento mineiro*): a mining process through which usable ore and derivatives are recovered in valuable mining products by physical treatments.
- **Mining processing** (*processamento mineiro*): a mining process to achieve ore concentrate by means of (among others) physical, chemical and metallurgical treatments.

¹ Law 14/2002, of 26 June 2002.

² Available on the Mozambican Ministry of Natural Resources' website: <http://www.mirem.gov.mz>



As general rule, the title holders of mining concessions may conduct mining treatment activities without obtaining a specific licence. Requirements, conditions and criteria applying to treatment activities will be dealt with in supplementary implementing legislation (please see the “Additional regulations” section below).

The treatment and processing of radioactive material will require that an additional specific licence be obtained.

Timing requirements

The Proposal stipulates new timing requirements, including:

- **Exploration and prospecting licence:** the exploration period is now 5 years (except for mining resources for construction) and can be renewed for 3 additional years; and
- **Mining concessions:** mining activities and operations must begin within 12 months from the date of concession, and production within a maximum of 48 months (this maximum may be extended in cases

of *force majeure* or a justified decision of the government of Mozambique).

Restrictions on the transfer of mining rights and titles

In a July statement, the Mozambican Director of Mines announced that the New Mining Law would establish a new taxation regime on the transfer of licences, when traded between companies incorporated under Mozambique law and transactions abroad between foreign companies.

As the Proposal does not mention this in its articles, we therefore believe that this new taxation regime on the transfer of licences will be dealt with in its implementing regulations (please see the “Additional regulations” section below).

Mining titles reserved for nationals

Mining titles will be granted to companies incorporated under the laws of Mozambique and with proven legal, technical and financial capacity.

Save for mining certificates and passes (used for small scale and artisanal mining), the companies may be 100 percent foreign owned.

Investment regime

The direct investment (national and foreign) section of the Proposal includes:

- Recognition of the following forms of investment (if there is the possibility of monetary valuation):
 - (i) acquisition (total or partial) of the shares in a Mozambique company or the mining title (if the acquisition amount is deposited in a bank registered in Mozambique or in an authorised foreign account under the Mozambique Exchange Law

and the tax discharge documentation is presented);

- (ii) equipment (and accessories), materials and other imported goods;
- (iii) infrastructures and transfer of land related rights, concessions, licences and other economic, commercial or technological rights (only for national investment);
- (iv) transfer of IP rights; and
- (v) geological surveys, etc.

- A State guarantee for the safety and legal protection of ownership of goods and rights (including IP rights) but with a right of expropriation, if the public interest justifies this (principle of appropriate compensation).
- A State guarantee regarding the offshore transfer of funds, upon the submission of the tax discharge documentation (issued by the relevant local tax authority).

Tax and custom duties

Mining rights holders are subject to the following taxes:

- Income;
- Value added;
- Production;
- Surface;
- Administrative/licensing fees; and
- Any other tax established by law (including local taxes, if applicable).

The Proposal includes no further details on tax and custom duties, nor gives any details on the rates of taxation that will apply. We therefore believe that this will be dealt with in supplementary implementing legislation (please see the “Additional regulations” section below).

However, last February, the Mozambican Ministry of Natural Resources (*Ministério dos Recursos Naturais*) announced that the New Mining Law would have no impact on the tax regime.

Special regimes

The Proposal contains further rules which apply to:

- Extraction of mining resources for local construction (private and public);
- Treatment and processing;
- Commercialisation of mineral products;
- Geological research;
- Small-scale and artisanal mining; and
- Radioactive material.

Acquired rights – “Grandfathering”

Rights acquired under a mining or concession agreement entered into before the New Mining Law will not be affected by the new rights.

However, the mining rights holders may choose to have their mining or concession agreements governed by the new rights within 12 months after the date the New Mining Law enters into force.

Additional regulations

The Proposal states that the government of Mozambique will pass the New Mining Law Regulations within 180 days from the date the New Mining Law enters into force. However, it does not indicate whether or not such regulations (among



others, the Mining Law Regulation³ and the Mining Law Tax Regime⁴) will remain in force until the publication of such New Mining Law Regulations.

Will the Proposal be passed in Parliament this year?

Although the Mozambican Ministry of Natural Resources (*Ministério dos Recursos Naturais*) announced that the New Mining Law would be passed by Parliament this year, it seems that the Proposal is still in preliminary draft form.

A November report by the Mozambican Centre for Public Integration (*Centro de Integridade Pública*)⁵ highlights that the Proposal contains ambiguities and inconsistencies, leading to misunderstandings and implementation

problems, and that a substantial amount of work on matters of form, systematisation, content and drafting needs to be done.

Considering the timing and the apparent embryonic stage of the Proposal, there is a possibility that it will suffer further changes in the months ahead and that it will pass in the Mozambican Parliament only at the beginning of next year.

However, due to the fact that the civil society is pressuring the Mozambique government to not grant new mining titles until the New Mining Law has entered into force, the process could be sped up and the New Mining Law could be passed by Parliament before the end of this year.

³ Decree 28/2003, of 17 June.

⁴ Law 11/2007, of 27 June.

⁵ Observatory of Law (*Observatório de Direito*) no. 4/2012, of 20 November 2012.

When will the New Mining Law enter into force?

According to the Proposal, the New Mining Law will enter into force within 30 days from its publication in Mozambique's Official Gazette (*Boletim da República*).

Even if the Proposal is passed by Parliament in the coming days, the New Mining Law would not enter into force until 2013 (perhaps in the first quarter).

Finally, and as mentioned in the report from the Mozambican Centre for Public

Integration, (*Centro de Integridade Pública*)⁶, consideration has to be given to the fact that, in the past, the Mozambique National Press (*Imprensa Nacional de Moçambique*) has considerably delayed some publications of laws in the Official Gazette (*Boletim da República*).

⁶ Idem.

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