



Republic of Mozambique

Investment and Exports Promotion Agency (APIEX)

Laws and Regulations Related to
Foreign Direct Investment in Mozambique

August 2017

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NOTE 2 – To the extent possible, all references made to “CPI”, “GAZEDA” and “IPEX” should be understood as “APIEX”.

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COUNTRY PROFILE

Flag	
Official Name	República de Moçambique
Capital	Maputo
Population	27.98 million (2015)
Currency	Metical (MZN)
GDP	\$14.69 billion (2015)
Government	Unitary Presidential Republic

Laws and Regulations Related to FDI in Mozambique

Political Leaders	Filipe Nyusi (President) Carlos Agostinho do Rosário (Prime Minister)
Independence	Since 1975 (from Portuguese Colonization)
Bordering Countries	Tanzania, Malawi, Zambia, Zimbabwe, South Africa and Swaziland
Languages	Portuguese (official)
Major Religions	Christianity, Islam, Indigenous beliefs

CHAPTER I – INTRODUCTION

After becoming an independent State, Mozambique was plagued by a long and severe civil war, which ultimately resulted in an economic collapse led by the lack of investment, nationalization of privately owned industries, as well as widespread food shortage.

The 1992 peace agreement marked the transition from civil war to peace, culminating in the country's first democratic elections of 1994 and the emergence of the Front for the Liberation of Mozambique (Frelimo) as the dominant political force in the country; a fact that still holds true today.

In 1993 the Mozambican Government approved the Investment Act to foster and promote both national and foreign investments in the country, granting various benefits and incentives, which include: tax and custom duties exemptions, free remittance of funds, and the possibility of hiring more foreign workers than those permitted by law. These incentives vary according to the economic and industrial activity pursued and the region of implementation of the project.

Mozambique's rapid economic expansion over the past decades has had only a moderate impact on poverty reduction, and the geographical distribution of poverty remains largely unchanged. Despite the recent discoveries of natural resources in the oil & gas sectors, Mozambique is undergoing serious economic and political crisis and needs to improve its social indicators. The country ranked 178th out of 187 countries in the most recent Human Development Index (HDI). The adult literacy rate is 56% (fifty six percent), and average life expectancy at birth is just 50,3 (fifty point three) years.

In January 2015, after the 5th (fifth) peaceful election process, Mozambique's fourth president came into office Mr. Filipe Nyusi. His party also secured a strong majority in the parliament, with 144 seats out of 250 in total.

CHAPTER II – GENERAL BACKGROUND

1. Brief description of the legal system

The entire Mozambican legal system is anchored in the Constitution of Mozambique, in its current version adopted in 2004. The Mozambican system clearly sets forth the separation of executive, legislative and judicial powers, each of which are embodied in different entities that must be taken into account.

The executive is composed by (i) the President, elected by universal ballot for a 5 (five) year term, who is considered the Head of State, Head of the Government and Commander-in-Chief of the Defense and Security Forces and has at his disposal a consultative body named Council of State; and (ii) the Government, composed by the President of the Republic, the Prime-Minister and the Ministers, together forming the Council of Ministers. Additionally, the Government holds legislative powers, being entitled to produce Decrees in matters authorized by the Parliament.

The Parliament, together with the Government, holds the legislative power and is a unicameral assembly composed by 250 (two hundred and fifty) members, representatives of the political parties elected in each parliamentary election for a 5 (five) year term. Being the body which, *par excellence*, represents the people of Mozambique, the Parliament is entitled to approve laws on every matter by simple majority.

Courts are the bodies entitled with judicial power including the Supreme Court, the Administrative Court (the highest hierarchical court in administrative, tax and customs matters) and the judicial courts - all independent sovereign bodies that administer justice on behalf of the people, guaranteeing compliance with the Constitution, laws, and all other legal provisions in force, while safeguarding the rights and legitimate interest of the citizens and institutions. According to the Law of Judiciary Organization, the judicial system is divided into District Courts, Provincial Courts, the Appeal Courts and the Supreme Court. On matters with a constitutional nature, the competent court is the Constitutional Council, with powers to verify and declare compliance of any legal provision with the Constitution.

The legal system in Mozambique is based on civil law, meaning that legislation is the primary source of law. Court decisions are only binding on the parties and over the matter they refer, thus the precedent rule applicable in common law systems such as the USA, UK and South Africa is not applicable in Mozambique.

As for the Law, the primary source in Mozambique, it is produced in the first hand by the Parliament and, in matters duly authorized, by the Government. It is binding on every person under the Mozambican jurisdiction on equal terms, as the law must contain general and abstract provisions applicable in compliance with the principle of equality. The legislative procedure will be further explained in section 3 of this chapter.

Regarding international law, according to article 18 of the Constitution of Mozambique, the treaties and international agreements which are validly approved and ratified are enforceable in the Mozambican legal system upon official publication, and for as long as they are still valid in the State of Mozambique.

2. Hierarchy of laws and authorities

According to the Mozambican hierarchy of laws, the highest prevailing diploma is the Constitution, followed by the Laws produced by the Parliament, then the Decree-Laws issued by the Government, the Decrees of the Council of Ministers, the Presidential Decrees, the Ministerial Diplomas and, lastly, the Ministerial Orders, all in this respective order.

Public Administration¹ is divided into two fields: the Direct Administration and the Indirect Administration.

The Direct Administration of the State is divided in two areas: the Central Administration and the Local Administration.

The Central Administration is composed by a group of bodies with the authority to operate in any territory in Mozambique such as, for instance, the Government. On the other hand, the Local Administration is only competent to operate in a limited territory.

The Central Administration is composed by Central Administrative Bodies (the President, the Prime-Minister and the Ministers), Independent Central Bodies (such as the Ombudsman), public services, temporary entities (entities incorporated to pursue a certain temporary interest) and the representations of the State's Administration overseas, namely embassies and consulates. The Local Administration is composed by the local authorities.

On the other hand, the Indirect Administration of the State is composed by the public institutions entrusted to an independent legal personality created by the central bodies of the State to develop a certain administrative activity for the purpose of achieving the goals to which they are created for. These are, for instance, the Bank of Mozambique, Public Institutes, Public Foundations, Public Funds and the entire State-owned company sector.

3. Brief description of the legislative process

In order for a law to be produced, there are certain acts that must occur so that the legislative procedure is triggered. This procedure is divided in three stages: (i) initiation; (ii) constitutive stage; and (iii) enactment and publication.

¹ According to Law no. 7/2012 of February 8th.

According to article 183 of the Constitution of Mozambique, the legislative initiative belongs to the members of the Parliament, to the Parliamentary Committees, to the Parliamentary Benches, to the Government or to the President of the Republic of Mozambique². One of the aforementioned bodies shall produce a bill (“*projecto de lei*” if the bill is the parliament’s initiative or “*proposta de lei*” if the initiative belongs to the Government) and submit it to the President of the Parliament, who then forwards the bill to the relevant Parliamentary Committee. Once received by the respective Parliamentary Committee, the bills are analyzed by the committee, which produces a report and an opinion to commence the constitutive stage, where the discussion of the bill occurs.

The constitutive stage is divided in two debates: the general debate and the specialized debate. In the general debate, the body that was responsible for the legislative initiative presents the bill to the Parliament, discussing its underlying principles and the requirements for enforceability of the law, followed by the presentation of the aforementioned report produced by the Parliamentary Committee. After this presentation, the bill is subject to a first voting. In case the vote is in favor of passing the bill, a specialized debate shall follow, during which the bill is discussed article by article by the competent Parliamentary Committee. However, the plenary may invoke the right to have the specialized debate within the Parliament. Lastly, and after these two debates, the bill is subject to a final overall debate and submitted to a final voting.

Upon approval, the bill is sent to the President of the Republic, who shall sign and enact the law within 30 (thirty) days. Beforehand, the President may request the Constitutional Council to issue an opinion on the compliance of the bill in terms of the Constitution. Once the Constitutional Council notifies the President of its assessment, the latter may veto the bill or, within 30 (thirty) days of receiving the assessment, enact it. In case the bill is vetoed, it is returned to the Parliament. This time, if 2/3 (two thirds) of the members of the Parliament vote favorably, the President shall mandatorily enact the bill.

The last step of the procedure is the publishing of the law (*sensu lato*) in the Official Gazette in order to become fully valid and enforceable.

The Official Gazette³ is divided in three series. Series I publishes laws, decree-laws, decrees, resolutions, orders and other legislative acts. Series II of the Official Gazette publishes decrees, orders, authorizations issued by the public administration and courts decisions that require publishing. Series III publishes land and mining concessions and permits, municipal regulations, incorporation, by-laws and amendments to associations, foundations and companies.

² The law does not yet provide for public consultation in the legislative process.

³ The Official Gazette is available only through paid services. Physical copies of the Official Gazette can be obtained at the *Imprensa Nacional de Moçambique* with the payment of a fee.

4. General description of procedure for adoption or amendment of laws and regulations

The procedure to adopt or amend a law is similar, since a legal diploma can only be revoked, modified or amended by a diploma with the same hierarchical rank - *please refer to sections 3 and 5 of the present chapter.*

a. Public consultation requirements

Although a proposal has been drafted and is awaiting discussion, Mozambique is yet to approve a Law on Public Participation in the Legislative Process. The Constitution allows for the participation of the people in the democratic process but no requirements or framework is still available.

Availability and access of the public to draft bills

The Law on Information⁴ regulates the right to information and mechanisms to exercise it by enabling any person to request, search, consult, receive or disseminate information of public interest. The bills currently under discussion are presented on the website of the Mozambican Parliament, therefore, even if the content is not made available, the Bylaws of the Parliament – determines in article 66 (2) (k) – that the sessions of the Plenary are public; permitting anyone to attend the debates.

b. Publication or dissemination requirements

As previously mentioned, the publication of the recently enacted diploma is a mandatory requirement for the diploma to be applicable. Without the publication on the Official Gazette, the diploma is not enforceable.

5. System for regular review of current laws

The laws in Mozambique can be reviewed at any time, insofar as compliance with the principles of the legislative process explained above in section 3, and provided the legal diplomas are modified by laws embodied with, at least, the same hierarchical rank. For instance, a mere order or a regulation cannot modify or revoke a decree-law or a law, but it can modify another regulation since it is a diploma with the same hierarchical rank.

On the other hand, the Constitution establishes a system of revision of constitutional rules in articles 291 to 296. That framework establishes that the initiative can emerge both from the President of the Republic or from 1/3 (one third) of the members of the Parliament. However, the revision laws

⁴ Approved by Law no. 34/2014 of December 31st.

may not affect certain subjects, namely the independence of the State of Mozambique, the separation between State and Religion and the republican form of Government.

The amendments to the Constitution must be approved by at least $2/3$ (two thirds) of the members of the Parliament and compiled in one single revision law that the President of the Republic must enact.

CHAPTER III – TREATIES AND INTERNATIONAL INVESTMENT AGREEMENTS

1. Membership in international treaty organizations, economic organizations and free trade areas

The Republic of Mozambique is a member of the African, Caribbean, and Pacific Group of States (ACP), African Development Bank Group (AfDB) and African Union (AU), *Comunidade dos Países de Língua Portuguesa* (Community of Portuguese Speaking Countries - CPLP), Commonwealth of Nations, United Nations (UN) and World Trade Organization (WTO) amongst other organizations.

2. Bilateral and multilateral treaties and international investment agreements signed/ratified

Mozambique has signed 25 (twenty five) Bilateral Investment Treaties (BIT) with Algeria, Belgium-Luxembourg, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Mauritius, Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom, United States of America, Vietnam and Zimbabwe.

BITs aim to foster and protect foreign investors from other Contracting Party's state whenever they invest in Mozambique or whenever Mozambican's citizens invest in the other Contracting Party's territory. Currently, only 3 (three) of the abovementioned BITs have not been transposed into the domestic law: Spain, UAE and Zimbabwe, and thus are not yet in force.

All BITs signed by Mozambique include the common provision of the "Most-Favored-Nation" principle, which states that the Contracting Parties are forbidden to treat the investments made by a foreign investor in a less favorable manner than the investments made by domestic investors. Also, it is provided that investors from a Contracting Party will always benefit from the most favorable treatment granted by that Contracting Party to another nation.

This principle protects every national of the Contracting Parties that have executed a BIT with Mozambique and represents a guarantee of non-discrimination.

In addition to the protection of the investor and its investment, the BITs also establish clear rules for settlement of disputes. The majority of the BITs signed by Mozambique establish that in case of dispute the parties should try to settle amicably within 6 (six) months as of the date on which the dispute arose.

Also, the BITs usually stipulate that the parties waive the right to demand that all domestic administrative or judiciary remedies be exhausted first, and that it is the investor's choice to opt for submitting the dispute to judicial entities or to international arbitration as mentioned below.

The two most common rules for settlement of disputes are: (i) submission of the dispute to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of March 18th 1965 on the Settlement of Investment Disputes between States and Nationals of Other States; or (ii) arbitration set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Double Taxation Agreements

There is international juridical double taxation in the presence of: (i) an imposition of comparable taxes in two (or more) States, (ii) on the same taxpayer, and (iii) in respect of the same subject matter and for identical periods.

Double Taxation has harmful effects on international exchange of goods and services and cross-border movements of capital, technology and persons. Mozambique entered into nine treaties for the avoidance of double taxation (DTT).

In order to avoid Double Taxation the Organization for Economic Co-operation and Development (OECD) Committee on Fiscal Affairs adopted, in 1963, the OECD Model Tax Convention on Income and on Capital that aims to clarify and standardize the tax situation of taxpayers who are engaged in activities in other countries; as well as provide a means to uniformly settle the most common problems that arise in the field of international juridical double taxation. These DTTs follow the OECD Model of Tax Convention. The terms of each DTT applicable tax rates and concepts vary depending on the period in which each of them was concluded. Reduced withholding taxes vary as follows:

Country	Dividends	Interest	Royalties
Botswana	0% 12%	10%	10%
India	7,5%	10%	10%
Italy	15%	10%	10%

Macao	10%	10%	10%
Mauritius	8% 10% 15%	8%	5%
Portugal	15%	10%	10%
South Africa	8% 15%	8%	5%
United Arab Emirates	0%	0%	5%
Vietnam	10%	10%	10%

4. Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents (“*Apostille Convention*”)

Mozambique has not ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, commonly known as the “*Apostille Convention*”. Thus, in order to be considered valid and enforceable in Mozambique, foreign-issued documents must go through a legalization process. The Mozambican Civil Code⁵ specifically states that public and private documents issued overseas are recognized with the same validity and reliability as locally-issued public and private documents. However, if doubts arise as to such documents’ authenticity, they shall only be accepted if the legalization process is duly completed - public and private documents are deemed legalized if the signature of the civil servant is certified by the Mozambican diplomatic official in the country of issuance of such document.⁶

⁵ Article 365 of the Civil Code.

⁶ Article 540 of the Civil Procedural Code.

CHAPTER IV – INVESTMENT INCENTIVES

1. Definition of foreign investor or foreign investment

Under the Investment Law⁷, a foreign person is “*any individual whose nationality is not Mozambican or, in the case of legal persons, the company originally incorporated under the legislation of another country, or which, having been incorporated in the Republic of Mozambique, has more than 50% of the respective share capital held by foreign persons*”.

Furthermore, this definition of foreign direct investment (hereinafter “FDI”) is similar to the definition set forth under the Foreign Exchange Law⁸ whereby FDI is considered as “*any form of foreign capital contribution valuable in monetary terms which constitutes equity capital or own resources at the own account and risk of the foreign investor, brought from external sources and to be used in an investment project with the purpose of carrying out an economic activity, thorough a company registered in Mozambique and operating from the Mozambican territory*”.

2. Incentives or support available to encourage foreign investment

The Mozambican Government approved the Investment Law and Regulation⁹ to promote and foster both national and foreign investments in the country, granting various benefits and incentives which include, namely, tax and custom duties exemptions, free remittance of funds and possibility of hiring more foreign workers than those permitted by law. These incentives will vary according to the economic and industrial activity pursued and the region of implementation of the project in the country, with the possibility of applying special benefits for certain sectors such as mining, oil and gas.

In order to be eligible for these benefits, foreign investment must consist of (i) freely convertible currency; (ii) infrastructures, equipment, materials and other imported goods; (iii) operating rights over concessions, licenses and other rights of an economic, commercial or technical nature; and/or (iv) concession rights to use patented technologies or registered trademarks.

The following incentives may be granted, in general, to all investors in Mozambique¹⁰:

⁷ Enacted by Law no. 3/93 of June 24th.

⁸ Enacted by Decree no. 83/2010 of December 31st.

⁹ Enacted by Decree no. 43/2009 of August 21st.

¹⁰ Free remittance of funds abroad is always granted together with the authorization of the investment project, which defines its terms and conditions. Provided the formalities in the Investment Law and Foreign Exchange Law are complied with, the remittance of funds operates regardless of further approval. Nevertheless, in situations of economic crisis where the

- Free remittance of funds abroad and re-export of invested capital;
- General tax and customs incentives, granted under the Mozambican Code of Fiscal Benefits, namely:
- Custom duties and Value Added Tax (hereinafter “VAT”) exemption on the import of goods and machinery classified as Class K in the Customs Tariff (corresponding to capital goods);
- Investment tax credit for new tangible fixed assets acquired by and utilized in the investment project;
- Accelerated depreciation and reintegration of new or rehabilitated immovable assets used in the development of the investment project;
- Deductions from taxable income for the purposes of calculation of corporate income tax regarding specialized equipment utilizing new technology;
- Deductions from taxable income for the purposes of calculation of corporate income tax regarding investment in professional training;
- Special tax and customs incentives may be applicable to each project, granted under the Mozambican Code of Fiscal Benefits or under special legislation approved for particular sectors of activity, such as:
- Large dimension projects benefit from an exemption of payment of custom duties and VAT on the import of construction materials, machinery, equipment and accessory parts and other goods used or required for the development of the activity;
- Investments exclusively in activities carried out in Accelerated Development Economic Zones¹¹ also benefit from the abovementioned exemption of payment of custom duties and VAT and an additional investment tax credit equal to 20% (twenty percent) of the total investment realized;

foreign currency is scarce, the investor may face challenges in transferring funds abroad as generally all operations might be on hold or take longer to be effected by the banks. In regard to the tax and customs incentives, these are also automatically granted to authorize investment projects that meet each incentive’s requirements. It might be however discussable with the authorities whether a given good or machinery is classified as Class K in the Customs Tariff, therefore benefiting from additional incentives as per described above.

¹¹ The Zambeze River Valley zone, Niassa Province, Nacala district, Ilha de Moçambique (Mozambique Island), Ibo Island and other areas which may be approved by the competent authority.

- Oil operations, which are governed by a Specific Regime of Taxation and Tax Benefits¹² specifically adapted to this sector of activity; and
- A Specific Regime of Taxation and Tax Benefits for Mining Activities¹³.

The Investment Promotion Centre¹⁴ (CPI), a Mozambican governmental agency with the aim of attracting and retaining domestic and foreign direct investment, was established to render the following services:

- Institutional assistance to investors in the approval and implementation of investment projects;
- Promotion of business cooperation between small and medium-sized companies and large national companies;
- Identification of business partners including financial and technical partners;
- Identification and dissemination of investment opportunities;
- Monitoring and support investment projects, namely to resolve constraints.

In addition, the Institute for Export Promotion (IPEX), a non-profit entity aiming to foster and coordinate policies and measures to develop Mozambican exports, and the Offices of Accelerated Development Economic Areas (GAZEDA), a Mozambican state body with autonomous governance in the sector of planning and development, are also entities that play a relevant role in promoting and assisting investment projects in the country¹⁵.

¹² Enacted by Law no. 27/2014 of September 23rd and Decree no. 32/2015 of December 31st.

¹³ Enacted by Law no. 28/2014 of September 23rd and Decree no. 28/2015 of December 28th.

¹⁴ The CPI functions as a coordinator with other public entities and authorities which may be involved in the investment project. It is therefore responsible for identifying possible constraints the project may be facing, of whichever type and nature, and propose solutions. If the CPI does not have the required competences to resolve the constraint, it shall refer the matter to the appropriate authority and mediate with the investor.

Complaints regarding a decision on investment matters may be submitted to the responsible CPI or GAZEDA, duly justified and grounded. The complaint will be forwarded to the relevant authority, that must reply within 20 (twenty) days. After this period, the CPI or GAZEDA will submit a proposal with solution to the competent Minister, who shall issue the final decision.

¹⁵ The Decree no. 60/2016, of December 12th, recently approved, establishes that these 3 individual bodies, CPI, GAZEDA and IPE will be extinguished and their competence will be fused into one entity to be known as the Institute for Foreign Investment and Commerce (“Agência de Investimento e Comércio Estrangeiro”) in Mozambique. This is an effort in harmonizing and promoting foreign investments, imports and exports. The institute will also have regional representation as well as headquarters in the City of Maputo. This diploma has not yet come into force.

3. Investment guarantees (e.g., against expropriation)

The State guarantees security and legal protection of all property on goods and rights, including industrial property. Any expropriations shall be motivated by national interest reasons and, if so, must be justly and equitably compensated. The BITs executed and in force in Mozambique also contain a protection provision against expropriation.

Furthermore, the free remittance of funds is also protected by the Investment Law and Regulation. Provided the original investment project has been duly approved and the applicable foreign exchange formalities have been complied with¹⁶, the law ensures the remittance abroad of:

- Exportable profits;
- Royalties and other similar payments;
- Amortization of loans and payment of interest on loans contracted in the international financial market and applied in investment projects in Mozambique;
- The proceeds of any compensation paid in conformity with the protection of property rights; and
- Invested and re-exportable foreign capital.

¹⁶ Compliance with the foreign exchange formalities mainly relies on the registration or request for authorization of transactions in the Central Bank. The process often requires a detailed description of the transaction and a great amount of supporting documentation. The registration of each operation requires the delivery of all documentation, even if prior transactions under the same agreement have already been registered. Notwithstanding, the forex procedures may be complied with the adequate accompaniment of required documentation.

CHAPTER V – RESTRICTIONS ON NATIONAL TREATMENT

1. Limitations on foreign equity ownership (e.g., sector or industry, equity or operational restrictions or limits on access to specific markets).

The general rule in force in the Mozambican legal regime is that all sectors of industry are open to all sources of investment, being it national or foreign¹⁷. As a consequence, most areas of investment can accommodate foreign and national equity ownership.

Notwithstanding the above, there are some areas which foreign equity ownership is limited or conditional, as below:

a. Real Estate Properties which have been previously nationalized by the Mozambican State¹⁸:

All Real Estate properties which have been nationalized by the Mozambican State after the independence cannot be transferred to (i) foreign individuals or (ii) companies whose share capital is held in majority by foreign entities or, irrespective of the percentage held by national entities, in case the number of foreign shareholders is superior to national shareholders.

