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NEWSLETTER

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Dear Reader:

In this number you can read: "Sharing of information about consumer rights to ensure more active participation by citizens" and "Detaching and Amalgamation of Mining Areas - An Aspect which the New Regulation of the Mining Law should not Omit".

We wish you a Happy reading!

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EDITOR'S LETTER

TECHNICAL INFORMATION

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CONTRIBUTORS: José Gerónimo Tovela, Manuel Virgílio Bila Júnior.

SAL & Caldeira Advogados, Lda. is a member of DLA Piper Africa Group, an alliance of leading independent law firms working together in association with DLA Piper, both internationally and across Africa.

We would like formally to share with our clients, friends and the general public the new image adopted by SAL & Caldeira Advogados, Lda. Its official launch recently took place at our offices. (Photos of the event are below.)

SAL & Caldeira is today a well-known brand in the Mozambican and international markets. The constant evolution in our country and the world obliges us to keep up with the fast pace of change.


After a period of careful consideration, we decided formally to join DLA Piper, a group of international law firms with over 4,200 lawyers in several continents.

We maintain our legal personality and independence but benefit from the experience and knowledge accumulated by DLA Piper over many years, participating in training and joint marketing initiatives, coordinated assistance to clients, especially in multi-jurisdictional transactions, improving our information technology systems and in other areas. We are convinced that we are also making a contribution to the expansion and scope of DLA Piper.

For some time we had been thinking about the need to renew our image and brand. It was not easy, but as with other organizations, it was necessary to do so. So we took advantage of the happy coincidence of our partnership with DLA to produce and adopt a new image that we will use from now onwards.

We currently have 89 employees, including 48 lawyers, so we are one of the nation's largest law firms. We have been recognized and classified as a top firm by IFLR and Chambers Global.

Our firm has always given priority to the permanent training of Mozambican staff, attempting to achieve excellence in services provided to both national and international clients and to cultivate a relationship of respect with all its partners.

We are pleased with our decision to open the Tete office and convinced that the investment recently made in our new Pemba branch will further promote our activity. 



SHARING OF INFORMATION ABOUT CONSUMER RIGHTS TO ENSURE MORE ACTIVE PARTICIPATION BY CITIZENS

The Mozambican market is growing and expanding. For this growth to be balanced and regulated, policies and regulatory standards should accompany this development by creating foundations for the protection of investors, the state, and consumers, among others. It is in this context that we find rules on protection of private property, free competition, fair competition, benefit sharing and the rights of consumers, among others.

In this article we focus on Law No. 22/2009, of 28 September, approving the Consumer Protection Law (the "LDC"), in order to share with readers some of the protections provided to consumers. Notwithstanding the fact that this law dates from 2009, we note that society's knowledge about consumer rights is limited and there is a weak culture of respect for these rights, and also little information-sharing and support by the relevant authorities.

Firstly, it is important to note that the LDC applies to both natural and legal persons, whether public or private, where these are exercising a commercial or industrial activity, by charging a price (LDC, Article 3). Additionally, note that for the purposes of LDC a "consumer" is anyone to whom goods or services are supplied, rights transmitted, or tasks carried out by a person pursuing economic activity on a professional basis aimed at obtaining benefits, as long as said goods, services, rights or tasks are intended for non-professional use.

Below we highlight some of the protections afforded to consumers:

a) Consumer rights. Article 5 of the LDC establishes the following consumer rights:

- quality of goods and services;
- protection of life, health and physical security;
- information for the consumer;
- protection of economic interests;
- the prevention and repair of pecuniary or non-pecuniary damage resulting from injury to individuals, groups, collective or diffuse rights;
- after sales service which must ensure the supply of parts and accessories for the normal average life expectancy period of the goods supplied;
- provision of a detailed budget breakdown, with the value of labour, materials and equipment to be used clearly discriminated, and including the terms of payment and the date of commencement and termination of services, with the estimate valid for 10 days from the date of receipt.

b) Signing a contract: the LDC establishes that contracts governing consumer relations only bind the parties if the consumer has been given the opportunity to have prior knowledge of the contract's contents, or if the contract is written in such a way that it is not difficult to understand its meaning and scope. Should the consumer be provided with services or goods which they did not request there is no obligation on them to make payment or to cover the cost of return or compensation. Note that, in general, contract terms must be construed in favour of the consumer. The consumer is allowed to withdraw from the contract within 7 working days for any reason, and the amounts paid shall be returned.

c) Adhesion contracts: these should be drafted in clear terms, with conspicuous and legible characters, in order to facilitate their understanding by the consumer; and the clauses limiting consumer rights shall appear prominently.

d) Unfair terms and practices: all unfair terms or those presumed to be exaggerated are void and of no effect though nullity must be invoked by the consumer or their representative. The LDC lists in its Article 29 some of the practices considered unfair:

e) Information and publicity: published prices must be clear and visible, expressed in Meticals, including taxes and fees. All information and publicity

must contain correct information, and be clear, precise and in Portuguese as relates to features, quality, quantity, composition, price, warranty expiration dates, origin, and risks posed to health and safety.

f) Payment in instalments: the provisions on purchase of movable goods by instalments are null and void if they establish the total loss of amounts paid to the creditor because of failure by the consumer to opt for contract termination and the return of goods.

g) Consumer rights protection bodies: consumer associations are primarily intended to protect the rights and interests of consumers and / or their members. The public prosecutor also has a duty to protect consumers. The LDC provides for the existence of a Consumer Institute with skills to promote consumer rights policies, as well as to coordinate and implement consumer protection measures, and provide information and education, and support for consumer organizations. However so far this institute is not operational.


h) Penalties: in addition to lawsuits that consumers can bring against suppliers of goods or services where rights are violated, the following administrative penalties may also be applied:

- 10% fine based on the value of the sale;
- seizure and / or destruction of property;
- manufacturing ban on the goods in question;
- suspension of the supply of goods and services;
- temporary suspension of the activity;
- revocation of concession or license;
- total or partial ban on establishment, construction work or activity

i) Complementary rules: the LDC provides that national and local government should regulate for the protection of consumer rights, monitor and control the production, manufacture, distribution, and advertising of goods and services and the consumer market, in the interests of preservation of life, health, safety, consumer information and well-being, promulgating the relevant additional rules.

