Mozambique recently enacted Law No 20/2014 (Mining Law), followed by Law No 28/2014 (Specific Regime of Taxation and Benefits of Mining Activities), which puts in place its new mining legal regime. These new laws aim to align the legal framework of its mining industry to the country’s current political and economic aims.

Their enactment was in response to the new developments in the mining sector, to ensure more competitiveness and transparency and guarantee the protection of rights and their correlated obligations. Additionally, the new legislation seeks to protect the national interests, improve State’s revenues and share its benefits with the communities.

Overview

The Mining Law focuses on improving regulation of the use of mineral resources. Its intention is to achieve a more conducive and stable environment in the mining sector than that created under former Law No 14/2002, by providing a clearer and more detailed legal framework. The Law expressly excludes activities involving oil & gas, which are regulated by a separate set of laws.

The Mining Law reinforces state ownership of the mineral resources located underground, onshore and offshore. It also creates the High Authority of the Mining Industry, a public entity with administrative and financial autonomy that will define the structure and competencies for the entire sector. Furthermore, it creates the National Institute of Mines, a regulatory entity that will create guidelines for the participation of the public and private sector in exploration, exploitation, processing, exporting and importing mining products and their derivatives.

Mining Rights and Contracts

The mining rights are awarded by a public tendering process in which applicants are required to provide specific details concerning the proposed mineral activities. In the decision for granting such rights, the State will consider the date of filings and the best conditions proposed to the State. Mining rights for the available areas will be assigned to applicants who meet the legislative requirements. Applicant legal entities must present their corporate documentation, including detailed identification of its shareholders. Under the Mining Law, rights to undertake mining activities can only be granted to Mozambican natural or legal persons. This differs from provisions under Law No 14/2002 that allowed foreign incorporated entities to hold exploration licences. The transfer of rights and obligations conferred under mining concessions to a related or to a third party is subject to government approval, including the transfer of shares, quotas or other forms of interests.

There are very limited situations in which mining rights can be revoked or expropriated. The Mining Law provides 7 types of mining rights/titles: (1) Exploration and Research License; (2) Mining Concession; (3) Mining Certificate; (4) Small-scale Mining Certificate; (5) Mineral Treatment License; (6) Mineral Processing License; and, (7) Mineral Products Commercialization License. The extraction of mineral resources for construction does not require a mining title or authorization provided that it fulfills legislation requirements.
The Mining Legal Regime in Mozambique

When negotiating with the State, investors must ensure that their mining concession contracts contain: a) the State’s share in the mining business; b) local employment and professional career plan; c) incentives for adding value to the minerals; d) actions to be taken concerning social responsibility; e) a memorandum of understandings between the government, the company and the communities; f) mechanisms for dispute resolution, including arbitration; and g) how the surrounding communities will benefit from the mining business. They should also ensure they comply with the local content requirements for the procurement of goods and services for mining activities introduced by the Mining Law. The concession contracts will be available to the public by their publication in the Official Gazette. To ensure compliance with the terms and conditions of the contracts, the right holders are subject to the provision of a financial guarantee. In addition, any data obtained during the performance of the mining concession contracts shall be property of the State. The state also has the right to inspect the performance of the contracts, in order to ensure the rational and sustainable use of mineral resources.

Land and Environmental Issues

The right to conduct mining activities is separate from ‘use of land’ rights and others pre-existing rights. However, they will dovetail in terms of extension rights and duration. The State has precedence over other pre-existing ‘use of land’ rights. The preceding land rights shall be extinguished only after the payment of a fair indemnification to the holder. Once the project is closed, the State can reassign to interested parties the ‘use of land’ rights, giving preference to the holders of the pre-existing rights in the reacquisition of such rights.

Investors engaging in mining activities must also ensure the protection of the local environment and refrain from causing any damage to cultures, soils, constructions, equipment or improvements. If any damage occurs, the concessionaires have the obligation to indemnify the affected stakeholders, in compliance with the applicable laws. Explosives and radioactive materials shall be handled in accordance with a separate licensing procedure to ensure the adoption of safety measures. In the decommissioning process of a mine, the

Taxation and Foreign Exchange Issues

Legal entities conducting mining operations in Mozambique are subject to the payment of general taxes, in addition to the industry specific taxes. Thus, the investors will be subject to the following taxes:

a) Income Tax – IRPC (32% on net profits and capital gains);

b) Value Added Tax – IVA (17% on sales, as debt rate being a creditable tax and exempt on exports);

c) Tax over the Mining Production - IPM (vary from 15% to 8%, depending on the mineral);

d) Tax over the Surface – ISS (fixed value per hectare and per year of the project); and,

e) other local and minor taxes, when applicable.

In accordance with the Mining Law, the State will guarantee the expatriation of funds, upon presentation by the holder of tax discharge certificates. This guarantee includes: a) expatriation 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; e) amounts corresponding to the payment of obligations to other non-resident entities, as the import of products and services.
concessionaires should not close or abandon the project without implementing the mine closure program approved by the competent authority. In some situations, the legislation requires the provision of a financial guarantee to cover the costs of rehabilitation and closure of the mine. An environmental audit must be conducted to ensure that concessionaires have fulfilled their obligations of rehabilitation and closure of the mine, in order for the financial guarantee to be refunded.

Local Content and Labor Issues

A percentage of the revenues of the State related to mineral extraction will be designated for the development of the communities where mining projects are located. The State can order the purchase of mining products at market value, to use it in local industry or in local energy sector, whenever the State’s commercial interests require it. As a local content requirement, foreign entities that provide services to mining operations are required to be in “association” with Mozambican individuals or entities. However, the nature of such an association is not defined.

Also, the acquisition of goods or services above a certain value to be defined by law must be made by a public tender, which must be published through the media. Preference should be given to local products and services. The recruitment of personnel for mining companies shall also be published in major newspapers in the country, or through available mediums (radio, television and internet). Concessionaires are required: to create structures to ensure the organization and participation of the communities that are located within the concession areas; to guarantee the employment and technical-professional training for Mozambicans; and, to ensure their participation in management positions. General labor legislation in Mozambique and specific labor laws for extractive sectors (mining and oil & gas) establish a more flexible regime, but limit the number of expatriates (up to 10%), as a general rule.

The Mozambican State demonstrated its desire to improve the business environment in its mining sector by issuing this new mining legal regime. The legislation and the willingness of the public and private sectors to develop a safe, efficient and sustainable partnership model, could provide a platform to dramatically boost the Mozambican economy and to consolidate expectations around the discoveries of natural resources in Mozambique. The implementation of this legal framework could potentially foster more competitiveness, transparency, protection and guarantees for both the State and the investors, having as a natural consequence the improvement of Mozambican economy, employment and social development.

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