

MOZAMBIQUE

Global Vision, Local Experience.

NOVEMBER 2015

NEW MINING WORK REGULATION

With the recent discoveries of oil and mineral resources, the Mozambican market has welcomed a significant number of oil and mining companies.

With the recent discoveries of oil and mineral resources, the Mozambican market has welcomed a significant number of oil and mining companies. However, labour relations in these areas have certain specific characteristics that result from the unique nature of these activities. These specifics call for an equally specific regulation and, indeed, article 3(1)(c) of Law 23/2007 of 1 August – the Law of Employment provides that mining work should be governed by special legislation.

The new regulation of mining work addresses a major gap in the legislation on professional work in this area that has generated employment for Mozambican citizens, although there are also a significant number of foreign workers in the sector. To fill the gap in the legislation, the Mozambican Government has approved the Mining Work Regulation through Decree 13/2015 of 3 July. The new regulation governs labour relations between mining and oil sector employers, including subcontractor companies, and their employees, whether Mozambican or foreign. It also provides for supervision of employment conditions.

Mining work is defined as the set of activities that constitute mining activity. These consist of carrying on, together or separately, the activities of prospecting and research, development and extraction, mining processing and sale of mineral products. Oil operations are defined as planning, preparation and implementation of the activities of research and development,

production, storage and transport, as well as termination of those activities or terminating the use of infrastructures. In other words, mining work corresponds to the subordinate service provided to Mozambican and foreign employers that carry on mining activity under the Law of Mines and the respective Regulation.

The Mining Work Regulation includes the following chapters:

I. EMPLOYMENT RELATIONSHIP

Mining work admission requirements: the minimum age of admission to mining work is 18 years and an individual contract of employment must be made in writing. However, the employer, in cooperation with the trade union committee, must adopt measures to provide persons aged between 18 and 21 with working conditions to protect their health, and physical and mental integrity, ensuring any risks are prevented.

Suitability for mining work: candidates for mining work must undergo a medical examination to confirm their physical and mental suitability for the work. Employers must also subject their employees to annual medical examinations, or medical examinations every six months for employees who work in areas of greater risk.

If the employment relationship comes to an end for any reason, the employee must undergo a final medical examination upon termination of the contract of employment to check whether he or she has contracted any occupational disease. This measure results from recognition of the fact that mining work involves health risks after a certain period of employment. For this reason, as soon as the employment relationship finishes, it is necessary to establish whether the employee is suffering from any occupational disease and, if so, the rules set out in the Law of Employment will apply.

II. PROVISION OF WORK

The Mining Work Regulation introduces rules on working hours that are specially adapted to the mining and oil sectors. Nevertheless, these special rules do not completely exclude the rules on working hours contained in the Law of Employment.

However, as long as the average working period does not exceed 48 hours a week, normal working hours can be defined in average terms and by reference to six-month periods. Overtime and exceptional work is not taken into account for this 48-hour limit.

It is important to note that, in companies that engage in continuous operation and in those in which there is a normal work period, the employer must organise the work on an alternating basis, with shifts of different personnel. The duration of each shift may not exceed the maximum limits for working hours set out in the Law of Employment.

The conditions for shift working must respect rules including: operational period, which may not exceed 45 days; a rest period that does not include travel to and from the place of work, except if the employee chooses a longer journey than the one chosen by the employer; weekly rest days, complementary weekly rest days and public holidays, included in the operational work period are normal working days.

The weekly rest period for employees in the mining and oil sectors is one day, without prejudice to the compensatory weekly rest period.

Mining work on land

Working hours in underground areas may not exceed the maximum daily shift limit, which is 8 hours.

Taking into consideration the risk this work involves (flooding, fires, landslides, earthquakes and other phenomena that could endanger employees), the employer must adopt special protection measures for this work. Furthermore, whenever medical examinations reveal that the effects of underground work on the health of the employee exceed the limits established for this purpose, the employee must be transferred above ground and allocated tasks appropriate to the employee's residual capacity.

The Mining Work Regulation provides that, if it not possible to reassign this employee, the contract of employment must be terminated and the employee must receive compensation for any injury suffered and for the termination of the contract.

Mining work at sea

Working periods on offshore platforms cannot exceed 30 consecutive days. However, if there is an exceptional and temporary need, the employer may extend this period for a further seven days but, in this case, the employee must receive double time pay. Furthermore, all offshore platforms must provide medical assistance, which means a doctor, emergency room and medication.

Working hours in underground areas may not exceed the maximum daily shift limit, which is 8 hours.

III. RIGHTS AND DUTIES OF MINING SECTOR WORKERS

Employees with certain medical conditions may not work on offshore platforms. These include people with chronic conditions, people with neuromusculoskeletal disorders, people with a hearing impairment above 50 dB, people with visual capacity below 6/10 and, finally, women who are pregnant, have recently given birth or who are breastfeeding.

The employer must also ensure that employees are provided with meals and accommodation.

The Regulation dedicates a specific article to employees' guarantees. This article establishes that all mining and oil sector companies must have a collective insurance policy against accidents at work and occupational diseases.

Besides reaffirming the obligation to give preference to hiring Mozambican employees, and because mining work is done in sometimes difficult conditions and the mines are located along way from residential areas, Decree 13/2015 of 3 July also requires employers to provide accommodation for their employees.

With this legal instrument, Mozambique now has a specific set of rules on labour relations in the context of professional activities in the areas of mining and oil operations.

This newsletter was prepared by a multidisciplinary team made up of lawyers from TTA-Sociedade de Advogados and lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics. This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to tta.geral@tta-advogados.com.

Edifício Millennium Park, Torre A, Avenida Vladimir Lenine, n. 174, 6º Dtº, Maputo, Moçambique
T. (+258) 84 3014479 . F. (+258) 21 303723 . E. tta.geral@tta-advogados.com . www.tta-advogados.com