It should be noted that consumer protection can be found in other legislation, such as the Advertising Code, approved by Decree No 65/2004 of 31 December which prohibits misleading publicity, among other matters, the Industrial Property Code, approved by Decree No. 4/2006 of 12 April, prohibiting the counterfeiting of trademarks, among other matters, and sector-specific regulations for industry, trade, and tourism, among others, which define business performance and quality control standards for goods and services in these sectors.

It is also worth noting that the Constitution provides for the right of citizens to: apply for compensation to which they are entitled; promote the prevention, cessation or prosecution of offenses against public health, consumer rights, environmental protection and cultural heritage; and to defend the property of national and local government (although it should be noted that the draft Law on Popular Action (class action) has so far not been approved, despite its importance in enabling more active participation by citizens in defence of their rights and of the proper use of public property).

We hope that this article helps inform people about the existence of the LDC, among other legislation, to enable them to actively participate in building a more disciplined market in order that people can be more aware of preventive measures and can react to rights violations and ensure compliance with legal requirements. It is imperative, however, that the relevant authorities establish the mechanisms and complementary measures that allow for the actual implementation of the aforementioned laws. 



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DETACHING AND AMALGAMATION OF MINING AREAS - AN ASPECT WHICH THE NEW REGULATION OF THE MINING LAW SHOULD NOT OMIT

The new Mining Law (Law No. 20/2014 of 18 August), which was recently approved by Parliament and promulgated at historic speed, introduces important matters such as the increased involvement of nationals in the exploitation of mineral resources, and the criminalization of certain mining-related practices, and seeks to promote greater benefit sharing by communities.

Established mining companies and those with interests in Mozambique hoped that the new Mining Law would be more attractive for investment and facilitate the development of mining for the benefit of owners and operators, the Government and the people of Mozambique. While the law shows significant progress in socio-economic matters, it leaves much to be desired in some provisions such as on procurement for the purchase of goods and services, the settlement of rights acquired under the previous law, and deadlines for environmental and DUAT license acquisition by mining concessionaires. These are matters that can (and hopefully will) be addressed in detail in the regulation, in order to provide the mining sector with greater certainty and legal security which are essential for the consolidation of a globally competitive mining industry.

Since there is ongoing debate about the proposed Regulation of the Mining Law, which we hope will address and fill some gaps left by the Law, we take this opportunity to provide our humble contribution to the proposed composition of the regulation, in particular with regard to the importance and relevance of the inclusion of the concepts of detaching and amalgamation of mining areas.

Detaching is the fragmentation of a mining license area, resulting in two or more tenements, covered by different mining titles. In contrast,

amalgamation is the joining of two or more distinct mining license areas, resulting in the formation of an area covered by a single mining title. These two tools (or mining management instruments) are important for the development of mining, enabling mining title holders to have recourse to them to monetize their investments. Generally in Mozambique mining companies first require an exploration license which enables them to perform survey operations to verify the existence or quantity of mineral resources. Depending on the results of this research, the company may require a mining concession (a mining title that allows extraction and exploitation of mineral resources) when the survey result is positive. Alternatively the company may simply give up and leave the entire area when research shows that the area is not (sufficiently) productive, or may abandon part of the area and maintain the productive part.


During mining exploration or survey, the operator may discover that the area adjacent to the one for which it has a license or title also has natural resources of interest, and may therefore want to extend the limits of its current license area, to also occupy the nearby area. The current regulation of the Mining Law (approved by Decree No. 62/2006 of 26 December) allows for extension of mining areas. Therefore, the mining title or license holder can request from MIREME the right to extend its license area, which will allow the annexation of a contiguous area, forming a single, larger area.

Given that mining activity is consolidating in Mozambique, new issues are emerging. For example, in recent times, some mining operators have shown interest in detaching or amalgamating mining areas. But the lack of legal provision for this has been a stumbling block. That is understandable. The previous Mining Law (Law No. 14/2002 of 26 June) was developed at a time

when mining was in its infancy. However, the situation has changed significantly in the last ten years due to the "race to mining" by large multinationals that have projects in Mozambique, and there is therefore a need to develop new legal instruments that are appropriate to the practical realities.

Normally, to circumvent the lack of legal provision for detaching and amalgamation, mining operators resort to negotiation with MIREME, in order to obtain the necessary permits to carry out these operations. It is important to acknowledge the assistance rendered by MIREME in these circumstances. MIREME has received requests from operators and instructed the DNM (which under the new Mining Law will be transformed into the National Mining Institute) to receive and process requests for detaching and amalgamation made by companies.

But legal uncertainty greatly affects companies. They are not comfortable depending on the "goodwill" of MIREME to detach or amalgamate mining areas. Therefore, the existence of legal provisions regulating these matters would be a guarantee that, if compliant with the necessary legal requirements, companies could detach or amalgamate mining areas in order to facilitate their projects in Mozambique.

Since these are matters of vital importance to mining operators, we believe that the current process of preparing the new regulation of the Mining Law is the perfect opportunity for the executive to include the concepts of detaching and amalgamation of mining areas thus ensuring a more modern and flexible legal framework for mining. A legal framework adapted to the current situation will provide significant advantages for everyone, especially for the country. 



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