As a common practice (with no legal support but largely accepted by all relevant institutions), there are cases in which some Real Estate properties which have been previously nationalized by the Mozambican State, have been passed to foreign controlled/owned institutions. This happens in cases where the Real Estate Property is included in the privatization of a business unit. Examples like National Textile Company, Glass National Industry (which were all privatized some years ago) as well as other business units have been granted as a concession with all assets - including Real Estate Properties - to foreign held companies.

b. Army related industries¹⁹:

Industries which are deemed to have an impact on national sovereignty, in particular army and military industries are to be conducted solely by national individuals or entities in which there is majority of national shareholders. Notwithstanding the above, the Government can grant time limited

¹⁷ The principle referred above has its legal base on Article 405 of the Civil Code, where it is mentioned the parties have the autonomy to enter in any type of relations, unless if prohibited by law.

¹⁸ Article 16 of Decree no. 2/91 of January 16th.

¹⁹ No specific law, however, Authorities will not license any army-related industries for private entities.

concessions to any entity (including foreign controlled entities) for the manufacturing of equipment and operational systems (hardware and software) provided that such do not interfere nor impose limits to national sovereignty.

c. Local Content in Mining and Oil & Gas contracting Procedures²⁰:

Both Mining and Oil and Gas law provide for a local content protection regime. The referred regime sets forth an obligation for any Concession holder in the said industries to grant a preference in engaging nationals and/or nationally controlled entities concerning the sub-contractual relations to be eventually entered. Nevertheless, this obligation is not compulsory but rather a preferential engagement²¹.

d. Construction Companies²²:

Construction companies can carry out civil works after being awarded a relevant Civil Contractors License. Such a license does not, however, allow the construction company to carry public works. Only a Public Works Contractors License will allow the construction company to be engaged in such type of works. In order to be awarded with a Public Works Construction License, the construction company must:

- be registered and operating as a Civil Construction Company for a minimum of 10 (ten) consecutive years;
- Have a majority of Mozambican nationality share capital (individual or held by a legal entity).

Although the law refers that this nationality requirement is solely for the registration (and license) period, there have been cases where the relevant licensing authority has withdrawn the Public Works Construction License upon changes effected to the shareholding structure of the Construction Company.

e. Travel Agencies²³:

²⁰ Article 41 of Law no. 21/2014 of August 18th and Article 34 of Law no. 20/2014 of August 18th.

²¹ Should there be a gross violation of this principle, it may be considered that the concession holder is violating the terms of the concession and, in ultimate case, be considered the justification to terminate such concession.

²² Article 5 of Decree no. 95/2013 of December 31st.

²³ Article 4(2) of Decree no. 53/2015 of January 31st.

A recently enacted Decree has established that Travel Agencies may only be held by a Mozambican major shareholder. However, it is possible that this rule may be deemed unconstitutional as a previous similar initiative (please refer to Security Companies, below). Nevertheless, the current regime which limits the access to equity ownership on Travel Agencies is still in force and is generally binding.

f. Private Security Companies²⁴:

The law states that Private Security Companies can either be operated only by national individuals, or its share capital cannot be held in the majority by foreign entities. However, the Constitutional Council (which is the Mozambican Institution which provides binding and final decisions in matters related to constitutional affairs) has issued a ruling stating that such a rule violated the Constitution of the Republic of Mozambique, making it non-binding.

²⁴ Article 6 of Decree no. 9/2007 of April 30th.

CHAPTER VI – INVESTMENT APPROVAL PROCEDURES

1. Screening and approval or licensing procedures for foreign direct investment entry

a. Applicability of the rules to domestic investors

The Investment Law is applicable to all investments of economic nature carried out in Mozambique that intend to benefit from the guarantees and incentives established therein, regardless of the nationality and the nature of the investor. The Law also provides that all foreign investors, employees and employers shall have the same rights and duties as Mozambican nationals, as enshrined in the national legislation. Moreover, the Regulation of the Investment Law also clarifies that these provisions are applicable to all private investments, domestic or foreign, made under the Investment Law.

b. Licensing procedures and relevant authorities

Foreign direct investors that wish to benefit from the incentives granted under the Investment Law may submit an investment project to the CPI or to a GAZEDA which has authority over Special Economic Zones and Industrial Free Zones²⁵.

A specific form must be filled and submitted either in English or in Portuguese which must include comprehensive information on the project and supporting documentation, *inter alia*, identification of the proposed investor and its legal representative, business plan, topographic plan or drawing of the proposed location for the implementation of the project. Additional information and documentation may be requested throughout the assessment of the application.

In order to be eligible, investment projects must comply with at least one of the following criteria:

- A minimum foreign direct investment threshold of MZN 2.500.000,00 (two million, five hundred thousand Meticaís);
- As of the third year of operation, the company shall generate an annual turnover equal or greater than MZN 7.500.000,00 (seven million, five hundred thousand Meticaís);

²⁵ Zambeze River Valley zone, Niassa Province, Nacala district, Ilha de Moçambique (Mozambique Island), Ibo Island and other areas which may be approved by the competent authority. Please see Footnote 15.

- The company shall register an annual export of goods or services of at least MZN 1.500.000,00 (one million, five hundred thousand Meticaís); or
- By the second year of activity, the investor shall create and ensure at least 25 (twenty five) employment positions for Mozambican nationals who shall be registered in the social security system.

Depending on the value and origin of the investment, the project will be assessed and authorized by²⁶:

- the Provincial Governor, for national investment projects not exceeding MZN 1.500.000.000,00 (one billion, five hundred million Meticaís);
- the Managing Director of the CPI, for national and/or foreign investment projects not exceeding MZN 2.500.000.000,00 (two billion, five hundred million Meticaís);
- the Minister of Economy and Finance, for national and/or foreign investment projects not exceeding MZN 13.500.000.000,00 (thirteen billion, five hundred million Meticaís);
- the Council of Ministers, for:
 - ✓investment projects with a value greater than MZN 13.500.000.000,00 (thirteen billion, five hundred million Meticaís);
 - ✓projects that require a land area greater than 10.000 (ten thousand) hectares, to be used for any purpose except forestry concessions;
 - ✓investment projects that require a forestry concession of an area greater than 100.000 (one hundred thousand) hectares; and
 - ✓any other projects with foreseeable political, economic, social, financial or environmental impacts that by nature should be reviewed and decided by the Council of Ministers, after proposal from the Minister of Economy and Finance²⁷; or by

²⁶ Each competent authority has discretionary power to assess, approve or reject the investment proposals. Those applicants whose investment proposals were rejected may amend them and submit them once again for the competent authority to reconsider its decision.

²⁷ The law does not provide a list of projects with foreseeable impact. Normally the Director of CPI and the Minister of Economy and Finance shall jointly assess if the project should be submitted to the Council of Ministers. In such case, the Minister of Economy and Finance shall propose to the Council of Ministers a decision on the approval of the investment project but the ultimate decision belongs to the latter.

- the Managing Director of GAZEDA, for investment projects subject to the special framework applicable to Special Economic Zones and Industrial Free Zones

Upon approval, the competent authority will determine the specific incentives granted to the project amongst the incentives described on Chapter IV.

2. Formalities, time frame and cost

Once the project is submitted, the competent authority for the approval of the investment project shall liaise with the Ministry(ies) that oversees the sector(s) of activity of the project to issue an opinion within 7 (seven) business days as of submission of the application. If the competent Ministry does not reply in a timely fashion – 5 (five) days following the initial deadline – the opinion will be deemed favorable.

The CPI/GAZEDA shall notify the applicants of its decision within the following 48 (forty eight) hours upon which the investors shall (i) register the investment project at the Central Bank within the following 90 (ninety) days; and (ii) commence the implementation of the project within the following 120 (one hundred and twenty) days or within the specific timeline given in the approval of the project, otherwise the authority that approved the project shall have grounds to revoke the authorization. The project is deemed to have commenced when actions have been taken in view of effectively starting the venture. Failure to register at the Central Bank within the 90 (ninety) days period will not have consequences on the implementation of the project, but the competent authority shall have grounds to not acknowledge the right to export profits and dividends, as well as to re-export the invested capital.

For the assessment and evaluation of investment projects, the CPI charges a fee equivalent to 1/1000 (one-thousandth) of the total investment of each proposal, as well as over further increase or expansion of the investment²⁸. The request to amend an already approved project or to extend certain time periods in the process is also subject to the payment of fees.

²⁸ Ministerial Diploma no. 116/89 of November 22nd determines that the applicable fee is of 5/1000 of the total investment. Nevertheless, the CPI does in practice only charge the abovementioned amount of 1/1000.

3. Grounds for rejection of investment applications and right to appeal by the foreign investor

It is uncommon for investment applications to be rejected by the CPI. Nevertheless, an incomplete project, lacking essential documentation or not fulfilling the eligibility requirements may be rejected by the screening authority. In this case, a complaint regarding a decision on investment matters may be submitted to the responsible CPI or GAZEDA, which must be duly justified and grounded. The complaint will be forwarded to the relevant authority, which must reply within 20 (twenty) days. After this period, the CPI or GAZEDA will submit a proposal with solution to the competent Minister.

4. Discretion of the authorities to approve or reject investment applications

For an investment application to be rejected the authority must duly justify its reasoning and notify the applicant of the grounds for rejection; which must have a legal basis.

5. Whether laws or authorities permit foreign investors to avail of other lawful informal procedures to expedite approval (e.g., using lobbying specialists or consultants)

The Mozambican legal framework does not establish any lawful informal procedures that could be useful in the process of investment approval. Nonetheless, according to our experience the approval of investment projects by the CPI is quite expedited and works closely in coordination with the investors to provide all the required assistance.

6. Power (and its exercise) by the authorities to monitor the foreign investment, including the power to unilaterally review, challenge or withdraw an approved application

The entity with powers to license a certain investment project also has the power to revoke such authorization, upon occurrence of one of the following events:

- Request by the investors;
- After 120 (one hundred and twenty) days as of the approval of the project, if no actions have been taken in view of starting the implementation of the investment;
- Suspension of the implementation of the project for a continuous period of more than 3 (three) months, if such suspension has not been previously notified to the competent authority;

- Breach of the provisions of the Investment Law or Regulation, of the provisions contained in the project's authorization or other applicable legislation.

CHAPTER VII – BUSINESS VEHICLES

1. Forms or structures of business organizations available to foreign investors

Pursuant to the Mozambican Commercial Code²⁹, foreign investors may set up a business structure in Mozambique through (i) the incorporation of a commercial company or (ii) setting up other legal forms for business representation.

a. Commercial Companies

The following structures of business organization are defined and considered to be commercial companies³⁰: (i) partnerships; (ii) capital and industry companies; (iii) limited partnerships; (iv) private limited liability company (“*Sociedade por Quotas*”); and (v) limited liability share companies (“*Sociedade Anónima*”).

Both foreign and Mozambican investors, either private individuals or companies, may opt for one of the abovementioned forms of commercial companies to launch their activity in Mozambique.

With the exception of the business sectors mentioned in Chapter V, above, it is not mandatory to incorporate a commercial company with a Mozambican individual and/or company, therefore a commercial company can be entirely owned by foreign entities.

From the abovementioned forms of commercial companies, a brief general overview of the legal framework, main characteristics and features, of the two most predominant forms of commercial companies in Mozambique – private limited liability company and company limited by shares – will be provided³¹.

²⁹ Approved by Decree-Law no. 2/2005, as amended.

³⁰ Article 82(1) of the Commercial Code.

³¹ The other forms of commercial companies are rarely used by any investor and are residual when compared with the two most used forms.

i. General overview

Issue	Quota company	Share company
Description	Limited liability company by quotas	Limited liability company by shares
Governing Law	Commercial Code	Commercial Code
Size	<input type="checkbox"/> 2 to 30 quota-holders ³²	<input type="checkbox"/> More than 3 shareholders
Share Capital	<input type="checkbox"/> No minimum share capital threshold.	<input type="checkbox"/> No minimum share capital threshold.
	<input type="checkbox"/> Upon incorporation the entire share capital must be subscribed with a minimum of 50% paid, and the remainder can be deferred up to 3 years ³³ .	<input type="checkbox"/> Upon incorporation the entire share capital must be subscribed with a minimum of 25% paid, and the remainder can be deferred up to 5 years.
	<input type="checkbox"/> The quota value should be expressed in the local currency (Metical).	<input type="checkbox"/> The share value should be expressed in the local currency (Metical).
Liability	<input type="checkbox"/> Quota-holders are only liable up to the limit of their share capital contribution under a joint liability regime ³⁴ .	<input type="checkbox"/> Shareholders are only liable up to the limit of their share capital contribution under a joint liability regime.
	<input type="checkbox"/> Only the company's net assets can be used to cover debts or liabilities.	<input type="checkbox"/> Only the company's net assets can be used to cover debts or liabilities.
Registration	<input type="checkbox"/> Quotas must be duly registered at the governing Legal Entities Register.	<input type="checkbox"/> Shares are registered before the Central Securities Depository (CSD) as of November 5 th 2014.
Confidentiality	<input type="checkbox"/> The identity of quota-holders is publicly available, having been registered at the Legal Entities Register, and included in all published company documents.	<input type="checkbox"/> The identities of shareholders are not publicly available in any public register.

³² If during its lifetime the number of quota-holders surpasses 30, then the company must be converted to one by shares.

³³ Article 292 of the Commercial Code.

³⁴ Article 287 of the Commercial Code.

Governance	<input type="checkbox"/> Quota-holders General Meeting: The most relevant decisions to the company must be resolved in the general meeting (e.g., mergers, spin-offs, winding up and liquidation, appointment of directors, amendment to the bylaws, decrease and increase of share capital, distribution of dividends, approval of the annual accounts, pre-emptive rights in the case of quota transfers, etc.	<input type="checkbox"/> Shareholders General Meeting: The most relevant decisions to the company must be resolved in the general meeting (e.g., mergers, spin-offs, winding up and liquidation, appointment of directors, amendment to the bylaws, decrease and increase of share capital, distribution of dividends, approval of the annual accounts, etc.
	<input type="checkbox"/> Board of Directors or sole director: Management powers	<input type="checkbox"/> Board of Directors or sole director: Management powers.
	<input type="checkbox"/> Sole Supervisor or Supervisory Board (Optional – if established in the company’s bylaws): Responsible for review of company accounts, tax and statutory obligations of the company.	<input type="checkbox"/> Sole Supervisor or Supervisory Board (Compulsory): Responsible for review of company accounts, tax and statutory obligations of the company. Must be an auditor or an auditing firm.
Quota-holder/Shareholder Rights	<input type="checkbox"/> To receive dividends in proportion with their quota holdings. <input type="checkbox"/> To have voting rights within the quota-holders general meeting. <input type="checkbox"/> To be provided with any information regarding the company. <input type="checkbox"/> To be appointed to the Board of Directors.	<input type="checkbox"/> To receive dividends in proportion with their shareholdings. <input type="checkbox"/> To have voting rights within the shareholders general meeting. <input type="checkbox"/> To be provided with any information regarding the company. <input type="checkbox"/> To be appointed to the Board of Directors.
Transfer	<input type="checkbox"/> The transfer of quotas must be executed in writing; <input type="checkbox"/> Must provide written notice of the transfer to the company; and <input type="checkbox"/> Provide pre-emptive rights in favor of the company and/or remaining quota-holders.	<input type="checkbox"/> No limitations to the transfer of shares unless the company’s bylaws state otherwise. <input type="checkbox"/> Legal formalities necessary to transfer shares will depend on the type of shares issued by the company: <input type="checkbox"/> bearer shares shall be transferred with the physical delivery of the share certificates to the purchaser;

		<ul style="list-style-type: none"> <input type="checkbox"/> nominative shares shall be transferred by registration in the respective share registration book, kept by the company, and signed by both the seller and the purchaser and a communication must be provided to the company for the purposes of registration in the respective share registration book; <input type="checkbox"/> book-entry shares also known as dematerialized shares, shall be transferred through the notification and update of the account in the bank where the shares are deposited (by means of receiving a copy of the shares sale and purchase agreement)³⁵. <p><input type="checkbox"/> Transfer of shares must be registered at the CSD.</p>
Securities	<input type="checkbox"/> Quotas can be pledged following the same formal procedures as for the transfer of quotas (above).	<input type="checkbox"/> Shares can be pledged following the same formal procedures as for the transfer of shares (above).

b. Other forms of Business Structure - Permanent Representation / Branch

As an alternative to the commercial companies described above, a foreign investor may opt to set up its business through other forms of business organization which are not considered to be commercial companies under the Commercial Code. As such, foreign companies may opt to be represented in Mozambique through branches, agencies, delegations, etc. The most common type used by foreign companies to set up a permanent representation in Mozambique is a branch.

A foreign company performing its activity in Mozambique for more than 1 (one) year must register and incorporate a permanent representation³⁶ – branch – which shall comply with the rules regarding commercial register.

Branches duly registered in Mozambique do not have any legal mandatory form of corporate governance with which they should comply. In fact, despite their existence being duly foreseen, the rules on corporate structure and corporate bodies which are applicable to commercial companies *stricto*

³⁵ Article 362 of the Commercial Code.

³⁶ Article 85 of the Commercial Code.

sensu, do not apply to branches. To register a branch, it is only necessary to appoint an authorized representative for such branch. Such authorized representative(s) shall have all the representation powers granted in accordance with the delegation of powers and/or proxies issued by the parent company (or head office).

Furthermore, there are no rules applicable to branches regarding its financial / accounting structure.

In Mozambique, branches do not have legal personality and they are considered as legal entities without autonomy. In fact, they are considered to be an “extension” of the parent company. However, branches should be registered before the Legal Entities Register. The branch does not formally have a required minimum share capital; however the parent company ought to allocate a specific amount to the branch, known as an endowment fund. Only with certain branches pursuing certain activities (for example financial and banking activities) should the parent company allocate a minimum share capital.

The parent company is deemed liable for all activities carried out by the branch in Mozambique; with its liability limited to the latter’s net profits.

c. Applicability of the same forms or structures applicable to domestic investors

There are no differences between the forms or business structures available for foreigners when compared with those available to Mozambican nationals/companies. The only relevant exception is the abovementioned permanent representation (branch) which is specifically conceived for foreign companies aiming to have permanent and stable activities in Mozambique but do not intend to incorporate a commercial company.

2. Authority which has jurisdiction and the approval process for each, including capital and other requirements

Central Register

Mozambique has a centralized register, the Legal Entities Register, where all commercial companies with head offices in Mozambique must be registered. The Legal Entities Register is divided geographically and all the existing commercial register departments have legal competence to deal with the registry procedure regarding any form of business representation.

In addition to incorporation documents, companies are also required to register any amendments to their bylaws. In the case of quota companies, any transfer or pledge of quotas must also be registered before the Legal Entities Register.

National Press

The Official Gazette publishes incorporation related documents, particularly the bylaws of the company and any amendments to the bylaws.

Central Bank

Pursuant to foreign exchange laws and regulations, foreign investors and respective implementing companies shall be duly registered at the Central Bank which will ascribe reference numbers to be used in any foreign exchange transactions – *please refer to chapters VI and XI*.

3. Time frame and cost to establish

Timeframes

The registration of companies at the Legal Entities Registrar is quite swift, taking between 3 (three) to 5 (five) days to conclude whereas the publication may take up to 45 (forty five) days to conclude.

Costs

The costs for registration vary according to the share capital of the company and the costs for the publication vary according to the number of words included in the articles of association.

4. Regulations on foreign nationals to manage affiliates of foreign enterprises, including restrictions on membership in the board of directors or management, holding managerial and key positions (e.g., General Director/CEO)

Under the Commercial Code, there are no restrictions for foreign nationals to manage affiliates of foreign companies or any commercial companies. Furthermore, the Commercial Code has no restrictions on foreign nationals in terms of their capacity to be members of the board of directors or to hold any corporate key position. Certain regulated activities, such as banking and insurance activities, may impose that a certain number of directors are resident in Mozambique.

5. Accountability of foreign investor for liability of subsidiaries

The Commercial Code sets forth a liability regime for the controlling shareholder – whether foreign or national – regarding certain matters of the respective subsidiary³⁷. Under this regime, the parent company (controlling company) is liable for any losses and damages caused to the subsidiary or to the other shareholders. More specifically, the controlling shareholders are liable to the subsidiary when they: (i) pressure any person from any corporate body to execute an illegal act; (ii) pressure anyone to enter into any agreement with the company that may harm the company; (iii) pressure the company of the directors to enter into an agreement that may harm the company; (iv) approve any decisions that provide the controlling shareholder an unlawful advantage harming the company's interests and harming the company's creditors and other shareholders.

In case the company/subsidiary is not able to fulfill its obligations towards its creditors, the creditors may request compensation from the controlling shareholder, on behalf of the subsidiary, provided that such controlling shareholder caused the abovementioned damages.

Furthermore, the Commercial Code also establishes that the corporate veil may be pierced³⁸ and the shareholders may be deemed directly liable whenever:

- The company is used as a fraudulent and abusive instrument from an economic standpoint;
- Consumer or environmental rights are infringed;
- In any event where the company is used to protect interests of shareholders, employees, stakeholders, Government or community where the company develops its activity;
- In case of bankruptcy of the company if established in a special regulation.

³⁷ Article 125 of the Commercial Code.

³⁸ Article 87 of the Commercial Code.

CHAPTER VIII – PERFORMANCE REQUIREMENTS

1. Performance requirements imposed on foreign-owned or invested enterprises (e.g., technology transfer, local/domestic procurement, and training of local employees)

Performance requirements imposed on foreign owned or invested companies are set out in the Investment Law and Regulation. Specific performance requirements may also be found in the Petroleum and Mining Laws.

In fact, foreign direct investment must achieve certain objectives set forth in the Investment Law. These objectives contemplate the performance requirements that must be followed by foreign investors.

Thus, the Investment Law establishes that the investments carried out in Mozambique shall pursue certain objectives, namely:

- The development, rehabilitation, modernization or expansion of economic infrastructures for the operation of productive activities or for rendering services necessary for supporting productive economic activities and promoting the country's development;
- The expansion and improvement of national production or of the capacity to render services which support productive activities;
- Contribution towards training, expansion and development of national entrepreneurs and Mozambican business partners;
- The creation of jobs for national employees and improvement of professional skill levels of the Mozambican labor force;
- Promotion of technological development and the improvement of entrepreneurial productivity and efficiency;
- Increase and diversification of exports;
- The rendering of productive services and of those generating foreign currency;
- The reduction and substitution of imports;
- Contribution towards improving the supply of domestic markets and the satisfaction of the priority and basic needs of the population;

- Any direct or indirect contribution towards improving the balance of payment and Government budget revenue.

