

MOZAMBIQUE

1. Mineral Policy and Law

- The national goal is to obtain optimum benefit to Mozambique from present and future mineral development. In pursuit of this goal policy objectives are to:
 - Increase mineral production to increase foreign exchange reserves through exports and import substitution of minerals and mineral based products;
 - Minimise government direct participation in mineral activities;
 - Provide employment opportunities for Mozambicans and benefits from rural infrastructure development;
 - Protect the environment and health of the people; and
 - Promote small scale mining both as a source of income and employment in rural areas and to increase prospecting activities.

To achieve these goals, the mining law framework is being revised to include a specialised fiscal regime. Mines that were formerly state run now operate by wholly private or joint venture companies.

The law does not provide for state control of the industry nor require state participation in mining ventures.

- Ownership of minerals and other natural resources as well as land is vested in the state by Constitution provision. Land use and tenure is regulated in the Land Law and Regulations. Private property rights are otherwise fully recognised and guaranteed as well as freely transferable.
- Applications for rights are addressed to the Minister of Mineral Resources and Energy and submitted to and processed by the National Directorate for Mines.
- Mining activities are regulated by the Mining Law (No. 2/86 of 16th April 1986) and by the Mining Law Regulations (Decree 13/87 of 24th February 1987). Small scale mining and prospecting permits are governed by the Mining Certificate Regulations (Ministerial Decree 77/94 of May 25).

- There are five categories of licences differentiated according to the type of mining activity:
 - Quarry Permits;
 - Mining Certificates;
 - Reconnaissance Licence;
 - Exploration Licence; and
 - Mining Licence.
- Mining certificates are available only to individuals and cooperative associations for small scale artisanal operations and for general prospecting within a defined area. The holder is also entitled to prospect, peg and register a claim. On this basis the holder can obtain an exclusive certificate or a licence to explore and mine a claim. The mineral certificate has a duration of 2 years and is renewable.
- For medium to large-scale mineral activities the relevant titles are Reconnaissance Licence, Exploration Licence and Mining Licence. In application for these licences details of the applicant's identity, financial and technical resources, a work programme and budget must be provided. Periodic progress reports are demanded to monitor prospecting and mining operations.
- A Reconnaissance Licence is available for reconnaissance operations and is valid for one year. It covers large areas and entitles the holder the right to an exploration licence for a specific mineral in the reduced area. A mining rights surface tax is levied at US\$0.10/ha.
- An Exploration Licence is issued for an initial period up to four years consistent with the work programme and budget. The licence may be renewed for further periods of up to two years and for such other period as the Ministry may determine. At each renewal the holder relinquishes 50% of the original area (as may be appropriate) and submits an exploration programme and expenditures for the renewal period. The mining rights tax for exploration is levied at US\$1.00 for the first year and increased by US\$0.50/ha for every year thereafter.

- The holder of the Exploration Licence has the right to apply for and be granted a Mining Licence for the particular mineral and area under licence upon submission of a plan of mine development and production. The maximum period of the licence is 25 years of the life of the mine, whichever is shorter. The licence may be renewed for further periods not exceeding 15 years each. No mining rights tax is paid during the period of the Mining Licence, however a land use tax of US\$0.30/ha for the duration of the licence and royalty on production sales are levied.
- The Mining Licence holder is entitled to land rights. In case of conflict mining prevails.
- Mineral rights can only be transferred with prior approval of the Minister.
- Generally large scale and foreign investment projects are also subject to individual licencing agreements because of the complexity and duration of the operations as well as the need to provide for and regulate foreign investment guarantees and incentives.
- The Mining Law provides licence holders security of title to their exploration and mining rights unless they are in breach of the Law and its regulations or any of the terms or conditions on which a licence has been granted.
- Mozambique has established a National Commission for Environment which has general oversight of this area. There is a general provision in the Mining Regulations requiring licences to conform to the requirements for environmental protection of natural resources and the environment. A prerequisite to the grant of a mining licence is the presentation of an environment impact assessment and protection plan.

