

THE REGULATION OF THE NEW MINES LAW



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Decree no. 31/2015 of 31 December recently came into force and approves the Regulation of the new Mines Law, established by Law no. 20/2014 of 18 August.

This Regulation establishes the rules for carrying on mining prospecting and research, development, exploration, processing and handling activities. It also establishes the rules for carrying out geological mapping, geological-mineral, metallurgical and scientific studies. The sale of mineral products carried out under a Mineral Products Sales Licence is excluded from the scope of the Regulation.

Although it does not make any dramatic changes to the rules on mining operations, the Decree that has just been approved includes more detailed provisions on some important issues, including:

i. The Mining Register

Besides establishing that the National Institute of Mines is the body responsible for dealing with the processes of awarding mining titles, the Decree has made it possible to obtain registration information digitally. Information can be obtained by paying a fee defined by a joint ministerial order of the Ministers of the Economy and Finance and of Mineral Resources and Energy.

Specific deadlines are established to do specific acts. These include 48 hours for the a member of the mining register staff to issue the warning for newspaper publication of notices, 15 days for the applicant to present proof of their publication, and 30 days after publication of the notices for the competent authority to process applications to acquire mining titles.

ii. Inspection, monitoring and evaluation

Mining activity is subject to inspection, monitoring and evaluation of the progress of the activities, in order to guarantee the quality and accuracy of the information and of the data generated in mining operations, and to guarantee the safe, rational and sustainable use and exploitation of mineral resources.

Inspection activity is classified as partial or full, and ordinary or extraordinary, and it is carried out by the General Inspectorate of Mineral Resources and Energy.

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iii. Public tender

The National Institute of Mines is the entity responsible for holding the public tender processes for mining activities and operations.

Taking into account the public interest and whenever necessary, a public tender process may be held to award mining processing and handling licences.

The decree expressly establishes the public tender as the means for holders of mining titles to acquire goods and services, whenever the value of those goods and services exceeds 15,000,000.00 MT (fifteen million meticaís). The public tender must be published in the relevant media.

The decree also establishes a series of requirements in this respect, which must be followed by the interested parties. These include an obligation on the part of foreign service providers to enter into association with Mozambican individuals or legal entities, and the obligation to give preference to local products and services when they are comparable with foreign products, materials and services.

iv. Fees and provision of guarantee

The regulation sets out, in an annex, the fees that must be paid for the processing of applications for mining titles and authorisations. The Ministers of the Finance and of Mineral Resources are responsible for updating the values of these fees.

When it comes to the provision of the **financial guarantees** to which operators and/or holders of mining rights are subject, there is a reduction of the amount in the following proportions:

- **Prospecting and Exploration** – 2% of the budget established in the programme of works, with the amount to be reviewed every 2 years;
- **Mining Certificate** – 1% of the value of the investment provided for in the technical-economic evaluation;
- **Mining Processing and Handling Licences** – 1% of the value of the investment provided for in the economic viability study;
- **Mining Concession** – 2% of the value of the investment provided for in the economic viability study.

The financial guarantee may be called on by the State in the event of a breach of the terms and conditions appearing in the mining titles and/or mining contracts that imply the revocation of the title in question. However, an exception to the obligation to provide the financial guarantee is established when, in light of the type of mineral resources and the scale of the mining operation, the Governor of the Province or the Minister waives the requirement for the guarantee at the request of the applicant.

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v. Forms of direct investment

The regulation provides that the domestic or foreign direct investment may take the following forms, individually or in combination, as long as they are capable of financial evaluation:

- Value paid in a freely convertible currency for the full or partial acquisition of shareholdings in companies incorporated in Mozambique, or for the mining title in cases of full or partial transfer, as long as the value is paid into a bank registered in Mozambique or into a foreign account authorised under the terms of the Exchange Law;
- Equipment and respective accessories, materials and other imported goods;
- In the case of domestic direct investment, infrastructures, premises and the assignment of rights relating to the use of the land, concessions, licences and other rights of an economic, commercial or technological nature;
- Assignment, in specific cases and under the terms agreed and sanctioned by the competent authorities, of the rights to use patented technology and registered trademarks;
- The amount spent on geological studies or other activities in the context of the obligations set out in the Mines Law.

The value of the direct investment must cover the expenses, properly entered into the accounts and confirmed by an auditing company of recognised standing, incurred in prospecting and exploration, handling, development, processing operations and other mining operations relating to prospecting and exploration, and to mining production in mines subject to a Mining Concession or Mining Certificate.

In relation to the investment made by the State, this will be covered by the increase in value of the existing resources and in other ways to be defined by the Government.

vi. Legal Framework of Mining Titles

It should be noted that the award of the right to mining exploration does not necessarily require the award of the right to use and exploit the land or other pre-existing rights, which will continue to be held by the State until the closure of the mining activities.

When the mining exploration right comes to an end, the State may award the right to use and exploit the land to other interested parties. The holders of pre-existing rights, or their legal representatives, benefit from a right of preference to reacquire any rights renounced in favour of the State for the purpose of mining operations.

The regulation that has now been approved dedicates specific sections to Prospecting and Exploration Licences, Mining Handling Licences, Mining Processing Licences, and to the Mining Pass and Certificate, and to the Mining concession. The regulation sets out the procedures for these titles to be granted, the content of the application, the procedure to be followed and the period of validity and conditions for the extension of the licences.