Hence, foreign investors may pursue one or more of the above listed objectives. The foreign investors are evaluated based on the fulfilment of the provisions of the Investment Law, the Investment Law Regulation and the conditions set out in the license, failing in which, the license may be cancelled³⁹.

Furthermore, the Investment Regulation sets forth a minimum threshold of MZN 2.500.000,00 (two million, five hundred thousand Meticaís) and other criteria for investment projects to be eligible to the incentives granted thereunder.

Also, in some specific sectors, there are also certain performance requirements imposed to investors – usually in investments involving partnerships with the Government, for example, in Petroleum and Mining sectors.

The Mozambican Mining and Petroleum Laws impose that investors must give preference in purchasing goods and services from local sources available in Mozambique which are of an internationally comparable quality and which are offered at competitive prices, in terms of delivery⁴⁰.

In terms of labor force, investors shall also guarantee employment and professional training to Mozambican nationals and ensure their participation in the oil & gas and mining operations and management. The employment vacancies of staff in the oil & gas and mining industries shall be published in the widest circulation newspapers in the country or through radio, television or internet to ensure access of a wider range of population⁴¹.

Both Mining and Petroleum Laws establish penalties in case of failure to comply with its provisions.

For this specific case, the Mining Law Regulation establishes a penalty of a minimum fine equivalent to 20 (twenty) minimum wages which may be compounded according to the severity of the offence or the circumstances around the violation⁴².

On the other hand, the Petroleum Law establishes a range of penalties applicable in case of violation of its provisions, such as warning, fines, suspension of operations and cancellation of the concession contract. For the above specific cases, a minimum fine of MZN 5.000.000,00 (five million Meticaís) up to MZN 50.000.000,00 (fifty million Meticaís) may be applicable to those who fail to comply with the petroleum legislation⁴³.

³⁹ Article 19 of the Investment Law Regulation.

⁴⁰ Article 22 of the Mining Law and article 41 of the Petroleum Law.

⁴¹ Article 12 of the Petroleum Law and article 33 of the Mining Law.

⁴² Article 132 of the Mining Law Regulation.

⁴³ Article 67 of the Petroleum Law and Article 114 of the Petroleum Law Regulation.

There is no special quota for employment of Mozambican nationals under the Mining and Petroleum Legislation.

CHAPTER IX – IMMIGRATION

1. Visas, permits or other requirements that apply to foreign individuals entering Mozambique

In Mozambique, immigration matters are regulated by Law no. 5/93 December 10th, which establishes the legal regime pertaining to foreign citizens and details the following: norms of entry; permanence and exit from the country; rights of foreign individuals; duties and guarantees. Decree no. 108/2014 of December 31st which regulates the aforementioned law, lays down the legal requirements for foreign citizens and sets out the respective rules of entry, residence and exit of the country.

The entry in national territory must be done through the official frontier posts established for this effect and all foreign citizens must present a valid passport or other valid travel document and an entry visa issued by a competent Mozambican authority.

Business Visa

A business visa shall be granted to a foreign citizen who intends to travel to Mozambique for business reasons and allows the permanence for a period of 30 (thirty) days, and is renewable twice, *i.e.*, up to a period of 90 (ninety) days in total.

This type of visa shall be issued by diplomatic and consular missions of the Republic of Mozambique in the country of origin/residence of the concerned foreign citizen and it does not allow the right to obtain a residency permit.

To obtain a business visa, the applicant is required to provide an invitation letter from a business entity established in Mozambique or a letter from the company represented by the applicant, stating the reason for the trip to Mozambique, whereby all the responsibility related to the stay of the applicant in the country is assumed.

The visas are granted within 6 (six) working days; with the exception of urgent visas, which may be granted within 2 (two) business days.

Work Visa

Prior to the application for the work visa it is necessary to obtain a work permit or authorization of work issued by Ministry of Labor. It shall be noted that foreign citizens can only enter into fixed term employment agreements for the maximum and freely renewable periods of 2 (two) years.

Upon the issuance of the work permit, a work visa may be granted to foreign citizens by the diplomatic and consular missions and is intended to allow entry in the national territory to the holder for the purpose of temporarily pursuing a remunerated job. The work visa is issued for a single entry and residence for 30 (thirty) days and may be extended up to 60 (sixty) days. However, if the employment contract is valid for more than 60 (sixty) days, the applicant must apply for a Temporary Residency Permit to the Immigration Services in Mozambique which will issue the identification document for foreign citizens (DIRE). The residency permit is valid for 1 (one) year and is renewable for equal periods.

Transfer of an employee from the parent or related company located in another country to a related company in Mozambique

In the event of transfer of an employee from the parent or related company located in another country to a related company in Mozambique the same procedures stated above apply for purposes of obtaining a work visa and fixed residence in Mozambique.

2. Visa waivers or special or fast-track procedures

Mozambique is a member of SADC and under the Protocol for Free Movement of Persons for the SADC member countries signed on August 2012, the citizens of Botswana, Malawi, Mauritius, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe can enter Mozambique without a visa and remain in the national territory for the maximum period of 3 (three) months.

In addition, Mozambique has signed some visa waivers agreements with Cape Verde (February 21st, 2014) and Lesotho (August 27th, 2009).

Also, holders of diplomatic, official or service passports issued to nationals of Angola, Brazil, Cape Verde, China, Cuba, Guinea-Bissau, India, Portugal, Russia, Sao Tome and Principe, Seychelles, Timor-Leste, Cuba, Korea, and Vietnam do not require an entry visa for Mozambique.

It shall be noted that the entrance in Mozambican territory by foreign citizens through visa waiver agreements do not enable the residency or employment in Mozambique as it merely allows for a stay in the country for a period of 30 (thirty) days renewable up to 90 (ninety) days.

Foreigners entering Mozambique as investors (in general)

Foreign investors - individuals or corporate entities investing capital and/or other resources – implementing investment projects, approved by the Mozambican Council of Ministers, with a global value equal to or higher than USD 50.000000,00 (fifty million United States Dollars), may benefit from an investment visa. This visa may be granted to an investor (if an individual), company representative or proxy and allows for multiple entries and a period of stay for 2 (two) years renewable for equal periods during the pendency of the investment project. This type of visa also enables the holder and his/her dependents to fix residency in the country.

Families or dependents of foreign investors

Spouses, children and/or other dependents of foreign citizens that hold a valid residency permit can also apply for a residency permit in Mozambique provided that a written statement is attached as evidence guaranteeing that the spouse, children and/or other dependents are financial dependents of the residency permit holder. The dependents must previously have obtained a temporary permanence⁴⁴ visa in the Mozambican diplomatic representation in their country of origin and apply for the residency permit thereafter.

⁴⁴ Temporary Permanence Visa must be used within 60 (sixty) days following the date of grant. This type of Visa permits its holder multiple entries and the foreign citizen can stay in the country for a period of a year renewable for an equal period, pending the employment contract or the project of the residency permit holder.

CHAPTER X – LABOUR

1. Regulations and restrictions on hiring of foreign nationals, and exceptions

a. Regulations and restrictions (e.g., quota system or labor market test)

Employment of foreign employees is regulated by the Mozambican Labor Law⁴⁵ (hereinafter “the Labor Law”), and by the Regulation on the Mechanisms of Hiring Foreign Nationals⁴⁶ (hereinafter “the Regulation”). In addition, there are special regimes applicable to certain investment sectors, namely to the oil & gas and mining sectors. Moreover, for some large dimension investments, the Mozambican Government may apply and/or enact a special regime.

Under the general legal framework for the employment of foreign nationals, the following mechanisms are applicable:

Hiring under the quota system⁴⁷

Under this scheme companies are able to employ foreign nationals by means of a mere communication⁴⁸ to the Ministry of Labor, Employment and Social Security (hereinafter “Ministry of Labor”) within 15 (fifteen) days as of the employee’s admission, provided it complies with the applicable

⁴⁵ Enacted by Law no. 23/2007 of August 1st.

⁴⁶ Enacted by Decree no. 37/2016 of August 31st.

⁴⁷ The quota system is the most widely used scheme for employment of foreign nationals, as clients tend to view the quota system as a simplified process to engage with foreign workers. Provided the company has not yet filled its quota, the Ministry of Labor will promptly issue a document approving the employment and allowing the foreign national to obtain a work visa. Nevertheless, the fact that the quota system limits the hiring of foreign workers by the small scale is often seen as a limitation for the better development of the implementing project.

⁴⁸ This is a concept imported from the law on foreign employment in Mozambique. It is opposed to an “authorization”, which requires a thorough analysis of a given application and results in the approval or refusal of a request – such as in the employment authorization scheme or in the approval of investment projects. On the other hand, when we refer to a “mere communication” (“mere” not being a legal term of the law) this means the notification to the Ministry of Labor is in itself enough to legalize the employment of the foreign national, as it does not require a further assessment of the substantive claim and reflects the simplicity of the procedure. It should, however, be noted that, in practice, the process of employment of a foreign national does not end with the notification. The Ministry of Labor shall issue a document confirming the receipt of the communication, and this document is essential and mandatory to later apply for a work visa.

quota. The number of foreign employees that may be admitted depends on the average number of employees and must be included in the company's nominal relation sheet⁴⁹.

For communication purposes within the quota system, there is an obligation to pay a fee equivalent to 5 (five) wages, at the rate of the minimum wage, and the employer must submit the following documents:

- Certificate of academic qualification or professional or technical qualification;
- Certificate of equivalence issued by the Ministry of Education and Human Development; or
- Proof of using professional experience.

The company's quota is proportional to its total number of employees:

- 5% (five percent) of the total number of employees in large-sized companies, *i.e.*, above 101 (one hundred and one) employees⁵⁰;
- 8% (eight percent) of the total number of employees in medium-sized companies, *i.e.*, from 11 (eleven) to 100 (one hundred) employees; and
- 1 (one) employee in small-sized companies, *i.e.*, from 1 (one) to 10 (ten) employees.

Hiring under the short-term employment/labor regime

This regime is applicable to the hiring of foreign nationals intended to carry out temporary and unexpected/unforeseen tasks and, as such, does not require any work authorization; although it is subject to a fee equivalent to a minimum wage. The short term employment/labor regime may not exceed 90 (ninety) days without prior authorization; this period may be extended to a maximum of 90 (ninety) days per year, in view of duly justified reasons

⁴⁹ This provision introduces great benefits for companies since in cases where the company had hired more than 100 employees after submitting the nominal list sheet - which was done by March 31st each year - it would have enormous limitations in hiring foreign workers, since the names on the nominal list would be insufficient to hire foreign workers. It is further believed that this provision arises in line with the introduction of the submission of the nominal relation sheet by electronic means introduced by Ministerial Diploma no. 105/2015 of November 27th.

⁵⁰ It is accepted by the labor authorities that large-sized companies will always benefit from the maximum quota allowed for the medium-sized companies (*i.e.*, a minimum of 8 foreign workers), until the limit of the number of foreign workers on such large size companies reaches 5% of the quota. In effective terms, this means that large-sized companies will only be subject to the 5% quota of foreign workers when the number of local employees exceeds 160; meaning that, in the interval between 101 and 160 local employees, large-size companies will always be allowed a fixed number of 8 foreign workers.

or, in the oil and mining sector, to 180 (one hundred and eighty) days per year, consecutive or not. It should be noted that short-term employment is neither part of, nor a subsidiary of the quotas or work permit regime.

Regarding the response of the communication of admission of foreign workers, the response time is five (5) business days.

Hiring under investment projects duly authorized

Investment Projects approved by the CPI or other competent authority may be granted an additional quota for the hiring of foreign nationals if so requested and justified by the investor. It does not have autonomy vis-à-vis the quota system, and the provisions on quotas for the quota system apply in respect of the formalities and time required for response. In this case, the employer need only to inform the Ministry that supervises the area of work of the contracting of foreign workers allowed under the terms of the investment authorization, within 15 (fifteen) days of their entry into the country⁵¹.

Hiring under the employment authorization

The hiring of foreign workers in the work permit system is done by means of an application (obeying the requirements set forth in article 18) addressed to the Ministry of Labor. The Ministry that oversees the area of work will approve the application only in cases where (i) the employee holds specialized skills and/or qualifications; and (ii) there are no Mozambican citizens with these skills or qualifications or, if existent, not in sufficient number to meet the demand. An application for the employment authorization addressed to the Ministry of Labor must be submitted before the competent provincial employment directorate, or in the area where the worker will carry out his activities

The file must, according to the law, be dispatched within 15 (fifteen) business days of receipt by the competent entity. In addition to the application and other documents that must be presented and addressed to the Ministry overseeing the area of work, the employer must also attach a certificate of discharge of the company issued by the entity that oversees the area of finance, valid for 30 (thirty) days, counted from the date of issue; Payment of a fee corresponding to 10 (ten) minimum wages applicable in the sector of activity in which the company operates.

⁵¹ There isn't any legally established limit for the extended quota that the CPI may approve for each project. The complexity of the project to be implemented will guide CPI in granting a different quota regime than the one prescribed in the law. We understand that CPI cannot impose a quota inferior to the quota already granted by law. Also, a higher amount of investment can be seen as a factor generating a demand of qualified skills in the implementing project and thus, permitting to negotiate a higher quota. Nonetheless, for the cases of normal commercial development projects which do not justify the need of special skilled man-work CPI tends to apply and grant the same quota as provided in the law.

b. Exceptions

As mentioned above, the law allows the exception of hiring foreign employees outside the general quota scheme through an authorized investment project or through a specific authorization.

Also, in very exceptional circumstances, the Mozambican Government may enact specific regulation with a special labor framework for a given project, if the features and dimension of the project so justifies it⁵².

Transfer of foreign worker

The transfer of the worker can be done definitively or temporarily. Definitive transfers occur in cases where the quota is available in the intended destination. On the other hand, temporary transfers occur in cases where the worker's travel is aimed at specific programs of work and does not cover the whole term of the contract of employment.

The requirement of availability of the quota at the intended destination does not apply to employers or establishments which have proven that they do not have offices at the location in question, and employers with a national activity whose area of activity covers several provinces. The determination of the availability of the quota is based on the number of national citizens included in the nominal relation sheet.

For the purpose of communicating the transfer, it must be made to the entity that supervises the area of work in the province where the employee was contracted and the employer must keep copies of the respective file archived in the place where the said foreigner commenced carrying out his activity.

c. Penalties for breach

Failure to comply with the provisions regulating the employment of foreign nationals is punishable with the suspension of activity and a penalty equivalent to 5 (five) to 10 (ten) monthly salaries of the foreign employee illegally hired⁵³. If the employer fails to provide the Labor Inspectorate with

⁵² It is difficult to determine how often clients are granted an exemption through the employment authorization scheme, but we have been able to secure quite a reasonable amount of work permits based on this mechanism. However, we cannot possibly preview the decision to be taken by the Ministry of Labor, the entity responsible for granting such authorizations. As for the regulation approving a special labor framework applicable to a given project, it has only been adopted in very exceptional circumstances for wide dimension projects with a great impact in the Mozambican economy.

⁵³ Article 22(1) of the Regulation.

information regarding the salary earned by an employee, the penalty shall be calculated based on the highest known salary paid by that company. The repeated practice of similar offences shall double the amount of the minimum and maximum fine applicable.

Upon termination of the employment contract with a foreign national, regardless of the ground, the company must, within 15 (fifteen) days, notify the labor authorities in writing. Failure to notify is punishable with a penalty corresponding to 5 (five) minimum salaries of the sector of activity of the company.

Companies that simulate the hiring of national citizens to increase the quota will be punished with suspension and a fine of between 5 (five) and 10 (ten) wages of the foreign worker concerned.

The Minister overseeing the area of labor may revoke the administrative act that approved the authorization of the foreign contractor in cases of mistreatment committed by the foreign worker, or physical aggression against the national or foreign worker in the workplace. Cases of serious injury against a national and foreign worker may be on the grounds of race, defamation, serious violation of the special rights of women, or conviction of the foreign worker and major prison sentence.

2. Applicability of labor laws and benefits to foreign employees

The provisions of the Labor Law are applicable to all foreign and national employers and employees performing their activity in Mozambique⁵⁴ (with the exception of public officials hired by the State or certain sectors of activity that are subject to special legislation).

A foreign employee has the right to be treated equally and have the same opportunities as national employees, within the reciprocity rules agreed between Mozambique and the employee's country of origin. Nevertheless, there are benefits predetermined by law that aim to protect Mozambican nationals. The State may reserve the admission of nationals to certain activities or job profiles and encourages the qualification and training of nationals⁵⁵. Besides these and other duly justified exceptions, the principle of equality shall be applicable throughout all employment relations, therefore prohibiting discrimination on the grounds of ethnicity, language, race, gender, civil status, religious or political views or union affiliation.

The most significant difference of treatment between foreign and local employees is, however, the impossibility to engage a foreign employee for an unlimited term contract. The Mozambican labor regime only allows foreign employees to be engaged for the maximum period of 2 (two) years (subject to unlimited renewals).

⁵⁴ Article 2 of the Labor Law.

⁵⁵ Research has found that no official list of job profiles only available to nationals is published in Mozambique. The determination of these exclusive national functions is scattered in the law, either in the Constitution or in specific diplomas. In general, job profiles only available to nationals are those related to political or public offices, the judiciary system and law enforcement agencies.

3. Authority which has jurisdiction over enforcement of labor laws, including their powers

The General Labor Inspectorate (“*Inspecção-Geral de Trabalho*”), supervised by the Minister of Labor, is the authority responsible for supervising the compliance with labor laws for both employees and employers. It has jurisdiction over all employing entities within the Mozambican territory, regardless of the sector of activity, namely public and private companies, social and economic organizations and cooperatives, both national and foreign.

4. Any obligation of foreign investor to employees (e.g., training of employees)

Health and safety

The employer is responsible for providing the necessary equipment, training and procedures to ensure adequate conditions of hygiene and safety at work. All companies whose activities involve additional and exceptional risks for the employees’ health must institute a safety commission, comprising representatives of both employer and employees, which will be responsible for (i) monitoring the compliance with the health and safety provisions, (ii) organizing preventive measures, and (iii) investigating the cause of accidents. Large-sized companies or those carrying out activities that involve a high degree of health and safety risks to which the employees are permanently exposed to must guarantee permanent medical assistance at the work place.

Before the admission of the employee the employer may ask that medical exams are carried out (or demonstrated evidence) to confirm the employee’s physical and psychological fitness and ability to perform the labor activities. The physician carrying out the exam(s) may only provide the company with information on the employee’s ability or inability for the work, without providing any other details on their medical condition.

Work accident insurance policy

Employers are obliged to acquire work accident insurance to cover all work accidents and occupational illnesses of all employees. Whenever the features of the activity imply a special professional risk, employers shall also have a specific collective insurance for all the employees exposed to such risk.

Training

Employees are entitled to benefit from professional training according to the company's needs. The employer is responsible for establishing a certified annual training plan aiming to foster productivity and quality of the services provided, increase the employees' professional qualifications and progression, and prepare the same for the technological development of the company and market.

The employer must facilitate the attendance of professional training outside of the company whenever the employees show interest and the training does not interfere with the work period.

Social Security

All private companies and their employees must be registered with the National Social Security (INSS) system so that employees may benefit from disability and retirement pensions and from illness, hospitalization, maternity and death allowances. The company must also register its employees and submit, on a monthly basis, a remuneration chart with information on the salaries and bonuses of each employee.

Foreign employees residing in Mozambique that are protected by a social security system abroad are exempt from registration.

The INSS system rate of contribution is of 7% (seven percent), with 3% (three percent) borne by the employee - deducted directly from their monthly salary - and the remaining 4% (four percent) as the employer's responsibility.

5. On-site labor inspections

As described in section 3, the Labor Inspectorate has free access to all establishments under its supervision and may request the employers to provide any information deemed necessary to carry out a compliance assessment.

Inspections may occur under a pre-established framework of inspections or triggered by a complaint, upon the request of trade unions or under exceptional circumstances.

As per the Regulation on the General Labor Inspectorate⁵⁶, the inspectors must warn the employer and the employees' representatives that a visit is scheduled, except when such warning is deemed to jeopardize the purpose of the inspection.

⁵⁶ Approved by Decree no. 45/2009 of August 13th.

The employer must cooperate and provide all information required⁵⁷. Inspectors are subject to confidentiality and professional secrecy regarding all information obtained during, or in relation to the inspections made. At the end of the visit the employer and the employees' representatives shall be informed of its outcome.

On-site inspections may be partial, assessing the compliance with specific regulations and criteria, or cover a full inspection of the company.

Any breaches to the legal provisions identified in the inspection shall be registered in writing and the Labor Inspectorate may then proceed with the application of any sanctions, measures or penalties.

The labor inspectors only have the power to apply penalties for the minimum amount established in the law. After the decision, the offender (employer) may, within 15 (fifteen) days, voluntarily pay the penalty or appeal to the immediate hierarchical superior, who may then acquit the employer or set a higher penalty up to the maximum amount established by law.

6. Requirements to give preference to hiring particular groups of people

The Labor Law sets an exception to the principle of labor equality, establishing that the measures benefiting certain vulnerable groups are not deemed discriminatory, in particular those that ensure equivalent conditions or rights on the grounds of sex, reduced working capacity, disability or chronic disease.

However, regarding the admission of employees, the only differentiating provisions are the ones giving preference to Mozambican nationals before foreign nationals.

7. Employment contracts – types, requirements and duration

Employment contracts in Mozambique may be open-ended or temporary (fixed and unfixed) term contracts.

Temporary term contracts may only be executed in order to fulfil temporary needs of the company and strictly for the period of time necessary for such purpose. The initial period of fixed term contracts shall not exceed 2 (two) years and the contracts may be renewed twice, except for small and medium-sized companies which may freely execute fixed term contracts in the first 10 (ten) years of activity. Open-ended contracts are only admitted in situations where it is not possible to predict with certainty the period of time necessary to surpass the temporary need that grounds the contract. In

⁵⁷ Otherwise the public enforcement authorities may act in order to obtain such information and the Labor Inspectorate shall apply a penalty and report such behaviors as crime of disobedience to the authority.

case a fixed term contract is concluded in the absence of a temporary need or beyond the period of time necessary to fulfil the same need, the employee shall have the right to demand due compensation.

The temporary term contracts may be converted into unfixed term contracts if, after the extinctive event, the worker remains in service after the denunciation takes effect or, failing that, 7 (seven) days after the return of the replaced worker or ceasing the activity, service, work or project for which it has been contracted.