2. Fiscal Regime

- The Government welcomes and encourages direct foreign investment that results in benefits to the national economy while providing investors with fair returns. The economy is open to foreign investment in all sectors. There is no distinction in the treatment between foreign and local investors.

- Foreign investors are allowed to operate both local and foreign currency accounts. Foreign currency accounts can be denominated accounts whereby the availability and free transactability of the foreign currency funds are guaranteed. Foreign retention accounts where foreign currency receipts from Mozambique derived production and sales are received and held in foreign bank accounts are permitted on a case by case basis for mining enterprises.
- The local currency, the Metical, is not a freely convertible currency. The exchange rates with other currencies is set by the Central Bank, however, other rates within the overall parameters set by the Bank may be negotiated with banks and other financial institutions. There is a foreign conversion facility available for investment projects.
- The Banco de Mocambique (BM) is the Central Bank. It is the foreign exchange control authority both for registration of investment and for the remittance or repatriation of foreign investment profits and capital.
- The Banco Commercial de Mozambique (BCM) particularly offers support services to the agro-export, fish, trade, industry, transport and construction sectors. The Banco Popular de Desenvolvimento (BPD) focuses its services on savings-mobilisation and agricultural support, but also provides services to other business and financial institutions. Banco de Fomento Exterior Portuguese is a merchant bank. The Banco Standard Totta de Mozambique (BSTM) is concerned with credit to trade, industry and the service sector as well as providing private banking services. Equator Bank is involved in trade credit. A number of new financial intermediary institutions have been established which offer foreign exchange and investment services.
- Foreign investors obtaining domestic currency loans follow the same requirements applicable to nationals. Loans may be given for the short, medium or long term, depending on the nature of the undertaking. The foreign investor can arrange any loans required in foreign currency from abroad, with terms, interest rates, periods of grace and timing of repayments being subject to approval by the Banco de Mozambique. The prevailing interest rates are 30%.

- The right to repatriate capital, dividends and other distributions of profit is guaranteed by law.

3. Commercial Legislation

- Mining as is the case for other business activities can be undertaken in a personal capacity or through a commercial company. For a foreign person to carry on mining and other business operations including the opening of a bank account, obtaining an import or export licence, import duty exemption certificate and other operations and benefits, it is necessary to either incorporate a local company or register a local business agent (commercial representation).
- The registration of a commercial representation or agent is done at the Ministry of Commerce.

The steps to set up a local company include:

- Obtaining certificate from the Commercial Registrar that confirms that no other company name already exists similar to the name being proposed;
- Opening a bank account in the company name and deposit the minimum share capital specified (these funds may not be transacted until after the company's formation);
- Recording or filing the statutes or articles of association through the "escritura" which is a formalised written record of the company statutes;
- Publishing the statutes in the Boletim da Republica (Official Gazette); and
- Registering the company with the Commercial Register and with the local tax office.

Normal registration time will be around two to three months with average costs ranging anything from US\$500 to US\$1000

- There is no requirement for Government or local participation or ownership.
- Basic accounting requirements are established in the General Plan of Accounts. All businesses are required to keep accounts in a manner appropriate to their type of

operations, and to maintain proper records in the form of asset registers, daybooks and ledgers, retaining copies for ten years. This is supervised by the Ministry of Finance.

- The financial year in Mozambique runs from 1st January to 31st December. A company may, with the permission of the Ministry of Finance, opt for a different financial year. The company must for fiscal purposes close its books and prepare financial statements for the 1st January to 31st December financial year. The Ministry of Finance may also authorise the closing and reopening of the accounts at another date in the year for purposes of reconciliation with the financial or fiscal year of the foreign investor's country of origin, at the request of the investor.
- Disputes will be settled amicable or by arbitration. For authorised foreign investments, final recourse may be to the International Chamber of Commerce or to the International Centre for the Settlement of Disputes between States and Nationals of other States (ICSID) which is connected to the World Bank group. Mozambique is also signatory to the Multilateral Investment Guarantee Agency (MIGA).
- Employment of workers is governed by the Labour Law No.8/85 and recruitment of expatriates is governed by Legislative Decree No.1/76. Special procedures apply to expatriates recruited for authorised foreign investment projects.
- Employment contracts must be made in writing, and the Ministry of Labour must be informed of contracts concluded, except for seasonal workers.
- Unless special terms and procedures are set in an employment contract, the employment relationship is regulated by the Labour Law.
- The right to organise unions and negotiate collective agreements is guaranteed in the Constitution and regulated by Decree No. 33/90.
- Normal working day is eight hours and working week varies between 42 and 45 hours. Shorter hours may be adopted for health and safety factors. Shift workers receive a shift bonus of 15% of basic monthly pay. Employees are entitled to paid