It is important to note that the Prospecting and Exploration Licence, the Mining Concession and the Mining Certificate are awarded upon the application of the interested party and through a public tender process.

The **Reconnaissance Licence** provided for in the previous regulation has disappeared and two new licences are introduced:

- **Mining Handling Licence;**
- **Mining Processing Licence.**

It is important to note that the Prospecting and Exploration Licence, the Mining Concession and the Mining Certificate are awarded upon the application of the interested party and through a public tender process.

The duties of the holders of the licences are set out in each section and vary according to the type of licence. These duties cover, among others, the deadlines to begin the activities and the deadlines to file annual reports on the explorations and to submit the programmes for works to be carried out in the following year, including the respective budget. Deadlines are also set for the communication of the discovery of any minerals, the beginning of mining production, submission of the programme of handling operations to be carried out in the following year, and submission of the plan for sale of the mineral products. The mining title must also demarcate the areas of the activity using easily identifiable concrete markers and an insurance policy must be taken out for the premises under the terms of the applicable legislation.

Another important feature of the new regulation is the introduction of a specific validity period for the following licences:

- **Prospecting and exploration licence for mineral resources for construction**, which is 2 (two) years, renewable once for an equal period;
- **Prospecting and exploration licence for other mineral resources**, which is 5 (five) years, also renewable once and for a maximum period of 3 (three) years;
- **Mining Concession**, which is valid for 25 (twenty-five) years from the date it is issued, and may be extended no more than once and for an equal period. It may not exceed 50 (fifty) years in total.

It is important to point out that the extraction of mineral resources for construction by users of the land does not require a mining title or authorisation in the following cases:

- a) When it is done by a Mozambican citizen to the extent and in the form allowed by local customs and on the land where it is usual to carry out this extraction;
- b) For construction of homes, storage and other personal premises;
- c) For production of handicrafts and ceramics.

Deadlines are also set for the communication of the discovery of any minerals, the beginning of mining production, submission of the programme of handling operations to be carried out in the following year, and submission of the plan for sale of the mineral products.

However, the Minister responsible for the area of the mineral resources must be consulted in advance, whenever the intention is to use natural resources for construction works in the public interest. Among others, there must be consultation over the construction and maintenance of dams, railways, public roads and other large engineering projects, in order to be able to establish whether there are any mineral deposits of national interest whose exploitation may be affected by the construction in question.

In these terms, the authorisation for extraction of mineral resources for construction is granted by the Minister responsible for the area of mineral resources as long as there is a provision in the contract approved in advance by the competent authorities and provided for in article 54(1) of the Mines Law (Law no. 20/2014 of 18 August), that the State will freely supply the mineral resources for construction.

Any mining operators and technicians authorised or hired by the holder of the mining title to carry out the mining activities must register with the National Directorate of Geology and Mines, in compliance with the rules established by Ministerial Order.

Mineral water also now has a specific section that establishes the requirements for the award of the mineral water prospecting and exploration licence. The regulation also provides that the area to which the licence applies may not exceed 117 hectares, and that the prospecting and exploration report must be submitted in electronic format, and in the form and with the content established in an annex to the regulation. The mining concession for mineral water is valid for 25 from the date it is issued and may be extended only once, for an equal period.

Provision is made for the transfer of the mining title, whether between living persons, or upon death or incapacity. The regulation sets out the conditions for the transfer, the deadlines for it to take place and the entities that authorise it.

Mining titles may be revoked on the basis of any of the grounds referred to in the Mines Law and when there is no response to the prior notice of the intention to revoke and the grounds to do so, within 60 (sixty) days of receipt of the prior warning. There will also be immediate revocation in the following cases:

- a) Non-payment of the taxes on the production or on the surface if, after 90 (ninety) days of the date on which the tax is due, the holder of the mining title does not make the payment in question plus any penalty interest established by law;
- b) Failure to carry out the activity mining or failure to submit the annual report on the works done for a period of 24 (twenty-four) months after the Prospecting and Exploration Licence is issued;
- c) Failing to begin mining production within a period of up to 48 (forty-eight) months after the Mining Concession is issued; and
- d) Failing to begin mining production within a period of up to 24 (twenty-four) months after the Mining Certificate is issued.

vii. Infringements and penalties

When it comes to infringements, the regulation provides for a penalty in the form of a fine equivalent to 60 minimum salaries in the extractive industry. This may be increased depending on the seriousness of the infringement, in the case of violations relating to the provision of false information.

Any title holder who submits the annual report on activities after the date established is also punished with a fine that varies according to the type of mining title they hold.

Besides the various infringements set out in the regulation, penalties are also established that include suspension of the activity or revocation of the mining title, which are applicable according to the seriousness of the violation of the legislation mining.

In conclusion, the mineral resources sector is one of the most important sectors for the development of Mozambique. As such, it has attracted major investors. For these reasons, the exploitation and sale of mineral resources must be carried out properly and in compliance with the rules set out in the regulation that has now been approved.

As we have already mentioned, Decree no. 31/2015 of 31 December sets out detailed regulations on the most important issues inherent to mining activity, principally, the various types of mining titles and the requirements and conditions for them to be awarded and maintained in order to safeguard the public interest.

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