As a general rule, employment contracts must be executed in writing, be dated and signed by both parties and must contain the following information:

- The identity of both employer and employee – where the employer is a company, details on the company’s structure should be included (i.e., respective holdings and subsidiaries and/or the existence of a group relation) as well as its respective registered office and address;
- The job title of the employee or a brief description of the respective functions;
- Work place, or, if no fixed place, a statement to that effect;
- The duration of the employment and the conditions for renewal;
- The amount of salary and the frequency of its payment;
- The date of commencement of the execution of the work;
- Vacation entitlement and method of calculating such period;
- Grounds for the term, in case of fixed or unfixed term contracts;
- Notice period required by the parties to terminate the employment relationship (if any) and/or the method for calculating such notice;
- Date of conclusion of the contract, and of its termination, if a fixed term contract.

Failure to comply with the written form does not affect the validity of the contract nor the employee’s rights, assuming that this failure is of the responsibility of the employer, which will be automatically subject to all legal consequences, such as payment of a penalty in an amount equivalent to

3 (three) to 10 (ten) minimum salaries⁵⁸. Moreover, a contract failing to mention its duration is deemed to be open-ended, unless the employer otherwise proves the temporary nature of the activities carried out by the employee.

Without prejudice to the above, fixed term employment contracts with a duration not exceeding 90 (ninety) days, do not require the written form.

8. Maximum length of probation period

The employee may be subject to a probation period of 15 (fifteen) to 180 (one hundred and eighty) days depending on the type, duration of contract and/or of the employee's job title/functions.

The open-ended employment contract may be subject to a probation period not exceeding:

- 180 (one hundred and eighty) days for medium or high level technical professionals and employees in leadership and management positions; and
- 90 (ninety) days for all the employees not included in the previous paragraph.

The fixed term contract may be subject the following probationary periods:

- 90 (ninety) days where the contract length is longer than 1 (one) year;
- 30 (thirty) days where the contract length is between 6 (six) months and 1 (one) year; and
- 15 (fifteen) days where the contract length is up to 6 (six) months.

Unfixed term contracts may have a probationary period of 15 (fifteen) days where its length is predictably equal to or above 90 (ninety) days.

The parties or an eventually applicable collective bargaining agreement (hereinafter "CBA") may expressly waive the right to a probationary period or reduce its length. Regardless of the length of the probationary period, the parties (employer or employee) are obliged to give 7 (seven) days' notice for termination.

⁵⁸ Which may be avoided if the labor inspection opts to merely issue a warning notice demanding the regularization of the situation, i.e., the execution of a written contract within a certain time limit.

9. Minimum wage

There are minimum wage restrictions in Mozambique. Each sector of activity has its own national minimum wage, which is annually reviewed and updated by the Mozambican Government⁵⁹.

The minimum wages for 2016 are set as per the chart below:

Minimum Wages in Mozambique (2017)		
Sector	Subsector	Minimum Monthly Salary
Agriculture, Livestock, Hunting and Forestry	-	MZN 3.298,00
Fishing	Workers of industrial and semi-industrial maritime fishing	MZN 3.815,00
	Workers of “kapenta” fishing	MZN 3.375,00
Mineral Extraction Industry	Workers carrying out activities in large companies	MZN 6.213,67
	Workers carrying out activities in quarries and sandpits	MZN 4.907,17
	Workers carrying out activities in salt pans	MZN 4.476,00
Manufacturing and Baking Industry	Manufacturing Industry	MZN 5.200,00

⁵⁹ All employees, whether national or foreign, without distinction in view of sex, sexual orientation, race, religion, ideological or political conviction and descent or ethnic origin are entitled to the same benefits for similar work.

	Baking Industry	MZN 3.985,00
Production and Distribution of Electricity, Gas and Water	Large companies	MZN 6.036,71
	Small and medium-sized companies	MZN 5.421,77
Construction	-	MZN 4.886,74
Activities with non-financial services	-	MZN 5.050,00
Financial activities	Workers carrying out activities in Banks and Insurance Companies	MZN 8.750,00
	Workers carrying out activities in microfinance, micro insurance and in other ancillary activities of financial intermediation	MZN 8.400,00

10. Regulations on working hours, resting periods, vacations and other leaves

Working and resting periods

Working hours consist of the company's determination of the start and end times of the work period, as well as the rest intervals, operating through it the distribution of the agreed duration of work by the days of the week. The general maximum working period is 48 (forty eight) hours per week, with eight (eight) hours per day. The employer shall provide a minimum of 30 (thirty) minutes daily rest and 1 (one) full rest day per week. However, the normal period of daily work may be extended up to 9 (nine) hours, as long as the employee receives a complementary half day weekly rest.

Establishments conducting industrial activities may choose a work period of 45 (forty five) hours per week distributed through 5 (five) days per week. It is also possible to exceptionally increase, by CBA, the normal maximum period of daily work up to a maximum of 4 (four) hours, as long as the amount of the weekly work hours does not exceed 56 (fifty six) hours.

Apart from these limits, the employee may be requested to perform overtime work up to a maximum of 8 (eight) hours per week, 96 (ninety six) hours per every 3 (three) month period and 200 (two hundred) hours per year.

Holidays and vacations

Employees benefit from two kinds of annual public holiday: (i) mandatory public holidays and (ii) optional public holidays.

There are a total of 9 (nine) mandatory public holidays and 1 (one) municipal holiday. Whenever the public holiday takes place on a Sunday, its enjoyment is transferred to the following Monday, unless the labor activities cannot, by nature, be interrupted.

Moreover, the employee is entitled to enjoy paid vacation as follows:

- 1 (one) day per month of effective work, during the first year of contract;
- 2 (two) days per month of effective work, during the second year of contract;
- 30 (thirty) days per year as of the third year of contract.

Employees are entitled to split holidays provided that each fraction is at least 6 (six) consecutive days. Exceptionally, upon agreement, the employee's vacation may be replaced by compensation but even in such cases, the employee must take at least 6 (six) working days of vacation.

It is up to the employer, together with the union, to prepare the vacation plan⁶⁰.

⁶⁰ If required or permitted by the nature and organization of the work, as well as by the production conditions - and after prior consultation with the union - the employer may decide that employees take their holidays simultaneously.

Parental rights

The Mozambican Labor Law guarantees to working parents (mothers and fathers) or guardians, special rights related with maternity, paternity and child care during the child's infancy. The working mother is entitled to a paid maternity leave of 60 (sixty) consecutive days, which can start 20 (twenty) days before the delivery date. The same shall also apply in cases of premature childbirth, regardless of being a live birth or a stillborn. The working father is entitled to a paternity leave of 1 (one) day, every 2 (two) years, which shall be taken the day immediately after the birth of the child. However, to this end, he is required to inform the employer in writing.

11. Employees' absences from work

An absence from the workplace during the period in which the employee is obliged to work may be justified or unjustified. The following are considered justified absences:

- 5 (five) days for the employee's marriage;
- 5 (five) days for the death of the employee's spouse, father, mother, child, step-child, siblings, grandparents, step-father or step-mother;
- 2 (two) days for the death of the employee's uncles, aunts, cousins, nieces, nephews, grandchildren and in-laws;
- Impossibility of attending work for reasons beyond his/her control, such as illness or accident;
- Accompanying own children or other hospitalized underage children under his/her responsibility;
- Periods of convalescence for female employees, in cases of abortion or miscarriages occurring more than 7 (seven) months before the expected birth;
- Other absences previously or subsequently authorized by the employer, such as for participation in sporting or cultural activities⁶¹.

⁶¹ The law does not specify the maximum days the worker may be absent under the last four justifications. Each absence must however be duly justified with substantiating evidence (such as a medical statement or proof of participation in a certain activity). The employer may always challenge the authenticity or accuracy of such evidence or, if there are suspicions that an employee's absences are being somehow exploitative in a way that is not justifiable, it may bring up a labor dispute to solve matter or initiate disciplinary proceedings.

If one of the abovementioned absences is foreseeable, it should be notified to the employer at least 2 (two) days in advance. Justified absences shall not result in loss of remuneration, length of service and/or holidays. Absences justified on grounds proven to be false may be subject to disciplinary proceedings.

All periods of absence not provided for in the preceding paragraph shall be considered as unjustified and result in a loss of pay, vacation and length of service for the period of absence. Unjustified absences for 3 (three) consecutive days, or for 6 (six) intermittent days in a 6 (six) month period may lead to disciplinary proceedings. Additionally, if the unjustified absence lasts 15 (fifteen) consecutive days the employee will be deemed to have abandoned his/her job.

The absence for military service is one of the situations where the employment can be suspended, meaning that during this period the employee retains the right to the position, being only suspended the rights and duties inherent to the effective performance of the work.

12. Grounds for dismissal of an employee, including the procedure and requirements

The employer may dismiss or terminate the contract (resignation) with an employee only where there is a fair cause. Unilateral dismissal with immediate effects is unlawful and entitles the employee to file a court claim for reinstatement or compensation.

Fair Cause

The Labor Law deems as fair cause for resignation any serious facts or circumstances that, for moral or material reasons, renders incapable the maintenance of the employment. If under these circumstances the employer is forced to resign from the contract, for reasons imputable to the employee, it shall notify the latter of the resignation with fair cause at least 30 (thirty) days before the date of termination of the contract. Although the law is silent, we believe that in this case the employee is not entitled to any compensation.

In particular, the following grounds are statutorily established as fair cause:

- a. The evident inaptitude of the employee to perform the work, acknowledged only after the probationary period

The contract can only be terminated on this ground if the inaptitude was only acknowledged after the probationary period and the employee was given due professional training and a period of adaptation, but still remains unable to perform the work. The employer shall notify the worker of its intention at least 30 (thirty) days before the date of termination.

b. Serious and intentional breach of the employee's professional duties

An intentional behavior of the employee that breaches the respective professional duties, making it impossible to maintain the employment, may lead to disciplinary proceedings which may result in the dismissal of the employee. In this context, the law exemplifies what may constitute a disciplinary offence:

- Failure to comply with the work schedule or with the functions;
- Absence from work without valid justification;
- Absence from the work place during the period of work, without authorization;
- Disobedience to lawful orders or instructions;
- Lack of respect towards hierarchical superiors, work colleagues and third parties, or lack of respect of hierarchical superiors to their subordinates, at the workplace or in the performance of work duties;
- Offences, physical injury, mistreatment or threats against third parties at the workplace or in the performance of work duties;
- Guilty of breach of productivity;
- Abuse of office or of one's position to obtain unlawful advantages;
- Breach of professional secrecy or of trade and production secrets;
- Misappropriation of equipment, property, services and other work tools for personal or non-work related purposes, or the improper use of the workplace;
- Guilty damage, destruction or deterioration of the property of the workplace;
- Drunkenness or influence of drugs and the consumption or possession of drugs, on the job post or at the workplace or in the performance of one's duties;

- Theft, robbery, breach of trust, embezzlement and other fraudulent acts performed at the workplace or during the performance of work duties;
- Job abandonment.

Within 30 (thirty) days after acknowledging the disciplinary offense the employer delivers to the employee a notice of fault describing the facts and the “when, where and how” the fault took place.

The employee is given 15 (fifteen) days to answer to the accusation, file documents, request the hearing of witnesses or the production of further evidence. Thereafter, the process is sent to the work council, to issue an opinion within 5 (five) days. The employer shall then decide within 30 (thirty) days on the applicability of a disciplinary sanction, which will be duly notified to the employee. In case the disciplinary offence is serious enough and proper evidence of the accusation is made in the disciplinary procedure, the employer may decide for the dismissal of the employee. In any case, the decision on the applicability a disciplinary sanction, including dismissal, must be executed within 90 (ninety) days⁶².

c. Arrest or imprisonment of the employee

This must be grounded on an effective sentence of imprisonment resulting from a conviction, and not merely a temporary detention for purposes of investigation.

The employer shall notify the worker of its intention at least 30 (thirty) days before the date of termination, and the employee shall not be entitled to any compensation.

Economic reasons related to the company

The employer may terminate one or more employment contracts provided that this decision is determined by market, structural or technological reasons and is deemed essential to the company’s competitiveness, economic rehabilitation or for the administrative and productive reorganization.

Even so, the employer must give a prior notice in writing of at least 30 (thirty) days and indemnify the employees accordingly. If the employee was under a fixed term contract, the employer shall pay a compensation equivalent to the salaries that would be received between the date of termination and the initially agreed end date of the contract. For employees with open-ended contracts, the compensation shall be calculated as per the following criteria⁶³:

⁶² Although, usually, the decision is for the dismissal to have immediate effect and the 90 days are used for the execution of other disciplinary sanctions.

⁶³ The Labor Law contains a transitional rule imposing the application of the previous law, in certain cases, until 2022.

- 30 (thirty) days of salary per each year of service, if the worker's salary is between 1 (one) and 7 (seven) minimum wages;
- 15 (fifteen) days of salary per each year of service, if the worker's salary is between 8 (eight) and 10 (ten) minimum wages;
- 10 (ten) days of salary per each year of service, if the worker's salary is between 11 (eleven) and 16 (sixteen) minimum wages;
- 3 (three) days of salary per each year of service, if the worker's salary is higher than 16 (sixteen) minimum wages.

13. Mandatory retirement age

The retirement of the worker, whether due to old age or disability, acts as an autonomous cause of expiry of the employment contract, not requiring the verification of the requirements of lapse established in the labor law.

Retirement age is 60 (sixty) years for men and 55 (fifty five) for women. Without prejudice, even when reaching these ages, employees may continue working in case they have not yet complied with other requirements for retirement, such as the amount of contributions to the INSS system. Employees who have been registered at the INSS for over 30 (thirty) years or have completed 25 (twenty five) years (equivalent to 300 (three hundred) months) of contributions are also eligible for retirement.

Nevertheless, whenever the employee is registered at the INSS and fulfils the requirements to benefit from a pension, termination of the employment due to retirement is mandatory under the terms of the Mozambican Labor Law. This measure aims to create vacancies for younger employees.

14. Authority with power to resolve labor disputes

Mozambique has three authorities with powers to resolve labor disputes: (i) the Commission on Labor Mediation and Arbitration; (ii) the judicial courts with labor jurisdiction; and (iii) the arbitration courts.

The Regulation for the Commission on Labor Mediation and Arbitration⁶⁴ imposes on the parties to first resort to mediation to solve a labor dispute⁶⁵. Only after an unsuccessful mediation procedure may the parties initiate proceedings in the labor judicial courts or the arbitration courts. An exception is provided for in the law on proceedings for the application of interim measures⁶⁶.

15. Statute of limitations for bringing labor disputes

The statute of limitation depends on the dispute that is raised.

The general provision states that all rights resulting from an employment contract, its breach or termination shall be forfeited within 6 (six) months as of the date of termination, but other special provisions may be applicable, such as:

- A disciplinary proceeding can only be brought up against an employee within 6 (six) months as of the date of the misbehavior and 30 (thirty) days after the acknowledgement by the employer;
- Both the employer or the employee may challenge the just cause in which the other party grounded the termination of an employment contract, within 3 (three) months as of the acknowledgement of the termination;
- An action to challenge an unlawful dismissal must be initiated within 6 (six) months as of the date of dismissal.

16. Liability of employer for acts of employees

The civil liability of the employer is governed by the general provisions on this matter⁶⁷. The employer is always deemed liable for the losses and damages caused by its employees to third parties whenever their acts were performed while executing the contract, even where the employee acted intentionally or against the employer's orders.

If the employer does not have any fault over the act, it shall be entitled to demand from the employee all compensations paid on his/her behalf. On the other hand, if the employer had acted with fault, it shall only be able to demand the compensations paid for the part corresponding to the employee's responsibility. Without further evidence, it is assumed that both the employer and employee have similar degrees of fault.

⁶⁴ Enacted by Decree no. 50/2009 of September 11th.

⁶⁵ Article 19 of Decree no. 50/2009 of September 11th.

⁶⁶ The general tendency is indeed to protect the employees' interests, as the Labor Law is guided by the *favor laboratoris* principle. This means that in order to proceed with a dismissal, to reduce compensation or to in any way restrict the workers' rights, the employer has the burden of proof to demonstrate that the restriction is grounded.

⁶⁷ Articles 500 and 497 of the Civil Code.

Legal entities (companies) can also be held criminally liable, as per article 30 of the new Criminal Code. The employer may therefore be held criminally liable for the offences committed by the members of its corporate bodies or representatives on its behalf and interest. When the offender acted against the orders or explicit instructions of the due authority, the employer is exempt from liability.

CHAPTER XI – FOREIGN EXCHANGE CONTROL OR CURRENCY REGULATIONS⁶⁸

1. Opening of foreign exchange accounts

The opening of foreign currency bank accounts by companies incorporated in Mozambique (even when the majority of their share capital is held by foreign citizens or companies incorporated in another jurisdiction) and local bank accounts by foreign entities is subject to prior authorization of the Central Bank of Mozambique (CBM)⁶⁹. Pursuant to the Mozambican Foreign Exchange (FX) Law and Regulation, foreign entities may open non-resident accounts in local or foreign currency with any commercial bank provided that prior authorization from the CBM is duly obtained⁷⁰.

The application for the authorization may be submitted directly by the foreign entity or through the local commercial bank where the foreign entity intends to open the account and the following documents/information shall be attached:

For local currency bank accounts:

- Identification documents of the holder of the account (individuals – passport and proof of residence – collective entities – commercial registrar certificate and articles of association);
- Description of the capital transactions that will be performed through the account, if any;
- Authorized signatories and operating procedures of the accounts.

For foreign currency bank accounts:

- Relevant form provided in Notice no. 5/GBM/2011 (Aviso n°. 5/GBM/2011) to be completed;

⁶⁸ Mozambique has detailed exchange control rules in place. The Bank of Mozambique has a high degree of discretion when assessing applications for authorization of transactions between local and foreign entities, taking in consideration not only the terms of the transaction, the economic and financial status of the company (making its own assessment of the capacity of the resident entity to fulfill its commitments) and the country's economic and financial situation (including the availability of foreign currency). Therefore, applicants should be prepared to provide detail information on its economic situation and the details of the project (including on the ratio of the investment).

⁶⁹ Article 6 of Law no. 11/2009 of March 11th ("FX Law") and Article 8(5)(d) of Decree no. 83/2010 of December 31st ("FX Regulation").

⁷⁰ Articles 101 and 102 of the FX Regulation.

- Indication of the source of funds, purpose of the account and other relevant information;
- Description of the capital transactions that will be performed through the account, if any;
- Authorized signatories and operating procedures of the account.

2. Purchase of foreign currency, including the requirements

Banks that carry out foreign currency services are under the obligation to confirm the ratio of the transaction, identify the client and if the transaction has been duly authorized by the CBM, as applicable⁷¹. If the information provided is insufficient, the bank ought to refuse to carry on the foreign currency transaction.

In addition, transactions that involve payments or collection of receivables from abroad must be carried out using the services of a Bank authorized to operate in Mozambique⁷². Banks must register all transactions and report them to the CBM.

3. Restrictions on the transfer of the following (and whether they also apply to domestic investors)

FDI-related capital (profits, dividends, interests, original capital, capital appreciation, or other amounts derived from foreign investment)

In order to ensure the repatriation of profits, dividends and/or original capital, the foreign investor must register any inflow of funds at the Bank of Mozambique⁷³ within 90 (ninety) days as of the receipt of the funds in Mozambique (or the approval of the relevant authority, if applicable) through the submission of a form (made available by the Bank of Mozambique) together with the following documents:

- identification documents of the foreign investor;
- copy of the bank *bordereau* evidencing the transfer of foreign money to Mozambique (when the investment is carried out by an injection of cash);

Or

⁷¹ Article 9 of the FX Regulation.

⁷² Article 12 of the FX Regulation.

⁷³ Article 6(1) of the FX Law and Article 54 of the FX Regulation.

- copy of the document evidencing that the assets have entered in Mozambique (when the foreign investor uses the loan to purchase machinery or other assets – reference prices for the assets will be Cost, Insurance and Freight (CIF));
- copy of the authorization of use, if the investment concerns the right to use a technology or right to use a trademark.

If the foreign investor aims to use the funds to invest in the real estate sector, *e.g.*, to purchase an immovable asset (building), a prior authorization from the Bank of Mozambique must be obtained⁷⁴ also through the submission in advance of a form (made available by the CBM) together with the following documents:

- identification documents of the foreign investor and the seller;
- immovable asset Land Certificate;
- Purchase-Sale Promissory Agreement;
- evidence that the foreign investor holds the relevant funds; and
- evidence of payment of all due taxes due in connection with the transaction.

Proceeds from the sale of an investment

When requesting that a commercial bank transfer abroad the proceeds from the sale of an investment, it is necessary to provide evidence that the original investment was duly registered before the Bank of Mozambique.

In a scenario of winding-up a company, the transfer of proceeds to a foreign country must be approved in advance by the CBM. For that purpose, a specific form must be submitted with the following documents attached⁷⁵:

- identification documents of the parties;
- evidence of the original investment (and its due registration before the Bank of Mozambique);

⁷⁴ Article 74 of the FX Regulation.

⁷⁵ Article 73 of the FX Regulation.

- financial statements relating to the wind-up of the company;
- corporate resolution approving the wind-up of the company;
- valid tax clearance certificate; and
- commercial certificate issued by the Legal Entities Register confirming the wind-up of the company.

Payments from expropriation

When requesting the bank to transfer abroad the proceeds from the sale of investment, evidence must be provided that the original investment was duly registered before the Bank of Mozambique; as well as documentation evidencing that the amounts to be transferred arise from State payment for expropriation.

Payments from settlement of disputes, court judgments, arbitral awards

There is not a specific provision in the law allowing for the transfer abroad of payments from settlement of disputes, court judgments, and arbitral awards. Therefore, an authorization request will have to be submitted to the CBM which, in turn, has discretionary powers to approve it or not.

4. Application of the rules on both inward and outward investments

Inward investments

Please refer to section 3 above.

Outward investments

Investments abroad performed by companies incorporated in Mozambique are subject to prior approval by the Bank of Mozambique. A specific form with the following documents must be submitted to the CBM⁷⁶:

- identification documents of the investor, including bylaws and shareholding structure;

⁷⁶ Article 67 of the FX Regulation.

- feasibility study;
- corporate resolution approving the foreign investment decision; and
- valid tax clearance certificates.

If the investment is to be made in a foreign company already incorporated, the following additional documents must be provided:

- corporate documents of the company where the investment will be made;
- corporate resolution of the company where the investment will be made accepting such investment;
- evidence of the legality of the source of funds; and
- evidence that the company where the investment will be made has complied with all due tax obligations;

In case of reinvestment of profits, the following documents must also be submitted:

- evidence that the dividends are due; and
- the corporate resolution of the company where the reinvestment will be made, accepting the reinvestment;

In case of conversion of debt into shares, the following documents must be submitted:

- evidence that the original loan was duly approved by the CBM; and
- a draft of the agreement of conversion of debt into equity.