vacation starting from the first year with 15 days, 20 days in the second and 30 days in subsequent years.

- There is a social security scheme for all workers.

4. Taxation Incentives and Duties

4.1. Mining Taxes

A mining sector tax regime has been drafted and is under consideration by Government.

The major provisions are as follows:

- Royalty is tax deductible and is levied on gross income at 3% for all minerals except:
 - Precious metals 5%
 - Gemstones 6%
 - Diamonds 10%
- Mining rights surface tax payable during reconnaissance and exploration at US\$1.00/ha. Payment of this tax exempts payment of land use tax during this period.
- Capitalisation of initial exploration and development expenditures to first year of production. Accelerated depreciation for this expenditure and thereafter standard straight-line rates.
- Unlimited carry forward of depreciation deductions; operating losses may be carried forward for a period of three years.
- Exemption of import duties, taxes and other charges on goods imported during and for purposes of exploration, development and mining.
- Exemption of duties and taxes on exports of mineral products.
- There is limited ring fencing to encourage exploration. In general, development and operating expenses are allowed as deduction in respect of the productive unit which they serve. There are two provisos to this rule:

- All exploration expenditure incurred in respect of a particular licence area may be taken as a deduction in respect of the first mine within that area brought into production; and
- Profits from a mine which are re-invested in the exploration and opening of new mines may be deducted as current expenses.
- Corporate Income Tax rate is 35%. A 50% reduction is allowed for a period of 10 years from start of production.
- There is no withholding tax on interest paid on foreign sourced loans (the normal rate is 18%).
- There is no withholding tax on dividends and other distributions of profits for a period up to ten years (the normal rate is 18%). A 100% remittance of such dividends and profits is allowed.
- The debt to equity ratio is set at 70:30.
- Tax exemption on expatriate staff salaries during exploration and development phases.
- Tax exemption on Consumption Tax and Circulation (Turnover) Tax on imports and exports.
- Additional Profits Taxes are applicable for exceptionally good projects.

4.2. Other Taxes and Incentives

- Subject to the exemptions applicable to mining projects, sales tax is levied on sales price of goods and services sold within Mozambique at the following rates:
 - 5% of producer/wholesaler invoices (including construction);
 - 10% in the case of retailer/service invoices;
 - 20% for hotels and restaurants; and
 - 5% on customs value of any imports.

- Customs Handling Fees are levied at 5% of the CIF value of imports and 3.5% in the case of exports (Imports and exports in mining projects are exempted from this charge).
- Consumption Tax, a form of luxury tax, is levied on a specific list of products based on the customs value of imported items or the local producer price. The maximum rate is 65%. (Imports and exports in mining projects are exempted from this charge).
- Tax is levied on transfers of real estate and is normally paid by the transferor. The effective rate is 7.25% on the first sale of a particular asset and 14% on any subsequent sale.
- Personal income tax is assessed at sliding scale rates which go from 6% up to 30% with a surtax on non-wage income of 15% to 40%. An optional flat rate varying between 15% and 30% is applicable to service contract (free-lance) income and in certain other cases.
- Capital Gains tax is chargeable and the rate is similar to that of corporate tax.
- Export tax is levied on all exports at a single rate of 0.5% of f.o.b. price of goods exported.
- There are tax relief provisions for setting up industries in rural areas. These vary and would include a 50% reduction in tax rate.
- Mozambique has a double taxation agreement at this time only with Portugal.