

## NEW REGULATION

### SALE OF DIAMONDS, PRECIOUS METALS AND GEMSTONES



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#### I. BACKGROUND AND CHANGES FROM DECREE NO.20/2011, OF 1 JUNE

Decree no. 25/2015, of 20 November ("Regulation of Sale of Diamonds, Precious Metals and Gemstones") comes into force on 20 November 2016 and repeals Decree no. 20/2011 of 1 June (the previous "Regulation of Sale of Mineral Products"). The aim of the new Decree is to adjust the Mozambican legal rules on mechanisms for certifying the origin of rough diamonds, precious metals and gemstones, and to define rules for their sale and control that comply with the international requirements established under the Kimberley Process (*Kimberley Process Certification Scheme* or *KPCS*).

Decree no. 25/2015, of 20 November, contains a significant number of changes to the previous regime. Among others, the powers of the minister responsible for the area of mineral resources are broadened, and there is an increase in the number of documents necessary for the application for the mining sales licence. Significant changes have also been made to the various deadlines contained in the Regulation.

The greatest innovation in this new piece of legislation is to be found in Section II, which regulates the sale of diamonds, precious metals and gemstones.

Below, we will provide a summary analysis of the procedures and requirements applicable to the sale of rough diamonds, precious metals and gemstones.

#### II. SCOPE OF THE REGULATION ON SALE OF DIAMONDS, PRECIOUS METALS AND GEMSTONES

**Objective and scope:** to establish the conditions for carrying on the activities of sale, importation, exportation and transport of rough diamonds, precious metals and gemstones.

The new Regulation applies to exploration and production operations carried out under Mining Titles (defined as such under the Mining Law (law 20/2014 of 18 August), and the sale and purchase of rough diamonds, precious metals and gemstones.

**Diamond:** defined in broad terms as a natural mineral that consists essentially of pure crystallised carbon in the isometric system, with a hardness on the Mohs (scratch) scale of 10, a specific gravity of approximately 3.52 and a refractive index of 2.42.

**Precious metals:** are defined in broad terms as gold, platinum and silver.

**Gemstones:** are defined as precious and semiprecious stones including rubies, sapphires, emeralds, and Paraiba-type tourmaline.

**Powers:** the powers of the minister responsible for the area of mineral resources are broadened.

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### III. SALES LICENCE AND PROCEDURES

**Application for sales licence:** it is necessary to make an application for the issue of a sales licence, which must contain the following information:

*i)* Full identification of the applicant; *ii)* indication of the mineral resources intended to be included in the licence; *iii)* NUIT (tax identification number); *iv)* proof of physical address (which will be subject to inspection)

The application must be accompanied by the following documents – *and this represents a distinction from the previous legislation, with a larger number of documents required:*

*i)* Certified photocopy of the identification document of the representative of the holder of the mining title; *ii)* power of attorney granting the representative powers of representation in the process to submit the application and registration, if the applicant is a legal entity or is represented by a third party; *iii)* criminal record certificate, when the applicant is an individual; *iv)* tax clearance certificate issued by the relevant Tax Authorities; *v)* in the case of a legal entity, a photocopy of the Boletim da República (official gazette) in which the entity's articles of association were published, or proof of payment of the publication; *vi)* sales programme, which must include the technical, financial and human resources to be employed in that activity; *vii)* identification document of the sales operative; *viii)* declaration of responsibility of the individual or legal entity for each sales operative, as applicable.

**Sales licence:** previously, the mining sales licence was approved in advance on a specific form, but that is not the case in the new legislation.

**Validity:** the sales licence is valid for 5 years, extendable for an equal period.

In a change from the previous legislation, an additional requirement has been introduced for the granting and extension of the licence: there must have been no previous infringement of the mining legislation or any other applicable legislation.

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**Deadlines:** an important part of the new Regulation is the change made to timelines. Compared with the previous legislation, all timelines have been extended. This should mean the timelines are now closer to the real timing of the process to issue mining sales licences.

**Section II:** it is important to note that only diamonds originating from countries that participate in the Kimberley Process can be exported or imported. The Kimberley Process is the set of international processes and activities adopted under the United Nations General Assembly Resolution 55/56. Its objective is to certify the origin of rough diamonds, to ensure that proceeds of sale of what are known as “blood diamonds” are not used to finance violence by rebel movements.

Exporters, importers or their representatives must make an affirmative statement that the rough diamonds in their possession were not acquired unlawfully, and they must present a Kimberley Process Certificate.

The exportation of diamonds requires the prior authorisation of the Kimberley Process Precious Metals and Stones Management Unit.

Any rough diamond destined for exportation is subject to prior payment of the Mining Production Tax or the prior provision of security equivalent to the amount of the tax due.

To import diamonds, an application for the necessary permit must be made to the minister responsible for mineral resources, through the Kimberley Process Precious Metals and Stones Management Unit, who coordinates with the minister responsible for the area of trade. The import permit is then issued by the competent body.

**Fees:** unlike the previous regulation, the new regulation includes an annex III, which contains a table of the fees applicable to the whole process and, in general terms, there is an increase in the value of those fees.

**Infringements and fines:** the possession and circulation of rough diamonds, precious metals gemstones without the applicable circulation permit, are punishable with the seizure of the rough diamonds, precious metals or gemstones, and the confiscation of the equipment and means used to transport them. Any items seized or confiscated revert to the State, and a fine equivalent to double the value of the diamonds, precious metals and gemstones in question may also be applied.

The importation or any other form of introducing diamonds, precious metals and gemstones into the country without the applicable Kimberley Process Certificate is punishable with a fine equivalent to the monetary value of the items in question and with their confiscation.

The new Regulation establishes a set of fines that vary from MZN (Mozambican Metical) 250,000 to double the monetary value of the diamonds, precious metals and gemstones in question.

The new Regulation also includes a **regularisation of rights rule**. Under this rule, holders of mining sales licences issued under the previous Regulation are expressly granted a period of 90 (ninety) from the date the new Regulation comes into force, to regularise their rights.

As we have said, the new Regulation does not come into force until November of this year, so its practical effects remain to be seen.

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