CHAPTER XII – LOANS

1. Structure of loans/type of loans available to foreigner investors

Mozambican Law establishes an equal treatment between national and foreign investors, and makes available two types of loans, accessible to any investor:

- Personal loans - defined as loans provided by a lender that does not lend money as a professional activity, envisaging or not, profit⁷⁷;
- Financial loans - defined as loans involving a financial institution within its professional activity and pursuing profit⁷⁸.

Mozambican Law also permits intra-group loans, between a resident entity to a non-resident entity from the same group, headed outside Mozambique and shareholders' loans to the company ("*suprimentos*")⁷⁹ as described below.

2. Eligibility of foreign investors to access loans, including requirements and procedures

There are no specific eligibility requirements applicable to foreign investors to access loans. Loans are deemed capital transactions that must be performed through the national banking system⁸⁰ and are subject to the prior authorization of the Bank of Mozambique whenever executed between residents and non-resident entities⁸¹; with the exception of loans provided for a maximum period of 2 (two) years to finance import of goods⁸² - in this case no prior authorization is required but merely the registration of inflow of funds⁸³.

⁷⁷ Definition of personal loans ("*empréstimos de carácter pessoal*") in article 3(o) of the FX Regulation.

⁷⁸ Definition of financial loans ("*empréstimos e créditos financeiros*") in article 3(p) of the FX Regulation.

⁷⁹ Article 68 of the FX Regulation.

⁸⁰ Article 62(1) of the FX Regulation.

⁸¹ Article 6(5)(f) and (k) of Law 11/2009 of the FX Law and article 5 of the FX Regulation.

⁸² Article 78(1) of the FX Regulation.

⁸³ For loans requiring the prior authorization of the CBM the law establishes 15 (fifteen) working days for the issue of a final decision, as of submission of the complete file (despite the time limit set by law, usually the process takes 2 (two) months).

a. Onshore and offshore credit institutions

In case of offshore financial loans the application for the authorization of the loan must be made through the filing of a form approved by the CBM and submitted with the following documentation⁸⁴:

- Identification documents from the borrower and lender;
- Copy of the project of the loan;
- Explanation on the economic and social reasons that explain the loan; and
- Demonstration of the source of the income to repay the loan or financial statements.

For the consolidation of the foreign exchange registry and commencement of the repayment, the borrower must send the CBM a notarized copy of the agreement that shall contain, amongst other information, a repayment schedule within 30 (thirty) days of the execution of the loan agreement.

The registration of the disbursements is also made through the filing of a form approved by the CBM and submitted with a copy of the sender and recipient banks' statements⁸⁵.

In case of onshore financial loans executed between two resident entities, prior authorization from the CBM is not required.

a. Onshore and offshore non-credit institutions

In case of an offshore personal loan (from a non-credit institution)⁸⁶ the application for CBM's authorization is made through the filing, attached with the following documentation:

- Identification documents from the borrower and lender;

⁸⁴ Article 83 of the FX Regulation.

⁸⁵ When assessing an application for the authorization of an offshore financial loan, the CBM will take into consideration not only the status of the company accounts (a debt to equity ratio of 70%/30% is usually used as guidance), the capacity of the company to generate resources to repay the loan (in view of the information provided by the bank, and also the balance sheet of the Republic of Mozambique, i.e., the prognosis on the availability of foreign currency). In view of this, for large loans the level of discretion of the CBM is high.

⁸⁶ Article 96 of the FX Regulation.

- Draft of the loan agreement;
- Explanation on the economic and social reasons that motivate the loan;
- Demonstration of the source of the income and ability to repay the loan; and
- Demonstration of the lawful source of funds.

In case of onshore personal loans executed between two resident entities a prior authorization from the CBM is not required.

For the consolidation of the foreign exchange registry and commencement of the repayment, the borrower must send to the CBM, within 30 (thirty) days of the execution of the loan agreement, a notarized copy of the agreement that shall contain, amongst other information, a repayment schedule.

For the approval application of Shareholders' loans⁸⁷, a copy of the corporate resolution that approves the loan and its conditions must also be submitted.

In case of intra-group loans, the borrower shall also seek a prior authorization from the CBM by submitting the following documentation:

- Identification documents of the parties;
- Audited financial statements or proof of the origin of the funds and its lawful origin;
- Corporate resolutions authorizing the loan;
- Proof of the intra-group relation, indicating the participation in the share capital held or belonging to the same company group;
- Draft agreement; and
- Tax clearance certificate.

Offshore loans granted by financial and certain non-financial entities (such as fund managers, property sale companies, among others) are subject to certain duties relating to anti-money laundering⁸⁸ as transaction from or to other countries that do not have the same international standards or have

⁸⁷ Article 86 of the FX Regulation.

⁸⁸ In accordance with Law no. 14/2013 dated August 12th.

deficient standards regarding AML controls, a special control obligation will apply and the financial or non-financial institution shall (i) prepare a confidential report on such transactions; (ii) confirm the source of the funds, ultimate beneficiary and the true nature of the operation, placing it available to the Financial Information Cabinet (GIFIM).

Both financial and non-financial entities that find a transaction suspicious must communicate immediately to the GIFIM and special attention must be given to transactions to and from other countries which do not have international standards.

International transfers

To perform transfers of funds abroad, intermediary and commercial banks normally require the following documentation:

- Identification of the parties;
- Evidence of authorization for the loan;
- Evidence of registration of the inflow of funds;
- Tax clearance certificate;
- Other specific documents that may be required given the specific nature of the transaction.

3. Registration requirements for onshore or offshore loans, including in case of modifications and timeframe

Any amendments made to loans authorized by the CBM shall also be authorized; thus must follow the same process for authorization of the original loan⁸⁹.

4. Main corporate taxes on amounts receivable under a loan

Mozambican resident legal entities (companies with their head office or place of effective management in Mozambique or permanent establishment of non-resident legal entities) are taxed on their worldwide income (including interest received) under corporate income tax (“IRPC”). IRPC taxes profits of legal entities at the rate currently in force of 32% (thirty two percent).

⁸⁹ Article 65 of the FX Regulation.

Non-resident entities are taxed through withholding tax generally at a tax rate of 20% (twenty percent), insofar as such income is deemed to be Mozambican sourced. Interest paid to non-resident entities is deemed sourced in Mozambique when the debtor is a tax resident in the country (*i.e.*, has its registered office in Mozambique or its effective place of management is located in Mozambique or if the interest payment is attributable to a permanent establishment located in Mozambique).

5. Requirements for payment of interest, principal loan fees, and expenses in foreign currency

Payment of the loan interest and any other charges/fees/expenses related to an authorized loan is deemed a current transaction⁹⁰ under Mozambican Law. Current transactions are not subject to a prior authorization from the CBM but shall be registered as specified below.

For registration and legality control purposes, the parties must submit its identification documentation, legitimacy and description of the operation in accordance with the AML procedures for the purpose of anti-money laundering (article 19).

Repayment of the capital is subject to registry through the filing of a form, in the model approved by the CBM, duly attached to the bill of costs or notice (article 84(3) of the Decree-Law).

6. Rights to grant security to lenders with respect to assets in Mozambique

In Mozambique there is no private ownership of land. Land belongs to the State and therefore cannot be used as security. The most common form of security over buildings, infrastructure and improvements built on a land is a mortgage (“*hipoteca*”). Mortgages may also be created over tangible movable assets subject to registration (aircraft/vessels/ vehicles) as these are deemed equivalent to immovable assets⁹¹.

Mozambican Law provides the following guarantees over assets, which provide the right for the creditor to be paid with the proceeds of the sale of the asset or its income, with preference over any other creditor right:

- Pledge (over movable and intangible assets⁹² – “*penhor*”);
- Mortgage (over immovable assets and movable and tangible assets subject to public registry – “*hipoteca*”);

⁹⁰ Defined as payments or received goods in foreign exchange that are not meant as transfer of capitals, such as payments/receiving in connection with external commerce, unilateral transfers without payment or others that are not subject to the authorization from the CBM – Article 3(yy) of the Decree-Law.

⁹¹ Article 686 of the Civil Code.

⁹² Article 669 of the Civil Code.

- Assignment of income (over immovable or movable assets subject to public registry, such as rent⁹³ – “*consignação de rendimentos*”);
- Right of a debtor to retain an asset from creditor in case where creditor owes the debtor any amounts for costs/damages incurred by the debtor relating to that asset⁹⁴ (“*direito de retenção*”).

There are no restrictions for a foreign investor to provide the guarantees above over assets located in Mozambique, except for the following applicable to immovable assets.

7. Loan stamp duty

Under Mozambican tax law, granting of credit in Mozambique or a credit that involves a borrower residing in Mozambique is subject to Stamp Duty, irrespective of the form of the loan, in accordance with article 1(1) of Stamp Duty Tax Code (CIS), in conjunction with Article 19 of Stamp Duty Table (TIS).

The applicable stamp tax rates depend on the term of the loan agreement, as follows: (i) loans with a term of less than 1(one) year - a rate of 0.03% (zero point zero three percent) per month or fraction over the amount of the loan; (ii) loans with a term equal or more than 1 (one) year - a rate of 0.4% (zero point four percent) over the amount of the loan; and (iii) loans with a term equal or more than 5 (five) years - a rate of 0.5% (zero point five percent) over the amount of the loan.

Stamp duty is payable upon execution of the loan agreement under article 13(h) of CIS and must be settled and paid by the borrower, as provided under Article 14(1)(b) also from CIS. The borrower is liable for payment of stamp tax due before the Tax Authorities until the 20th (twentieth) day of the following month in which the agreement was signed.

8. Registry system for properties used as collateral

The registration process of security depends mainly on the type of asset to be secured and it is also possible to constitute different types of guarantees over the same asset, which shall be ascertained on a case by case basis (e.g., it is possible to constitute a mortgage and an assignment of income over the same immovable property).

Mortgage of immovable and movable and tangible property

⁹³ Article 656 of the Civil Code.

⁹⁴ Article 754 of the Civil Code.

This type of security grants the creditor a right to be paid from the proceeds that result from realization of the assets. The process to register the mortgage is as follows:

- Draft of the public deed – in case of vehicles, a private notarized agreement will suffice;
- Submission of the application for authorization to the Bank of Mozambique, when applicable⁹⁵; and the CBM shall reply within 15 (fifteen) business days;
- Execution of the public deed before a public notary, with due authentication and registration by the notary - with the exception of a mortgage over motor vehicles which is perfected by the completion of a specific form;
- Payment of stamp duty, until the 20th (twentieth) day of the month following the execution of the deed;
- Registration of the mortgage deed in the competent Registrar⁹⁶;
- Obtaining a new real estate certificate evidencing that the mortgage is duly registered;
- If the transaction requires a prior approval from the CBM, a certified copy of the executed loan agreement, the mortgage deed and the real estate certificate should be sent to the CBM.

⁹⁵ When the beneficiary of the pledge is a foreign entity.

⁹⁶ The centralized Registrar is the Land Registry Office. Each Land Registry Office has a territorial jurisdiction. There is no central registry and in order to obtain information on a specific real estate asset, an application must be submitted by referencing the details of the real estate (it is not possible to make a search per owner). In the case of motor vehicles there is a Central Register and searches are made by the number of the identification plate of the motor vehicle.

Pledge of movable assets

For the pledge of movable property to be enforceable the possession of the asset shall be transferred to the creditor or a written document giving exclusive availability of the property to the creditor shall be executed (article 669 of the Civil Code), unless the creditor is a banking institution and the assets are shares, financial credits and other intangible rights⁹⁷. The registration entails the following actions:

- Execution of a Pledge Agreement;
- Transfer of the asset or execution of the document giving exclusive availability to the creditor (if the beneficiary of the pledge is not a Bank and the pledge has not been executed under the terms of Decree 29.883 dated August 17th 1939);
- Payment of stamp duty (until the 20th (twentieth) day of the month following the contract); and
- If the transaction requires a prior approval from the CBM, a certified copy of the loan agreement and the draft of the pledge agreement shall be sent to the CBM.

Pledge of quotas

In limited liability companies organized by quotas, the share capital is divided into quotas, i.e., the identity of quota holder is publicly disclosed. Pledge of quotas shall be perfected as follows:

- Execution of pledge agreement;
- Written notification of the pledge to the company;
- Payment of stamp duty (until the 20th (twentieth) day of the month following the contract);
- Registration at the competent Commercial Registry (1-2 days);

⁹⁷ In this case the pledge agreement may be subject to the special regime of Decree 29.883 dated August 17th 1939, which does not require the movable asset to be transferred to the Bank (the pledge agreement ought to be executed and confirmed before the notary) and whenever the assets to be pledged are shares, financial credits and other intangible rights. The creation of a pledge entails these actions (please note that with the exception of shares, quotas and intangible assets (trade marks) the pledge is not subject to registration).

- If the transaction requires a prior approval from the CBM, a certified copy of the loan agreement, the draft of the pledge agreement and the updated commercial certificate shall be sent to the CBM.

If the company assets include real estate assets (building, infrastructures and improvements as the case may be) a Public Deed of Pledge of Quotas must be executed and the following is required:

- resolutions from both the pledgor and its shareholders (if applicable) approving the pledge of quotas;
- power of attorney from the pledgee to its representative; and
- an updated certificate of registration of the company which is issued by the Registrar of Legal Entities.

Pledge of shares

Limited liability companies organized by shares or joint stock companies provide greater flexibility in this matter. In this type of company both nominative or bearer shares may be issued and the requirements to enforce the pledge will vary according to the type of shares issued by the company:

- Bearer shares may be freely pledged through the transfer of the share certificate (or deposited in a bank account) to the creditor or through a written agreement executed between the debtor and the creditor;
- Nominative shares may be pledged provided the encumbrance is duly registered on the share registration book.

It shall be noted that the company's articles of association may specifically determine special provisions applicable to the pledge of shares.

Since 2015, the pledge of shares must also be registered before the Central Securities Depository operating at the Stock Exchange⁹⁸. In fact this requirement involves that all shares must become dematerialized shares (*acções nominativas escriturais*) or in case of certificated shares (*acções nominativas registadas*) deposited with a financial intermediary (thus replacing the register book kept by the Company). However, most companies in Mozambique have not yet complied with this requirement.

⁹⁸ Decree no. 25/2006 dated August 23rd enacted the rules applicable to the Central Securities Depository. However the CSD has only initiated its activities in 2014 and a term of one year was granted for companies to register.

Intangible assets

Registered IP rights can be pledged or encumbered⁹⁹. The Mozambican Intellectual Property Institute has never previously accepted the registration of any encumbrances over the IP rights on the basis that: (i) this matter is not properly regulated; and (ii) their electronic system is not adjusted and prepared to perform these registrations. Further to the enactment of the new Intellectual Property Code, it is expected that the forms for registration and the applicable costs will be disclosed in the near future.

⁹⁹ Article 34 of the Intellectual Property Code.

CHAPTER XIII - CUSTOMS

1. Conditions and restrictions on importation of commercial goods

Import of goods to Mozambican territory requires prior registration of the importer as operator of foreign trade (“*operador de comércio externo*”).

A customs declaration is required to authorize the arrival of goods to Mozambican customs territory. A customs declaration shall indicate the goods and the applicable customs procedure, and takes the form of:

- Single Document (“*Documento Único – DU*”) – form of customs declaration for goods entering and leaving the Mozambican territory, regardless of applicable customs procedure; or
- Abbreviated Single Document (“*Documento Único Abreviado – DUA*”) – abbreviated form of customs declaration for the import and export of goods transported in small quantities, that are intended for commercial purposes and which is applicable in the authorized entry and exit borders;
- Simplified Document (“*Documento Simplificado*”) – form of customs declaration used exclusively for imports of goods and separate luggage brought by travelers in excess of their franchises, for personal non-commercial use.

Under Article 53 of the Regulation of Customs Clearance of Goods¹⁰⁰, the declarant shall, within 10 (ten) days after the issue of the relevant payment notice, make the payment of the duties and other levies due. Besides customs duties, imported goods are also subject to payment of VAT and, sometimes, of Excise Duty.

The customs clearance of imported goods must be processed within 25 (twenty five) calendar days, counted from the date of the end of unloading at the customs office of destination, after which the goods are considered abandoned and the relevant administrative procedure for selling them at auction is established¹⁰¹.

¹⁰⁰ Approved by Ministerial Statute no. 16/2012 from February 1st.

¹⁰¹ Article 35 of the Regulation of Customs Clearance of Goods.

Although the import of goods is not, as a rule, subject to special restrictions, Annex I of the General Rules for the Customs Clearance of Goods¹⁰² establishes a set of goods whose import is forbidden¹⁰³.

On the other hand, according to Article 2 of the Regulation of the Pre-Shipment Inspection¹⁰⁴ (“*Regulamento da Inspeção Pré-embarque*”), there are some regulated goods (known as the ones included in the Positive List) that may be subject to a pre-shipment inspection in the country of export before they are allowed into Mozambique. The goods included in the referred Positive List are provided for in the annex table to above referred Regulation. Under Article 5 of the Regulation of the Pre-Shipment Inspection, the importer must inform the exporter that the goods should be subject to the pre-shipment inspection, in case such inspection is required. Intertek¹⁰⁵ has been appointed by the Government of Mozambique as the provider of the referred pre-shipment inspections.

2. Customs duties that apply to commercial goods

According to article 69 of the General Tax Law¹⁰⁶ (“*Lei de Bases do Sistema Tributário*”) imported or exported goods within Mozambican customs territory are subject to customs duties.

Under article 9 of the General Rules for the Customs Clearance of Goods, the charges due on the import and export of goods are as follows:

- Customs Duties;
- Anti-Dumping Rights;
- Specific Consumption Tax (ICE);
- Surcharges;
- Value Added Tax (VAT);
- Customs Service’s Fees (TSA);

¹⁰² Approved by Decree no. 34/2009 from July 6th.

¹⁰³ For example, goods with false origin, materials considered offensive of the moral and public dignity, drugs, among others.

¹⁰⁴ Approved by Ministerial Statute no. 19/2003 from February 19th.

¹⁰⁵ <http://www.intertek.com/>

¹⁰⁶ Approved by Law no. 15/2002 from June 26th.

- Broadcasting Fee;
- Overvaluation Fee;
- Other charges approved by law.

The rates applicable to customs duties and other applicable charges are provided for in the Customs Tariff, at the date of acceptance of the customs declaration by the Customs Office.

3. Customs incentives for foreign investors, if any

Under Article 14 of the Tax Incentives Code¹⁰⁷ (“*Código dos Benefícios Fiscais*”), approved investment projects promoted by foreign or domestic investors can be exempted up to 5 (five) years from customs duties and VAT in respect of class “K” imports, if used exclusively for feasibility studies and/or the implementation of investment projects. This class represents capital goods, mostly equipment and machinery. Exemptions provided cover building materials for the construction and installation of new undertakings, with the incorporation of a new company. This exemption excludes investments in existing undertakings as well as investments in their expansion, rehabilitation and reorganization. Different sectors of the economy have specific customs duties exemptions and VAT exemptions as set down in articles 21,¹⁰⁸ 24,¹⁰⁹ 26,¹¹⁰ 27,¹¹¹ 31,¹¹² 34,¹¹³ 37,¹¹⁴ 42,¹¹⁵ 45¹¹⁶ and 47¹¹⁷.

Notwithstanding the foregoing, according to Article 6(1) of the Tax Incentives Code, the abovementioned exemption is only granted when the imported goods are not produced in Mozambique, or even if there are produced therein, they do not meet the specific characteristics of purpose and functionality required or inherent to the nature of the project and to the activity to be developed and explored.

¹⁰⁷ Approved by Law no. 4/2009 from January 12th.

¹⁰⁸ For creation of basic infrastructures.

¹⁰⁹ For commerce and industry in the rural areas.

¹¹⁰ For transforming and assembly industry.

¹¹¹ For agriculture and fisheries activities.

¹¹² For hotels and tourism activities.

¹¹³ For science and technology parks.

¹¹⁴ For projects of big dimension.

¹¹⁵ For rapid development zones.

¹¹⁶ For free industrial zones.

¹¹⁷ For special economic zones.

Moreover, according to Article 6(2) of the abovementioned Code, the referred exemption is not also applicable to food, drinks, tobacco, clothing, light vehicles and other articles of personal and domestic use.

4. Registration requirements for exporters/importers

As stated above, for the importation of goods to customs Mozambican territory it is, as a rule, necessary that the relevant entity is registered as an operator of foreign trade.

Nevertheless, there are certain exceptions in which case the importers are exempted to be registered as an operator of foreign trade. By way of example, we refer the case of travelers who in excess of their franchises brought luggage, for personal and non-commercial use, of less than MZN 25.000,00 (twenty five thousand Meticaís).

According to article 4 of the Regulation for Licensing of Commercial Activities¹¹⁸ (“*Regulamento do Licenciamento da Actividade Comercial*”), the authorization for the registration as operators of foreign trade, as well as for the issue of the card of operator of foreign trade, is given by the Executive Director of the One-Stop Shop (“*Balcão de Atendimento Único*”).

Under article 11 of the Regulation for Licensing of Commercial Activities, the registration as operator of foreign trade and the importer card are valid for a 1(one) year period and shall be renewed 7 (seven) calendar days before the relevant date of expiry.

The registration as an importer/exporter requires the submission of a particular form, available at <http://www.at.gov.mz/index.php/por/Procedimentos-Aduaneiros/Formularios>.

5. Warehousing and storage

According to the Regulation of the Customs Regime Warehouses¹¹⁹ (“*Regulamento dos Armazéns de Regime Aduaneiro*”), a custom regime warehouse is an authorized facility in which the goods subject to tax and customs payments may be temporarily collected with suspension of payment of those charges.

The conditions and regime provided for in the referred statute is applicable to three types of customs regime warehouses, as follows:

¹¹⁸ Decree no. 34/2013 of August 2nd.

¹¹⁹ Ministerial Statute no. 12/2002 of January 30th.

- a) To those which are merely intended to store the goods for a certain period, under a suspended procedure;
- b) To those which are intended to support producers who need to rely on imported raw materials in their production processes. When the final product is sold to the domestic market, the correspondent taxes are paid; if the final product is exported, the warehouse operator will have exemption from the payment of taxes;
- c) To those which are intended as storage of goods in transit.

According to article 4 of the Regulation of the Customs Regime Warehouses, the request for the attribution of a customs regime warehouse should be submitted in a specific form by the interested party along with a set of documentation, depending on the type and the aim of the warehouse – please refer to the forms annexed to referred legal statute.

Article 5 of the Regulation of the Customs Regime Warehouses provides for a set of requirements for the attribution of a custom regime warehouse. Among others, please note that the authorization to operate a warehouse is given only to companies which are legally registered in Mozambique and that do not have debts to the Tax Authorities. Moreover, it is also required that the relevant entity is registered as an operator of foreign trade.

Additionally, it is also worth noting that under article 7, for the authorization for a custom regime warehouse it is also required to present a guarantee that should cover the amount equivalent to 20% (twenty percent) of duties and other charges due in respect to the maximum authorized warehouse stock.

6. Export incentives

According to article 11(1) of the Preliminary Instructions of the Customs Tariff¹²⁰ the export of goods is exempt of customs duties.

However, article 11(2) specifically establishes that in some cases provided in their own legislation, the export of goods may be applied an Overvaluation Fee, like in the case of cashew nuts.

¹²⁰ Law no. 6/2009 of March 10th.

7. Applicability of rules to foreign and domestic investors

Mozambican law establishes the principle of equal treatment between foreign and domestic investors. According to Article 4(1) of the Investment Law¹²¹ (*Lei do Investimento*), foreign investors, in carrying out their activities, should have the same rights and be subject to the same obligations provided for in Mozambican legislation for a domestic investor.

Notwithstanding, Article 4(2) excludes from the aforementioned principle the activities carried out by domestic investors that may have a special treatment due to their nature or to the dimension of the investment¹²².

¹²¹ Law no. 3/93 of June 24th.

¹²² The special treatment that may be granted to domestic investors due to the nature or to the dimension of the investment is attributed on a case by case basis. In consequence there is no provision in the Investment Law that establishes a case to which such special treatment should be applicable.

CHAPTER XIV - LAND

1. Ownership rights to land and other assets on land

Mozambique does not recognize the private ownership of land¹²³. The Mozambican Constitution establishes that land is owned by the State and cannot be subject to any sort of sale or encumbrance¹²⁴. In addition the Mozambican Criminal Code states that any attempt to sell land is deemed a criminal offence and both the seller and the buyer can be held liable and subject to imprisonment¹²⁵.

Nevertheless, the use and benefit of the land can be granted to any entity (both local and foreign) provided that a development plan is submitted and approved - any local communities eventually making use of the land granted under a development plan must also approve such occupancy and be compensated for discontinuing the use of the land¹²⁶.

The title that enables use and benefit of the land granted to private entities is generically called as DUAT (which stands for the acronym of “*Direito de Uso e Aproveitamento da Terra*” meaning “Right to Use and Benefit from the Land”). This title enables the holder to carry on the improvements based on which the land has been granted (respecting the zoning of the area in which the land is located)¹²⁷. Once the development of the improvements is concluded, any and all infrastructures erected with permanent character that constitute a Real Estate Property can be registered by the titleholder at the Land Registry Office; as it can be privately owned, leased, transferred and encumbered¹²⁸.

Requirements and Duration

The granting of the DUAT occurs in two phases: (i) the provisional phase; and (ii) the definitive phase.

The provisional phase is the phase during which the titleholder needs to initiate the development plan and, eventually, terminate the development.

¹²³ Article 109 (1) of the Constitution.

¹²⁴ Article 199 of the Constitution.

¹²⁵ Article 269 of the Criminal Code.

¹²⁶ Article 109 (3) and (110) et seq. of the Constitution and articles 10 et seq. of the Land Law vis a vis articles 9 et seq of the Regulation of the Land Law.

¹²⁷ Articles 19 and 20 of the Land Law.

¹²⁸ General principle of the free disposal of Real Estate properties provided in the Civil Code, reading together with the provisions set forth in the Code of Registrations and Notary.

Regarding land concessions granted to foreign entities (foreign citizens or foreign entities and/or entities which are majority controlled by foreign entities), the duration of the provisional phase is 2 (two) years. In case of national entities (individuals of legal entities majority controlled by national entities), such duration is extended for 5 (five) years¹²⁹.

The duration of the provisional period cannot be extended. Nevertheless, local authorities have, in the past, authorized developments to be continued even after the expiry of the provisional validity of the DUAT. However, there is no legal protection after the termination of the provisional validity of such right. When converted to definitive, the DUATs are valid for a period of 50 (fifty) years, subject to an automatic renewal of another further 50 (fifty) years. Both the DUAT granted under the provisional and definitive phases must mandatorily be registered with the competent Land Registry Office¹³⁰.

It should be noted that the basic principle of the Mozambican Land Regime is that land does not have an economic value, as it cannot be privately owned. As such, it cannot be evaluated as an asset towards any sort of development, although the expectation of the use of benefit of the land can, in economic terms, be considered for appropriate valuation. As a consequence of the above, all the infrastructures erected, constructed or edified on the land will always be seen as an added value to a non-valued asset.

This legal construction implies that, once a permanent structure is built (according to the development plan) in a certain parcel of land, the protection that the developer (owner of the permanent structure) acquires is legally superior to the right that the State has in respect to that parcel of land. As such, upon expiry of the validity period of the definitive DUAT (i.e., after the expiry of the 50 plus 50 years) should there be registered improvements erected in that parcel of land, it is strongly argued that the expired DUAT cannot be used to revert the ownership of such infrastructures to the State unless there are grounds for expropriation, in which case the titleholder will be entitled to a fair compensation¹³¹.

Regarding the requirements and process for obtaining a DUAT, the process can be seen as somewhat complex - mainly due to intervention of several institutions. The most common procedure can be described as follows:

Identification of the Land and relation with Local Communities

The investor and/or developer must engage with the representatives of local communities that make use of the land, in order to evaluate the conditions for such communities to vacate the land. Payment of compensations may be due if there are improvements on the parcel of land identified. It shall be

¹²⁹ Article 25 (2) of the Land Law.

¹³⁰ Article 14 of the Land Law and Article 20 of the Regulation of the Land Law. Lack of performance of the development plan (for instance, not being able to develop the land within the provisional timeframe) would prevent the provisional DUAT from being converted to a definitive DUAT.

¹³¹ Article 16 of the Land Law.

noted that for this purpose, any and all improvements may be deemed relevant - even grass used for cattle or existing fruit trees – for the evaluation and calculation of the compensation that may be due.

In certain parcels of land that are reserved by the State (through investment agencies or even Municipal Councils) for specific investments, this step may be waived.

Application for the DUAT

Once a written and testimonial agreement is entered with the local communities, the investor/developer is required to submit to the relevant authority for land matters: an application for the DUAT attaching the agreement made with local communities, a detailed development plan, a preliminary Environmental Impact Assessment and the conditions for the use and benefit of the land.

This process may be time-consuming as unfortunately it is impossible to find a pattern to establish a normal deadline. Reports show that some have waited for more than 5 (five) years to obtain a DUAT while others have only waited a couple of months.

In case the investor and/or developer is a foreign individual or entity, the law prescribes that it is mandatory to obtain an Investment Authorization by the CPI¹³². The CPI (or the competent authority) will assess the need of land use in respect of the proposed investment program.

Registration of the DUAT

Once the DUAT has been secured, the developer is legally required to register at the competent Land Registry Office. Such registration will be updated with the registration of the infrastructures.

2. Restrictions or conditions to foreign ownership/other rights to land

There are no further conditions other than the ones referred above.

¹³² Article 11 of the Land Law.

3. Registration of ownership rights, leasehold or security interests in real estate

National registration system and requirements for registration or recording

As mentioned above, all improvements must be duly registered at the competent Land Registry Office. Initially, the registration should be made under the titleholders' name. In the event of a transfer of ownership of the registered improvements, the registration must be updated accordingly.

The registration system is based on a first come first serve basis, which means that whoever registers first has the right over the property and is considered the legal owner. All subsequent transactions must be made with a consecutive link of legal registered owners.

Registration is made before the Land Registry Office with jurisdiction over the area where the property is located. Each Land Registry Office has a registry book system where all properties are manually registered and in order of presentation of register¹³³.

4. Expropriation and forfeiture of private lands and applicable compensation¹³⁴

The Mozambican Constitution establishes the principle whereby expropriation can only occur due to public interest under the terms provided for in the law; it also recognizes and guarantees the right to fair compensation in the event of expropriation.

Expropriation is ruled in Mozambique in the Investment Law (Law 3/93, dated June 24th 1993) and also in Law 14/2011 dated August 10th 2011 (Public Administration Law).

Article 13(2) of the Mozambican Investment Law states that "*when deemed absolutely necessary for relevant reasons of national interest or public health and order, the nationalization or expropriation of goods and rights shall (result in the owner being) entitled to just and equitable compensation.*"

Therefore, expropriation may only occur exceptionally, must be substantiated with regard to public interest, and is subject to the payment of fair compensation.

There have been no relevant reported cases of expropriation in Mozambique since the adoption of the 1990 Constitution.

¹³³ Information is publicly available, in some parts: identification of the land concession, location and limits of the land, etc. Details on the arrangements made in order to secure the land might be conditional. The information is accurate, however, it is difficult to perform searches as all the registrations are manually inserted in a compilation (both digital and handwritten).

¹³⁴ Article 82 (2) of the Constitution.

CHAPTER XV - ENVIRONMENT

1. Relevant authority

Competence over environmental matters is held by the Ministry for Land, Environment and Rural Development, acting through the Department for Environmental Licensing. Under the Ministry's supervision is the Authority for Environmental Impact Assessment, functioning both at central and provincial level, which coordinates the process of environmental impact assessment and is responsible for issuing environmental permits and licenses.

2. Environmental reports or studies required for investment projects or activities applicable to foreign investors

A new Environmental Impact Assessment Regulation has been recently approved by Decree 54/2015 of December 31st. The environmental license depends on a prior environmental impact assessment procedure of the project which precedes and conditions the issuance of any other licenses required by law.

Interested parties must submit to the Environmental Impact Assessment Authority, at central or provincial level, an application accompanied by the documentation set out in the Regulation. All activities susceptible of causing an environmental impact shall be subject to a pre-evaluation procedure, in order to determine the category of the activity and consequently the procedures of environmental impact assessment to be carried out:

- Category A and A+: Pre-Feasibility Environmental Study (EPDA), including the Terms of Reference for the Environmental Impact Study (EIA), which shall follow and include, namely, an Environmental Management Plan, a Biodiversity Balance Management Plan (when applicable), a Report of the Physical and Social-economic Assessment (when applicable) and a public consultation report. For activities classified as category A+, an Expert Reviewers' Report shall precede both the EPDA and the EIA;
- Category B: Terms of Reference and respective Simplified Environmental Study (EAS), including an Environmental Management Plan and a public consultation report; or
- Category C: Report with Good Practices on Environmental Management.

When the environmental feasibility of the activity has been conducted, the competent authority shall notify the applicant and supervisory entities, as well as issue the applicable environmental permit within 15 (fifteen) business days after the payment of the fees.

3. Environment-related financial obligations applicable to foreign investors

For the submission of the application a fixed fee is due in the amount of MZN 1.000,00 (one thousand Meticaís).

The issuance of the environmental permit at the end of the impact assessment procedure requires the previous payment of the applicable fee:

- Licensing of Category A+ activities: 0.30% (zero point three zero percent) of the value of the investment project;
- Licensing of Category A and B activities: 0.20% (zero point two zero percent) of the value of the investment project;
- Licensing of Category C activities: 0.02% (zero point zero two percent) of the value of the investment project if higher than MZN 5.000.000 (five million Meticaís), or a fixed fee in the amount of MZN 1.000 (one thousand Meticaís) for investment projects up until MZN 5.000.000 (five million Meticaís).
- Licensing of provisional Concrete Units, located inside the construction area: fixed fee of 200 (two hundred) minimum salaries – currently corresponding to MZN 977.348,00 (nine hundred and seventy seven thousand, three hundred and forty eight Meticaís).

The subsequent renewal of the environmental permit, mandatory every 5 (five) years, is subject to the payment of the following fees:

- Environmental permit of Category A+: MZN 80.000,00 (eighty thousand Meticaís);
- Environmental permit of Category A: MZN 60.000,00 (sixty thousand Meticaís);
- Environmental permit of Category B: MZN 30.000,00 (thirty thousand Meticaís);
- Environmental permit of Category C: MZN 5.000,00 (five thousand Meticaís).

Other fees are also applicable in order to register environmental consultants, to update the environmental consultants' registry, to transfer an environmental permit or to request a duplicate.

4. Liability for damage to the environment (for corporations, officers, directors)

The Mozambican Criminal Code provides a specific chapter for crimes against the environment, punishing (i) the illegal prospect and exploitation of mineral and forestry resources; (ii) the production, processing, packaging, import, export, trade, provision, transportation, storage, abandonment or utilization of substances which are toxic, dangerous or harmful to the human health, or the functioning of any potentially polluting enterprise; and (iii) water, soil, air or sound pollution.

Under Mozambican law, legal entities (companies) can be held criminally liable for the offences committed by the members of its corporate bodies or representatives on its behalf and interest. Only when the offender acted against the orders or explicit instructions of the due authority, is the company exempt from any liability. In the case of environmental crimes, the offending company shall be at least punished with a fine and temporary exclusion from access to the State benefits.

Furthermore, as criminal liability does not exempt the person from civil liability, damage to the environment may also have civil consequences. According to the Environmental Law, approved by Law no. 20/97 of October 1st, all persons exercising activities that involve high risks of environmental degradation must hold a civil liability insurance against such risks. Regardless of intention and fault or of the compliance with the legal provisions, those causing significant damages to the environment leading to the temporary or permanent suspension of economic activities, as the result of potentially dangerous practices, shall duly compensate the affected persons.

Civil liability of the company is governed by the general provisions on this matter - articles 500 and 497 of the Civil Code. The company is always held liable to third parties for the losses and damages caused by its officers or employees when the act was performed while performing the contracted services, even where the officer acted intentionally or against the company's orders. If the company was not at fault over the act, it is entitled to demand from the officer all compensations paid on his/her behalf. On the other hand, in case the company had acted with culpability, it shall only be able to demand the compensations paid for the part corresponding to the officer's responsibility. Without further evidence, it is assumed that both the company and the officer have similar degrees of fault. With regard to the liability of directors, according to articles 160 to 164 of the Commercial Code the directors are liable towards the company and its shareholders for their willful acts or omissions not in compliance with their legal and statutory duties.

Additionally, whilst the Environmental Law does not provide for any right of recourse against shareholders, article 87 of the Commercial Code establishes that shareholders may be deemed directly liable if evidence of willful misconduct exists in relation to breaches of environmental laws and obligations.

5. Applicability of rules to domestic investors

The environmental licensing procedures and legal framework established in the previous sections is in principle applicable to all entities carrying out activities, public or private, domestic or foreign, which may directly or indirectly impact the environment.

The State may occasionally draft legislation providing a special regime applicable to a specific large dimension project, with differentiating characteristics that may justify the distinction with the general framework.

CHAPTER XVI – INSOLVENCY / BANKRUPTCY / RESTRUCTURING

1. Insolvency

a. Who may file an insolvency procedure

In order to file for the insolvency of a company the requesting party must have procedural legitimacy to do so. The Insolvency Code¹³⁵ determines that the following entities may file for the insolvency of a debtor:

- The debtor itself;
- The consort of the debtor and/or any heritor;
- The partner or shareholder of the debtor according to the terms the company's law or incorporation deed;
- Any creditor.

The requesting creditor will not be granted any kind of special privilege in the insolvency proceedings, being treated equally with the other creditors. The creditor's expenses will not be reimbursed with any special priority.

Also, it should be emphasized that the debtor itself should file for its own insolvency if it is considered being in a state of “*economic-financial crisis*”¹³⁶ and that it does not have the conditions to ask for its own judicial recovery¹³⁷. It is important to note that in this case it is the duty of the debtor to file for its own insolvency; as opposed to their right.

¹³⁵ Article 93 of the Insolvency Code.

¹³⁶ This state of “*economic-financial crisis*” is not defined by law but it is commonly understood as a general incapacity of the debtor to fulfill its due obligations towards third parties.

¹³⁷ Article 102 of the Insolvency Code.

b. Requirements and procedure

The insolvency proceedings begin with the filing of a request for the insolvency of the debtor by one of the parties abovementioned.

If the debtor files for its own insolvency, it should give an explanation of the reasons which make it impossible to continue its corporate activity, together with the following documents¹³⁸:

- Accounting reports regarding the last 3 (three) financial exercises;
- Balance sheet;
- Evidence of balance since the last exercise;
- Cash flow report;
- List of existing creditors (including address, amount, nature and classification of each credit);
- List of the company's assets and rights (including an estimation of its value and documents which evince its ownership);
- Evidence of the condition of "*business owner*," company bylaws or statutes (or if there are none, the list of all the partners, including its addresses and a description of its personal assets);
- Company's writing books and accounting documents;
- List of the company's administrators from the last 5 (five) years.

After the request for insolvency is filed, the debtor shall have a period of 10 (ten) days to file its opposition¹³⁹. It should be also noted that within the deadline for opposition, the debtor may request its own judicial recovery¹⁴⁰ (detailed further below).

¹³⁸ Article 102 of the Insolvency Code.

¹³⁹ Article 94 (1) on the Insolvency Code.

¹⁴⁰ Article 91 of the Insolvency Code.

The Mozambican Insolvency Code determines that the insolvency of a debtor shall be declared if one the following conditions are met¹⁴¹:

- When the debtor, without any lawful justification, does not pay a specific obligation issued in an “*executive document*” (it consists of a document which can be directly enforced in court);
- When the debtor which is being judicially executed for any amount, does not pay, deposit or appoints enough assets to respond for the debt;
- When the debtor executes any of the following acts¹⁴²:
 - ✓ Proceeds with a precipitated liquidation of its assets or uses a fraudulent / ruinous procedure to make payments;
 - ✓ Executes or attempts to execute a simulated business with the goal of delaying payments or defraud creditors, or sells part or all of its assets to a third party;
 - ✓ Transfers its establishment to a third party without the agreement of all its creditors and without existing enough assets to pay for its debts;
 - ✓ Simulates the transfer of its main establishment with the goal of defrauding the law or the supervising entities or to cause damages to a creditor;
 - ✓ Gives or reinforces a warranty to a creditor for a previous debt, without remaining with enough unpledged assets in its patrimony to pay for its debts;
 - ✓ Goes missing without appointing a legal representative and without leaving enough resources to pay its creditors / abandons the establishment or tries to conceal from its domicile, headquarters or main establishment;
 - ✓ Stops fulfilling an obligation constituted within a plan of judicial recovery within the established deadline.

¹⁴¹ Article 89 of the Insolvency Code.

¹⁴² Except if they are part of a judicial recovery plan for the company.

The decision which declares or rejects the insolvency of the debtor will be issued by the State Court. The decision can be appealable to the second instance court¹⁴³.

If the insolvency of the debtor is declared, it will lose the right to administer or freely dispose of its assets. Nevertheless, it can still supervise the administration of the insolvency estate, requesting the necessary diligences to preserve its rights and having an intervention in the procedures in which the insolvency estate is an interested party¹⁴⁴.

The declaration of insolvency will also suspend all the claims and enforcement procedures pending against the debtor¹⁴⁵. The insolvency court will then have jurisdiction to determine all the civil and/or commercial claims about any assets, relevant matters and businesses of the insolvent. All the claims will proceed with the insolvency administrator representing the insolvency estate¹⁴⁶, which should act according to the interests of the insolvency estate.

Finally, it should be also noted that if a party requests the insolvency of another party in order to deliberately cause damage/harm, and if such request is refused by the court, such party can be condemned to compensate the debtor for the damages and losses suffered¹⁴⁷ (if more than one party files for an ungrounded request for insolvency, all the parties shall be jointly responsible for the compensation).

c. Credit claims and classification

Once a debtor is declared insolvent, the creditors will have to claim their credits in the insolvency procedure within a period of 10 (ten) days after the publication of the insolvency declaration. The credits which are acknowledged will then be classified according to specific categories and graduated in an order which will determine the priority of the payments¹⁴⁸.

The Insolvency Code determines that the following credits are considered as non-concurrent and paid before any other:

- Payments due to the insolvency administrator and to its auxiliaries and credits arising out of labor legislation or work accidents related to services rendered after the declaration of insolvency;

¹⁴³ Article 96 of the Insolvency Code.

¹⁴⁴ Art. 99 of the Insolvency Code.

¹⁴⁵ Article 6 (1) of the Insolvency Code.

¹⁴⁶ Article 70 (1) and (2) of the Insolvency Code.

¹⁴⁷ Article 97 (1) of the Insolvency Code.

¹⁴⁸ Articles 77 and 79 of the Insolvency Code.

- Amounts advanced to the insolvency estate by the creditors;
- Expenses with the apprehension, administration, liquidation of the assets and distribution of the payment, as well the costs of the insolvency procedure;
- Court costs related to claims and enforcement procedures in which the insolvency estate has not obtained favorable ruling;
- Obligations arising out of valid legal acts executed during a process of judicial recovery or after the declaration of insolvency; taxes that arose after the declaration of insolvency.

After the above credits are paid, the following categories of credits will follow:

- Credits arising out labor legislation and from work accidents;
- Guaranteed credits until the maximum amount of the warranty¹⁴⁹;
- Tax and social security credits (with the exception of tributary fines);
- “*Ordinary credits*”, namely: a) any of the credits not stated in this paragraph or in the paragraph above; b) credits not entirely covered by the product of the sale of assets linked to its payment;
- Fines of any nature, including contractual penalty clauses and tax fines;
- Subordinated credits.

¹⁴⁹ The specific order of priority in which the guarantees will be paid will depend on all the existing types of guarantees that will concur to payment within the insolvency procedure.

d. Effects of the insolvency on the pending contracts of the debtor

It is also important to note that the declaration of insolvency will have an impact on pending contracts of the debtor.

The main effects will be:

- Suspension of the right to exercise retention over any of the debtor's assets that are subject to judicial apprehension¹⁵⁰;
- Suspension of the right to exonerate or sell company's shares owned by the partners¹⁵¹;
- It will be the insolvency administrator who determines if pending agreements shall continue to be fulfilled or terminated¹⁵². In case of termination, the counterparty will have right to a compensation that shall rank as "ordinary credit"¹⁵³. The same rational shall apply to unilateral agreements¹⁵⁴;
- If the insolvency assets are not enough to pay the subordinated credits, the payment of the interests due after the insolvency declaration cannot be demanded from the insolvency estate. The exception to this will be the interests of the credits which are guaranteed with real estate; notwithstanding, even in this case, the product of the sale of the assets that constitute the real estate guarantee will respond exclusively for these interests¹⁵⁵;
- If the insolvent is a limited partner or owner of a quota in another company, only the assets that it owns in the respective company, determined within its bylaws, will get into the insolvency estate¹⁵⁶;
- Bank accounts shall be closed and put under control of the insolvency administrator¹⁵⁷.

¹⁵⁰ Article 113(a) of the Insolvency Code.

¹⁵¹ Article 113(a) of the Insolvency Code.

¹⁵² Such option will depend on the judgment of the insolvency administrator regarding what will be better for insolvency estate.

¹⁵³ Article 114 of the Insolvency Code.

¹⁵⁴ Article 115 of the Insolvency Code.

¹⁵⁵ Article 120 of the Insolvency Code.

¹⁵⁶ Article 119 of the Insolvency Code. If the bylaws do not rule anything regarding this matter, the determination will be made judicially, except if due to law or contract provision, the company must be liquidated. If that is the case, the insolvent's assets will only get into the insolvency estate after the payment of all the company's liabilities.

¹⁵⁷ Article 117 of the Insolvency Code states that the debtor's bank accounts shall be considered as closed in the moment of the insolvency declaration and its balance shall be verified.

Any patrimonial/assets relations that are not specifically addressed in the insolvency law will be decided according to the court's best judgment, taking into account the universality of the insolvency estate and the equality of treatment of the creditors¹⁵⁸.

e. Revocation of acts executed by the insolvent

The Insolvency Code also determines that certain acts which are executed prior to the declaration insolvency can be ruled as void in relation to the insolvency estate. This includes payments of not yet due debts; payments of debts through any means not established in the corresponding agreement; security over real estate assets (including retention, created in the 90 (ninety) days prior the moment the entity is declared insolvent); acts executed without any kind of compensation in the two years prior to the insolvency declaration; sale or transfer of business establishment without agreement of the existing creditors and without existing enough assets to pay for the debts; registry of rights in rem and transfer of property amongst living.

The acts abovementioned can be deemed void by the court. In such case, the contracting parties will return to their previous condition before the corresponding deal. These effects will be produced regardless if the creditor was aware of the condition of "*economic-financial crisis*" of the debtor or of fraud intent. Also, any acts which have been executed with the specific purpose of harming creditors can be revoked.

f. Relevant authorities in the insolvency proceedings

Insolvency administrator

The most important authority is the insolvency administrator. It should be a qualified professional, preferentially a lawyer, economist, company administrator or accountant with a minimum professional experience of 5 (five) years. The administrator has a wide array of powers and duties within the insolvency / judicial recovery proceedings such as:

In general:

- Drafting the list of creditors and taking position regarding any credit claims/oppositions filed;
- Handling correspondence and information concerning the creditors and the debtor;
- Hiring professionals or specialized companies to aid (when and if necessary) in the performing of its duties¹⁵⁹;

¹⁵⁸ Article 122 of the Insolvency Code.

¹⁵⁹ This should be done through court authorization.

- Handling the accounting books of the debtor.

Within the judicial recovery procedures:

- Supervising the activities of the debtor and the fulfillment of the recovery plan;
- Requesting the declaration of insolvency of the debtor in case of breach of obligations included in the recovery plan;
- Delivering to the judge a monthly report with the activities of the debtor and with the development of the performance of the recovery plan.

Within the insolvency procedures:

- Examining the books, documents and accounting of the debtor;
- Representing the insolvency estate in any court proceedings;
- Filing a report in the court regarding the causes and circumstances which led to the insolvency situation (including possible civil and criminal responsibilities);
- Apprehending the assets and documents of the debtor;
- Making a financial assessment of the seized assets¹⁶⁰;
- Executing the necessary acts in order to sell the assets and pay the creditors;
- Requesting anticipated sale of perishable assets;
- Executing all necessary acts to preserve any rights which can affect the insolvency estate;
- Debt recovery;

¹⁶⁰ If necessary, the insolvency administrator may hire professionals in order to give an estimation of the value of the assets.

- Requesting all the necessary measures and diligences for the compliance with the insolvency law, protection of the insolvency estate and/or the efficiency of its administration;
- Filing monthly reports to the court regarding the administration of the insolvency estate with evidence of the corresponding revenues / expenses;
- Giving note of the final accounting of the insolvency at the end of the procedure¹⁶¹.

Creditors Committee

Another important authority is the Creditors Committee¹⁶². This committee is composed by 3 (three) representatives of each class of existing credits, in particular:

- Credits arising out of labor legislation and/or related to work accidents;
- Credits with real estate guarantee;
- General credits, credits with special privilege, credits with general privilege and/or subordinated credits.

This committee has several responsibilities such as¹⁶³:

- Supervising the activities and examining the accounts of the insolvency administrator;
- Assuring a proper management of the proceedings and compliance with the law;
- Stating to the court any breach of rights or any damage/harm to the interests of the creditors;
- Issuing opinion on any complaints filed by interested parties;

¹⁶¹ Or whenever the insolvency administrator happens to be replaced or dismissed.

¹⁶² Articles 26 and 27 of the Insolvency Code.

¹⁶³ Article 27 (1) of the Insolvency Code.

- Requesting the court the summon of the General Assembly of Creditors;
- Supervising the administration of the activities of the debtor as well as the execution of the plan of judicial recovery, and also, recommending to the insolvency administrator the sale of assets, constitution of guarantees or any acts of debt necessary to the continuance of the business activity.

The decisions made by the Creditors Committee are taken by majority and are merely advisory.

General Assembly of Creditors

Another important authority is the General Assembly of Creditors¹⁶⁴. This is an insolvency body which has deliberative powers over the following matters:

Within the judicial recovery procedures:

- To approve, reject or modify the recovery plan filed by the debtor;
- The constitution of the Creditors Committee and the choice of its members;
- The request for withdrawal of the recovery plan;
- The choice of the judicial manager;
- Any matter which is of the interest of creditors.

Within the insolvency procedures:

- The constitution of the Creditors Committee and the choice of its members;
- The determination of other methods to proceed with the judicial sale of the insolvency assets;

¹⁶⁴ Article 34 of the Insolvency Code.

- Any other matter which is of the interest of the creditors.

Court

Finally, another relevant authority is the court where the insolvency procedure is pending. The court has the power to decide over judicial matters, such as:

- The request for insolvency;
 - Oppositions to credit claims;
 - Ratification of the list of creditors;
 - Any lawsuits regarding assets, interests and businesses of the insolvency (including fiscal executions but excluding labor matters);
 - Requests for restitution of assets belonging to third parties which may have been apprehended to the insolvency estate;
 - “*Claw back*” claims (related to requests for annulment of guarantees / payments / liquidation of assets which may have occurred prior to the debtor’s insolvency declaration);
 - Any request for the dismissal of the insolvency administrator or any of the members of the Creditors Committee (as well as the appointment of the corresponding new bodies);
 - Determining the type of sale of the assets which compose the insolvency estate and related actions/proceedings;
 - Issuing decision regarding the termination of the insolvency proceedings.
- g. Special regulations, requirements and/or liability of foreign investors

The regulations and requirements applicable to foreign investors in the context of insolvency proceedings are the same as the ones applicable to domestic investors.

Likewise, the liability of a foreign investor is not particularly different from a domestic investor. Thus, a foreign investor should take into account that if it deliberately requests the insolvency of a party in order to cause damages/harm that if such request is refused by the court, the foreign investor can be ordered to compensate the debtor¹⁶⁵.

Another liability issue that should be considered is the fact that very often the creditors are not paid within insolvency proceedings. In fact, generally these procedures take a long time and the amounts claimed by the creditors are vastly superior to the existing assets. Thus, it is important to have guarantees which support the creditors' rights (such as mortgages or bank warranties).

h. Company Recovery

As alternative to a request for insolvency, the debtor may file for its own recovery which has the goal of allowing the debtor to overcome its impossibility of fulfillment/payment of its due obligations and not falling into a situation of definitive insolvency.

The Mozambican Insolvency law sets out two possibilities for company recovery:

- Judicial Recovery;
- Extra-Judicial Recovery.

Judicial Recovery Procedure

The judicial recovery can be requested by the debtor and by its surviving spouse, heritors, inventoried or remaining partner.

Only a debtor which has been regularly exercising its corporate activities for more than 12 (twelve) months can file for its own judicially recovery. Moreover, it should comply with the following conditions¹⁶⁶:

- Not being insolvent and in case it was previously declared insolvent, that its previous responsibilities have already been declared extinct through a final and binding judgment;
- Has not obtained approval for its judicial recovery in the previous 2 (two) years;

¹⁶⁵ Article 97(1) of the Insolvency Code.

¹⁶⁶ Article 47 of the Insolvency Code.

- The debtor and/or its administrators / dominant partners have not been condemned for crimes of: fraud to creditors, false information or statements, unlawful dissipation, disposition or encumbrance of assets, unlawful appropriation, dissipation or concealing of assets, filing of false/simulated credit claims, lack of organized commercial books and disobedience.

The judicial recovery claim should be filed together with:

- A detailed explanation of the specific causes regarding the financial situation of the debtor and the reasons for its state of economic-financial crisis;
- Accounting reports relating to the last 2 (two) exercises and also the ones specifically requested to join the recovery request which are necessarily composed by:
 - ✓ Inventory and general balance of the assets and liabilities;
 - ✓ Balance sheet;
 - ✓ Evidence of balance since the last corporate exercise;
 - ✓ Cash flow report;
 - ✓ List of all existing creditors (including address, amount, nature and classification of each credit, justifying its origin, due date and specific location in the accounting books);
 - ✓ List of existing employees (including its duties, wages, compensations and other payments with specific reference to the concerning month and any unpaid amounts);
 - ✓ Certificate issued by the Registry of Legal Entities, incorporation deed and minutes of appointment of the current administrators;
 - ✓ List of all the lawsuits/claims in which the company is part with reference to the claimed amounts.

There are several types of judicial recovery which can be determined, such as¹⁶⁷:

- Extended periods and special conditions for the payment of obligations;
- Corporate restructuring;
- Change of corporate control / shared administration;
- Granting of rights to the creditors relating to the appointment of administrators and veto power regarding specific matters;
- Increase of the company's share capital;
- Sale / renting of the business establishment;
- Wages reduction, schedule compensation and reduction of the work journey (through agreement with the workers or collective agreement);
- Delivery of assets and/or rights for the payment of debts; constitution of new obligations in substitution of previous ones (with or without guarantees);
- Partial sale of assets;
- Standardization of financial responsibilities;
- Issuing of securities;
- Incorporation of a company with the specific purpose of adjudicating the debtor's assets for payment of debts;
- Moratorium of the payments of the debtor to the creditors.

Notwithstanding the above, there are some limitations to the scope of the recovery plan. The judicial recovery plan cannot set a deadline greater than 1 (one) year regarding the payment of credits due until the date of the request for the judicial recovery arising under labor legislation or relating to

¹⁶⁷ Article 49 of the Insolvency Code.

work accidents. Also, it cannot determine a deadline superior to 30 (thirty) days for the payment of labor credits relating to wages which are due in the previous 3 (three) months to the judicial recovery plan.

After the filing of the request for judicial recovery, the debtor cannot sell or encumber assets or rights, except when there is a clear usefulness recognized by the court (after hearing the Creditors Committee and the insolvency administrator)¹⁶⁸.

If the judicial recovery request is admitted, it will have several effects, such as¹⁶⁹:

- Appointment of the insolvency administrator;
- Suspension of all the lawsuits and claims against the debtor;
- The debtor shall be ordered to file its monthly accounting reports for as long as the judicial recovery lasts (under penalty of destitution of its administrators);
- Summoning of the Public Attorney representative and communication to all the bodies which are responsible for any credits belonging to the Mozambican State;
- Summoning of all the creditors listed by the debtor to claim their credits, and if they so wish, to oppose the judicial recovery plan.

Any creditor can oppose the recovery plan within a period of 30 (thirty) days following the publication of the list of creditors¹⁷⁰. If this occurs, the court should summon the General Assembly of Creditors to deliberate about the plan¹⁷¹. If the plan is rejected by the Assembly, the judge shall declare the insolvency of the debtor¹⁷². On the other hand, if the plan is not opposed by any creditor or is approved by the General Assembly, the court should concede in the judicial recovery of the debtor¹⁷³ (such decision is nevertheless subject to appeal which can be filed by any creditor or by the Public Attorney)¹⁷⁴.

¹⁶⁸ Article 64 of the Insolvency Code.

¹⁶⁹ Article 51 of the Insolvency Code.

¹⁷⁰ Ibid, Article 54 (1).

¹⁷¹ Ibid, Article 55 (1).

¹⁷² Ibid, Article 55 (5).

¹⁷³ Ibid, Article 56 (1).

¹⁷⁴ Ibid, Article 57 (2).

The debtor shall remain in judicial recovery until all the obligations, set out in the plan, which are due until 2 (two) years after its acceptance are fulfilled¹⁷⁵. During this period, if any obligation is breached, the recovery procedure will be transmuted into insolvency¹⁷⁶. If the insolvency is declared, all the creditors shall have its rights and guarantees reconstituted in the conditions originally agreed, being deducted the amounts possibly paid during the process and also being duly taken into account the acts which have been lawfully executed within the recovery plan¹⁷⁷.

If all the obligations included in the recovery plan are fulfilled, the court shall determine the closing of the proceedings.

Extra-Judicial Recovery Procedure

The debtor can also file for an Extra-Judicial Recovery Procedure, as long as it fulfills the same conditions abovementioned for the admittance of the judicial recovery plan.

However, this mechanism does not carry the suspension of any claims, lawsuits or rights, neither the impossibility of request of insolvency by creditors which are not subject to such plan¹⁷⁸. Thus, it leaves the debtor more unprotected when compared with the judicial recover procedure. Also, it will be the debtor (and not the court) who should summon all its creditors, through publication in a newspaper, to claim their credits.

The creditors will have a period of 30 (thirty) days to file their credit claims or oppose the recovery plan¹⁷⁹. As long as the plan is subscribed by creditors who represent more than 3/5 (three fifths) of the credits of its own class (excluding labor and tax credits) it will be imposed on all the remaining creditors of the same type, but strictly concerning credits which have been constituted until the date of the request for extra-judicial recovery¹⁸⁰.

¹⁷⁵ Ibid, Article 59 (1).

¹⁷⁶ Ibid, Article 59 (2). After this period, in case of breach of obligation set out in the recovery plan, such will constitute grounds for any creditor to request to the insolvency of the debtor.

¹⁷⁷ Ibid, Article 59 (3).

¹⁷⁸ Ibid, Article 158 (4).

¹⁷⁹ Article 163 (2) of the Insolvency Code.

¹⁸⁰ Article 162 of the Insolvency Code.

CHAPTER XVII – DISPUTE RESOLUTION

1. Civil court system

General background on the structure of courts

The Mozambican judiciary system is composed by the following categories of courts¹⁸¹:

- Supreme Court;
- Superior Courts of Appeal;
- Province Judicial Courts;
- District Judicial Courts.

The judicial courts are internally organized by sections. The jurisdiction of the courts is divided amongst them in light of: i) the matters in contention; ii) hierarchy; iii) amount of the claim; and iv) territory.

There is also the Constitutional Council which, although not formally a “court,” is a sovereign body which has jurisdiction over constitutional matters.

Jurisdiction of each court level

The Supreme Court is the highest court in the judiciary hierarchy and has jurisdiction over the entire Mozambican territory. This court is only entitled to settle matters of law and not of fact. It has jurisdiction regarding the following principal matters:

- Unification of jurisprudence;

¹⁸¹ The decisions issued by the courts are not publicly available. There are some written publications of jurisprudence in the country but they are still scarce. Third parties can request certified copies of a decision from the Secretary of the court where the decision was issued. Notwithstanding, such a request should be duly justified and is subject to a decision from the judge.

- Conflicts of jurisdiction amongst other courts;
- Appeals of decisions issued by lower courts regarding matters of law;
- Criminal procedures and claims regarding losses and damages against specific representatives of the State;
- Habeas Corpus* requests (when the procedural law determines the supreme court to have jurisdiction over the specific request);
- Requests for revision and confirmation of civil/criminal judgments;
- Extradition proceedings.

The Superior courts of appeal are in its essence, appeal courts. They have jurisdiction regarding the following main matters:

- Trial the appeals from decisions issued by the province courts;
- Trial conflicts of jurisdiction regarding province courts;
- Criminal procedures and claims regarding losses and damages against specific representatives of the State;
- Habeas Corpus* requests (when the procedural law determines the Superior Courts of Appeal to have jurisdiction over the specific request).

The Province Courts have jurisdiction regarding the following main matters:

- Cases which are not within the specific jurisdiction of other courts;
- Criminal infractions which are not within specific jurisdiction of other courts;
- Appeals from decisions of the district courts;
- Conflicts of jurisdiction regarding district courts;
- Appeals filed regarding decisions issued by arbitral tribunals or other bodies of mediation of conflicts;

- *Habeas Corpus* requests (when the procedural law determines the Province Courts to have jurisdiction over the specific request).

Finally, the District Judicial Courts are, as principle, courts with general jurisdiction. Notwithstanding, they have specific jurisdiction over the following matters:

- Family law and jurisdictional procedures related to minors;
- Claims with an amount which does not exceed 100 (one hundred) times the national minimum wage;
- Criminal infractions which are not within the jurisdiction of other courts;
- Criminal infractions which correspond to a sentence not surpassing 12 (twelve) years of jail time;
- *Habeas Corpus* requests (when the procedural law determines the district courts to have jurisdiction over the specific request).

Appeal process and levels of appeal

The decisions issued by the courts are generally subject to appeal. These appeals should be filed by means of a request filed in the secretary of the court which issued the decision and should contain the reasons of fact (when applicable) and law for the petitioner to disagree with the decision issued.

The appeals can be divided between “ordinary” and “extraordinary” appeals. With regard to the ordinary appeals (the “general” appeals), a party can only appeal decisions in claims which have a value superior to the level of jurisdiction of the court which issued the decision subject to appeal. Concerning civil matters, the jurisdiction of the province courts is correspondent to a value of 50 (fifty) times the national minimum wage. The jurisdiction of the district courts, of first and second class, is of 25 (twenty five) and 10 (ten) times the minimum wage, respectively. In terms of criminal matters, there is no jurisdiction limit in terms of value of the claims. The extraordinary appeals can only be filed if the strict specific procedural conditions are met.

Notwithstanding, court decisions which are considered of merely procedural routine and decisions issued in light of a discretionary power determined by law cannot be subject to appeal.

As stated, in general, the appeal can be both of fact and law. However, the Supreme Court only trials matters of law and does not revise matters of fact. Depending on the type of appeal at stake, the appealed decision can be suspended in its execution while the appeal is being trialed.

Finally, the appeals which concern constitutional matters should be trialed by the *Constitutional Council*.

Time limits for bringing civil (commercial) claims¹⁸²

The Mozambican Civil Code determines several statutory limitation periods which depend on the cause of action at stake.

The general limitation period to bring a claim is of 20 (twenty) years¹⁸³.

There will be a limitation period of 5 (five) years for the claims regarding the following matters:

- Rents / leases and annuities relating to perpetual rents;
- Interests and corporate dividends;
- Quotas for the amortization of capital which are payable with interests;
- Alimony;
- Any other periodically renewable debts.

There is a limitation period of 2 (two) years for the claims regarding the following matters:

- Credits belong to establishments which provide accommodation, food to students, as well as the credits relating to teaching facilities, education, assistance and/or treatment;
- Credits belonging to merchants arising out of sold assets to whom is not a merchant or does not use it for commerce;
- Credits of whom professionally exercises an industry for the supplying of merchandise or products, execution of works or management of businesses of third parties (except if what is provided is destined to the industrial use of the debtor);

¹⁸² Please note that there are other statutory limitations established in specific statutes.

¹⁸³ Article 309 of the Civil Code.

- Credits arising out of services rendered by liberal professionals (such as lawyers).

There is a limitation period of 6 (six) months for the claims regarding credits belonging to general housing/accommodation establishments, food or beverages.

Time frame and cost

It is difficult to estimate time frame and costs for judicial procedures. Such can depend on many factors such as the type of claim, the matter at stake, the value of the claim, the number of the parties, the volume of work of the court where the claim is pending, the number of procedural incidents, etc.

Notwithstanding, judicial claims in Mozambique are generally very lengthy and a procedure can last several years in court on first instance; excluding the possibility of appeals.

Whether courts are required to respect (and in practice apply) choice of foreign law as governing law in contracts

The Mozambican Civil Code determines that “*the obligations arising out of a specific deal, as well its substance, are determined by the law that the parties have chosen or have would have wanted to choose*”¹⁸⁴.

Thus, the choice of law for a specific contract is within the will of the parties. However, such choice either has to obey to a criteria of seriousness or correspond to one of the elements of connection which are considered in the domain of private international law (such as the nationality of one of the parties, its usual domicile, the place of the asset(s) at stake, the place of execution of the deal, etc., under the penalty of such choice being considered as unlawful¹⁸⁵.

Moreover, it is important to note that such choice of law cannot remove the application of Mozambican rules which are imperative and relate to the main principles of Mozambican public order.

In light of the above, the courts should respect the choice of a foreign law by the parties as governing law in contracts. Nevertheless, in practice, it is rare for a judicial court to determine a dispute according to a foreign law, opting instead to apply Mozambican Law in case it cannot determine its

¹⁸⁴ Article 41 of the Civil Code.

¹⁸⁵ Article 41 (2) of the Civil Code determines that “*The choice of the parties can only concern a law which the applicability is correspondent to a serious interest of the parties or is in connection with any of the elements of the deal which can be considered relevant within the area of private international law.*”

content¹⁸⁶. However, in the context of arbitration proceedings, it is normal and frequent for arbitral tribunals applying a foreign law to the resolution of a dispute, according to the choice of the parties.

2. Arbitration agreements

Requirements for an arbitration agreement and binding effect on third parties / non-signatories

The Mozambican Arbitral Law states that interested parties¹⁸⁷ can submit the determination of disputes to arbitration, through an arbitration agreement¹⁸⁸.

The arbitration agreement should be in writing and should determine accurately the scope of the dispute or specify the legal relation regarding which a possible dispute may concern. An arbitral clause is considered to be “in writing” if it is included in a document signed by the parties or in an exchange of letters, telex, fax or other mean of communication which evidences its existence, or when the existence of such an agreement was alleged by a party and not contested by the other.

An arbitration agreement can have any dispute within its scope, as long as the dispute is not expressly subjected to a judicial court (through a specific law) or does not concern rights which are not within the ambit of the parties nor subject to settlement¹⁸⁹.

States or State entities of public law can enter into arbitral agreements related to disputes that regard private law matters and when they are authorized to do so (through a special law)¹⁹⁰.

The arbitration agreement will only have a binding effect on the signatory parties and not on third parties.

Enforceability of arbitration agreements

¹⁸⁶ Articles 23(2) and 348(3) of the Civil Code allow the court to apply domestic law in case it cannot determine the content of a foreign law.

¹⁸⁷ Article 6(2) of the Arbitral law states, however, that individuals under the age of 18 and not emancipated, or those who have been legally interdicted cannot enter into arbitral agreements, even if done through their legal representatives.

¹⁸⁸ Article 4(1) of the Arbitral Law.

¹⁸⁹ Article 5(2) (a) and (b) of the Arbitral Law.

¹⁹⁰ Article 6(1) of the Arbitral Law.

Under Mozambican law, a valid arbitral agreement will be enforceable since it will carry the consequence of the parties waiving judicial proceedings regarding the matters or disputes that were submitted to arbitration¹⁹¹.

The Mozambican Arbitration law is clear when providing that the judicial court in which a claim was filed regarding a matter included in the scope of an arbitral agreement should refer the parties to arbitration if one of the parties has raised this issue until the moment that it files its first pleadings regarding the merit of the case.

3. Domestic arbitration system

Relevant institutions

The most relevant arbitral institution in Mozambique is the Mozambican Arbitration Centre (CACM)¹⁹². This Centre provides arbitration, conciliation and mediation services to its users, administering the corresponding procedures.

It is advisable that any arbitral disputes which are seated in Mozambique and/or concern Mozambican law are subject to *ad-hoc* arbitration or to arbitration under a Portuguese Arbitral Institution¹⁹³; which have extensive experience in dealing with Portuguese speaking arbitrations, including those relating to Mozambique¹⁹⁴.

Requirements and procedures of the CACM

Any commercial dispute which is not subject to a judicial court and does not concern “unavailable”¹⁹⁵ rights can be submitted to the CACM through an arbitration agreement. It is not mandatory for the parties to appoint an attorney in order to participate in the arbitral proceedings.

Any of the parties to the arbitral agreement who wish to commence a dispute under the Centre should file a request to the President of the Arbitration Council. In the request the party should identify the following: the disputing parties, the object of the dispute, the grounds for the claim, the amount,

¹⁹¹ Article 12 (1) of the Arbitral Law.

¹⁹² See <http://www.cacm.org.mz/>

¹⁹³ In this regard, the most notable Portuguese Arbitral Institution is the Arbitration Centre of the Portuguese Chamber of Commerce and Industry - <http://www.centrodearbitragem.pt/index.php?lang=en>

¹⁹⁴ Foreign lawyers are not allowed to practice law in Mozambique. Lawyers must have either Mozambican nationality or obtained their degree in an accredited Mozambican University. Foreigners are allowed to be arbitrators in Mozambique. The only requirements determined in the Mozambican arbitral law are that the arbitrators are fully capable and of age.

¹⁹⁵ Rights that cannot be subject to agreement between the parties.

and the final request. It should also be joined by the arbitral agreement, documentary evidences and a preliminary description of the remaining means of evidence which will still be filed¹⁹⁶. The opposing party can file its response within 10 (ten) days if it is a party residing in Mozambique or 20 (twenty) days, if it is a foreign party. The response should also be joined with documentary evidence and a preliminary description of the remaining evidences which will still be filed throughout the proceedings.

The Arbitral Tribunal can be composed by 1 (one) or 3 (three) arbitrators. If the parties do not agree on the number of arbitrators, the Tribunal will be composed of 3 (three) arbitrators¹⁹⁷. In case an arbitrator is not appointed by the parties, the appointing authority shall be the President of the Arbitration Council of the Centre. The arbitrators should be fully capable individuals who fulfill the conditions determined on the arbitral agreement or by the Centre¹⁹⁸. Any evidences which are admitted in a civil court can also be admitted in the context of the arbitral proceedings.

The arbitral award should be issued in the maximum period of 6 (six) months counting from the constitution of the Tribunal, except if in the arbitral agreement the parties have determined an extended period. Also, exceptionally, when the dispute is especially complex, the arbitral tribunal can prolong the deadline up to double of its initial period. The decision shall be adopted by majority of votes. If it is not possible to form a majority, the decision shall be taken by the chairman of the Tribunal¹⁹⁹.

The arbitrators will issue their award according to the constituted law, unless the parties, in the arbitral agreement or in a document filed until the acceptance of the first arbitrator allow the Tribunal to judge the dispute according to equity. If the parties do not choose a specific applicable law, the Tribunal will judge the case according to the rules of law which consider convenient. The parties can also agree that the dispute is determined by general principles of law, uses / customs and national / international rules of commerce²⁰⁰.

The arbitral award shall have the same value of a judicial decision and will constitute an “executive title” which will allow the claimant to enforce it in the State Courts. From the arbitral award there will be no appeal except the “*Appeal for Annulment*” as detailed in the Mozambican Arbitral Law²⁰¹.

¹⁹⁶ Article 6 of the Regulation of the CACM.

¹⁹⁷ Article 12 of the Regulation of CACM.

¹⁹⁸ Article 14 of the Regulation of CACM.

¹⁹⁹ Article 24 of the Regulation of CACM.

²⁰⁰ Articles 25 and 26 of the Regulation of CACM.

²⁰¹ This appeal has very limited procedural grounds which are based on the grounds for refusal of recognition/enforcement contained in Article V of the New York Convention.

4. Foreign court judgment and arbitral awards

Signature or ratification of relevant treaties or international agreements

The State of Mozambique acceded to the 1958 New York Convention on June 11th 1998. At the time, the so called “*reciprocity reservation*” was made in the following terms: “*The Republic of Mozambique reserves itself the right to enforce the provisions of the said Conventions on the base of reciprocity, where the arbitral awards have been pronounced in the territory of another Contracting State.*”

Mozambique is also a member State of the 1966 Convention on the settlement of investment disputes between States and Nationals of other States (the “ICSID” Convention).

It is also important to reiterate that Mozambique has currently in place several BITs with other nations. These instruments contain provisions regarding fair, equitable, most-favored-nation treatment and the investors’ freedom to choose to resolve disputes with the host government through international arbitration.

Requirements and procedure for recognition and enforcement

a. Judicial foreign judgments

Foreign judgments are enforceable in Mozambique. However, such enforcement depends on a domestic procedure of revision and confirmation.

The court with jurisdiction for the process of revision and confirmation is the Mozambican Supreme Court²⁰². The legal requirements for a foreign decision to be confirmed in Mozambique are the following²⁰³:

- There must be no doubts as to the authenticity of the document where the decision was produced, nor about the truthfulness of the decision;
- The decision must be final and binding according to the law of the country in which it was issued;
- The decision was issued by a competent court with jurisdiction as determined according to the Mozambican conflict law rules; *Lis pendens* or *res judicata* defense arguments cannot be invoked;

²⁰² Article 1095 (1) of the Code of Civil Procedure.

²⁰³ Article 1096 of the Code of Civil Procedure.

- The defendant must have been duly served, except if it is a case for which the Mozambican Law would dismiss the need for the initial summons; and, if the defendant was immediately sentenced because it did not file any opposition, the summon should have been made directly to him (and not to a third person);
- The decision is not contrary to the principles of Mozambican public order²⁰⁴;
- If the decision was issued against a Mozambican citizen or entity and if the case should have been decided according to the Mozambican conflict law rules, it cannot stand against the provisions of Mozambican private law. In practical terms, this last provision amounts to a revision of merit, since provisions of Mozambican private law must be examined.

The procedure will begin with the filing of an initial statement which should include the decision to revise. The counterparty will be summoned to within a deadline of 10 (ten) days to file its opposition. The requesting party can reply to the defense within the following 8 (eight) days²⁰⁵. The request for revision can only be opposed by the respondent with grounds on the lack of any of the requirements mentioned in article 1096 of the Code of Civil Procedure (as per above), or in one of the following cases²⁰⁶:

- When it is shown, through a final and binding criminal judgment, that the decision which revision is pursued was issued due to prevarication, bribery or corruption of any of the judges which intervened in the decision;
- When a document is filed which the party had not yet been aware of, or that it was not possible to be made use of in the procedure in which was issued the decision pending revision, and that such document, only by itself, is sufficient to change the decision in a manner more favorable to the losing party;
- When the decision to be revised is contrary to another decision previously issued which has *res judicata* effect towards the parties.

If the decision is recognized and confirmed, the enforcement can be pursued as a regular domestic decision.

²⁰⁴ The concept of “public order” or “public policy” entails the fundamental principles that underlie the legal regime and relating to which the State and the society have an utmost interest in their prevalence even over private agreements/conventions. They are mostly inspired in fundamental political, economic or moral reasons. The interpretation of the concept of public policy means that a foreign judgment may not be enforced if: (i) it involves the superior interest of the State or the local community; (ii) there is a fundamental divergence with local laws (a foreign judgment can only be considered contrary to public policy, if its enforcement would breach local Mozambican law).

²⁰⁵ Article 1098 of the Code of Civil Procedure.

²⁰⁶ Article 771 (a), (c) and (g) ex. vi Article 1100 of the Code of Civil Procedure.

b. Arbitral awards

Arbitral awards, foreign or domestic, can be enforced in Mozambique. Decisions issued by arbitral tribunals have executive force and are enforceable according to the same terms as the decisions issued by State courts²⁰⁷. The parties should fulfil arbitral awards in the exact terms that were notified by the arbitral tribunal²⁰⁸. Thus, if the decision is not complied with, the interested party can request its enforcement in the Mozambican state courts. The arbitral awards can be enforced after a period of 30 (thirty) days counted from its notification to the parties (or from the notification of the decision which rectified it, interpreted it or completed it)²⁰⁹.

The party which requests the enforcement of the arbitral decision should attach authenticated copies of the following documents²¹⁰:

- Arbitral agreement;
- Arbitral award (and, if that is the case, any decision which rectifies, interprets or completes it); and
- Evidence of the notification to the parties and deposit of the decision.

If the decision is not issued in Portuguese, an official translation should be provided to this language. The respondent is allowed to oppose the enforcement within a period of 8 (eight) days counting from the notification of the enforcement decision. However, such opposition has limited procedural grounds²¹¹, in particular:

- The fact that the decision contained in the arbitral award has already been fulfilled;
- The annulment of the arbitral award or the pendency of an annulment procedure (in this case, the court should suspend the enforcement proceedings until the annulment process is determined).

If the period to file an annulment appeal has already elapsed, an opposing party will not be prevented from invoking the same grounds for such appeal²¹². Finally, the decision which rules the opposition to enforcement is not subject to an appeal.

²⁰⁷ Article 48 (2) of the Code of Civil Procedure and Article 43 of the Arbitral Law.

²⁰⁸ Article 49 (1) of the Arbitral Law.

²⁰⁹ Article 49 (2) of the Arbitration Law.

²¹⁰ Article 50 (2) and (3) of the Arbitration Law.

²¹¹ Other than the grounds provided in Article V of the New York Convention.

²¹² See section below regarding the “appeal of arbitral awards.”

Notwithstanding the above, concerning foreign arbitral awards in particular, some specific considerations should be made. Being that Mozambique is a member State of the 1958 New York Convention, the revision and confirmation process shall be according to what is stated in the Convention. It is important to take into account that the State of Mozambique entered into the already mentioned “reciprocity reservation.” Therefore, if the foreign decision at stake is issued in a State which is not a member of the New York Convention, the domestic civil procedural rules of recognition will apply, in particular those already stated and contained in Article 1096 of the Code of Civil Procedure. On the other hand, if the decision originates in a member State, the New York Convention regime will apply, following by multilateral/bilateral conventions (if existent), and residually, by the Code of Civil Procedure.

c. Time frame and cost

Previous cases of revision/confirmation of foreign judgments in Mozambique are still very rare. The review process has strict requirements and it is usually slow. It is difficult to estimate how long this kind of procedure takes in court since it can depend greatly on the volume of service. Also, the means to work available to the courts in Mozambique are not abundant. Notwithstanding, we estimate that the revision procedure would be no less than 1 (one) to 3 (three) years

The cost of the procedures is uncertain very hard to estimate without knowing the specific details of the dispute (type of procedure, matter at stake, value, number and domicile of the parties, etc.).

d. Appeal of arbitral awards

Domestic arbitral awards are subject to appeal in Mozambique, based on specific legal grounds, under the so called “Appeal of Annulment.” It is important to take into account that the parties cannot waive their rights to this appeal²¹³.

The appeal will halt the effects of the arbitral award²¹⁴ and can only be procedurally admitted if the party which requested the Annulment provides evidence that²¹⁵:

- A party in the arbitral agreement was under a legal incapacity;

²¹³ Article 47 of the Arbitration Law.

²¹⁴ Article 44, n.º 3 of the Arbitration Law.

²¹⁵ Article 44 of the Arbitration Law.

- That the arbitral agreement is not valid under the terms of the law that the parties have designated, or in the absence of such choice, under the terms of the law of the Mozambican State;
 - It was not duly informed of the designation of an arbitrator or of the arbitration procedure, or it was not possible to uphold its rights for any other reason;
 - The arbitral award has a scope which is not included in the arbitral agreement (however, if it is possible to differentiate, the award can be only partially annulled specifically in what regards the part of the decision which contains a judgment concerning issues not submitted to arbitration);
 - The constitution of the arbitral tribunal or the arbitral proceedings were not according to the agreement of the parties (unless the agreement is contrary to an imperative legal provision of the Mozambican Arbitration law, or in absence of such agreement, that is not according to the referred law);
 - If the court finds that:
 - ✓ Under the terms of Mozambican law, the object of the dispute cannot be subject to arbitration;
 - ✓ The arbitral award is against the Mozambican Public order.
- e. Issues and challenges in enforcing foreign court judgments and arbitral awards

The party seeking enforcement, especially if foreign, should expect particular difficulties in trying to enforce a judicial or arbitral award in Mozambique.

A possible way to mitigate such risks would be to choose Mozambican Law to govern contracts which have a strong connection with the Mozambican jurisdiction. Alternatively, if a dispute arises from such agreements it would be advisable to choose arbitration as the dispute method and to designate arbitrators which are acquainted with the Mozambican legal regime (usually Mozambican or Portuguese arbitrators). It would also be important to hire local counsel in order to assist with the enforcement proceedings.

f. Other forms of dispute resolution (e.g., mediation)

Mediation and conciliation mechanisms exist in Mozambique. In fact, Law no. 11/99 of July 8th specifically establishes not only arbitration but also conciliation and mediation as specific means of alternative dispute resolution (title III of the law).

The use of mediation and conciliation depends on the mutual agreement of the parties, as they are not legally required to consider or submit their claims to alternative dispute resolution before or during proceedings.

In short, despite being specifically determined by law, mediation and conciliation are not yet widespread in the country and are not commonly used as dispute resolution mechanisms.

CHAPTER XVIII – INDUSTRY SPECIFIC LAWS/OTHERS: COMPETITION/ANTI-CORRUPTION/PUBLIC PROCUREMENT

Competition Law

Although the law and regulation have been promulgated, the entity with the authority to enforce the law (“*Autoridade Reguladora da Concorrência*” or Competition Authority) has not yet been established.

The publication and entry into force of the Competition Act occurred in 2013 and its regime was further developed by the Competition Regulation in 2014/15. The adoption of the Competition Authority Organic statute also occurred in 2014 however, the appointment of the Board of the Competition Authority is still pending. The President of the Board must be appointed by the Council of Ministers after being proposed by the Minister of Industry and Trade and the other Members of the Board are appointed directly by the Minister of Industry and Trade.

For these reasons, although the provisions of the Competition Act and the Competition Regulation are in force (and, in strict legal terms, failure to comply with such rules may be deemed as an infringement and be punished as such), the Competition Authority is not yet fully operational in Mozambique. Accordingly, the Competition Act has not yet been enforced in Mozambique.

The Competition Act regulates both prohibited practices and merger control and is greatly inspired by the approach also adopted by the Portuguese and the EU competition legislation.

In terms of prohibited practices, horizontal restrictive practices (i.e., between competitors), vertical restrictive practices (i.e., between a supplier and customer), abuses of dominance and abuses of economic dependence are dealt with in the Act.

With reference to horizontal conduct (cartels included), the following conducts are provided as examples of prohibited agreements/concerted practices (non-exhaustive list):

- the adoption of uniform or concerted commercial conduct;
- price fixing conditions, direct or indirect;
- directly or indirectly fixing other trading conditions in the same or in different levels of the economic process;

- provoking of price oscillations without due cause;
- limiting or controlling the production or distribution of goods, the provision of services, the investigation, the technical development or the investments for the production of goods or services or their distribution;
- market allocation and source allocation;
- forming of coalitions or developing other concerted practices in order to obtain advantages, interfere or influence the results of public tenders for the provision of goods and services (bid rigging); and
- limiting or impeding the access of new enterprises to the market.

There are also enumerated prohibited vertical practices, including (non-exhaustive list):

- discriminatory pricing or other discriminatory conduct;
- refusals to deal;
- tying and bundling;
- making commercial agreements subject to the acceptance of unjustifiable or anti-competitive clauses and commercial conditions;
- making commercial agreements dependent on the acceptance of supplementary obligations not linked with the object of such agreements;
- making commercial agreements dependent on the acceptance of payment conditions that differ from or are contrary to the normal commercial usage and practice;
- imposing on distributors resale prices, discounts, payment conditions, minimum or maximum quantities, profit margins or any other marketing conditions vis-à-vis third parties;
- discriminating suppliers or consumers of goods or services through the differentiated setting of prices or operational conditions governing sales or the provision of services; and

- excessive pricing or increasing, without due cause, the price of a good or a service.

However, these conducts are not *per se* (outright) prohibited – they are prohibited only if its object or effect is the impediment, distortion or considerable restriction of competition in all or part of the national market.

Elaborating upon the Competition Act, the Regulation also perfected the rules regarding the possibility of justifying and exempting anti-competitive practices, which can be accomplished by means of an individual simplified exemption procedure. This can be done by evidencing the justification before the Competition Authority as provided for in the regulation, yet to be adopted by the Competition Authority, or by means of the adoption of block exemption regulations by the Competition Authority (under which practices that meet the conditions laid down in such regulations are presumed to have a positive economic balance and to be justified, emulating what is done at the EU level by the EU Commission).

The abuse of a dominant position (single or collective) is prohibited, including practices such as (non-exhaustive list):

- any of the conducts above;
- refusing access to a network or other essential infrastructure/facility without a reasonable justification
- to terminate a commercial relationship without justification;
- to force or induce a supplier or a consumer not to establish a commercial relationship with a competitor;
- to sell merchandise below the cost price without justification;
- to import any goods below the cost price in the exporting country; and
- to discriminate prices amongst different buyers in a way that prevents, distorts or restrains competition in an appreciable manner, subject to certain exceptions.

Abuses of dominance are also prohibited to the extent that its object or effect is the impediment, distortion or restriction of competition in all or part of the national market and can also benefit from the abovementioned justification and exemption mechanisms.

Finally, the Competition Act also prohibits the exploitation by one or more undertakings of the economic dependence in which any supplier or client finds itself for not having an equivalent alternative (abuse of economic dependence).

Discussing merger control, a filing of a merger is required when the operation constitutes a concentration of undertakings and the notification thresholds are met. A merger subject to pre-notification can only be implemented if it is notified and approved.

The notification thresholds are based on the market shares involved in the transaction ($\geq 50\%$ (fifty percent)), on the turnover of the undertakings involved in the concentration ($> \text{MZN } 900.000.000,00$ (nine hundred million Meticaís) in Mozambique in the previous financial year) or in a combination of both (market shares $\geq 30\%$ (thirty percent) provided that the individual turnover of at least two of the undertakings involved exceeded $\text{MZN } 100.000.000,00$ (one hundred million Meticaís) in Mozambique in the previous financial year).

Anti-Corruption

It is deemed a criminal offence to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to anyone, including a public official, in order that the person or official act or refrain from acting in relation to the performance of official duties (and it involves the performance of either lawful or unlawful acts).

Both active and passive bribery are criminal offences²¹⁶. The law provides a penalty of imprisonment - up to 1 (one) year if it involves lawful acts and 2 (two) years for unlawful acts.

The penalty shall be increased to 2 (two) to 8 (eight) years if the bribery was aimed to obtain, or was capable of involving, a breach of market competition rules or involve damages to third parties.

In addition, if a public official with the intention to obtain an economic benefit for himself or for a third party, in a business, damages the public estate that is under its management control, shall be subject to a penalty of imprisonment between 2 (two) to 8 (eight) years.

It is also a criminal offence for a person, directly or through a third party, to use their influence to obtain an economic advantage from a public official for himself or third party. The law sets a penalty of imprisonment of up to 2 (two) years. The penalty rises from 2 (two) to 8 (eight) years if the action is for the public official to use its influence.

Public Procurement

²¹⁶ Articles 501 et seq. of the Criminal Code.

In 2016, the Mozambican Government approved new legislation regulating the tender of public works, supply of goods and provision of services to the State²¹⁷.

The scope of the Public Procurement Regulation contains two different perspectives: an objective criterion which establishes that it is applicable to public works, supply of goods and provision of services, including rental, consultancy and concession agreements; and a subjective criterion, which states that the Public Procurement Regulations are applicable to all bodies and institutions of the State, including municipalities.

The Public Procurement Regulation set out the general rules for providing public works contracts, supply of goods and provision of services to the State and its bodies. These must be made, as a general rule, through a public tender process. It means that the procurement of goods and services by all levels of government, including procurement using funds from donor agencies, are to be undertaken according to the requirements provided in the Regulations.

The general regime of the public tender process comprises the following stages: (i) preparation and launching; (ii) submission of bids; (iii) evaluation of bids; (iv) classification and recommendations of the jury (tender committee); (v) award; and (vi) complaints and appeals, if any.

A general principle relates to the national criteria. This provides that the tender document must provide a preferential margin to national bidders or nationally-produced goods. The margins used are 10% (ten percent) of the pre-tax contract value for public works, and 15% (fifteen percent) of the pre-tax contract value for nationally-produced goods. A company or individual registered in Mozambique for over 5 (five) years with a majority of foreign share capital is considered to be a national bidder.

The law also includes special regimes of public procurement proceedings such as:

- Limited Tenders apply when the estimated contracted value comprises:
 - ✓ public works of less than MZN 5.000.000,00 (five million Meticais); and
 - ✓ goods and services of a value less than MZN 3.500.000,00 (three million, five hundred thousand Meticais).
- Small-scale tenders are a simplified form of procurement process, and are designed for use where the values involved are low and the items being procured are not technically complex. A small-scale tender is used where the estimated contract value is less than 15% (fifteen percent) of the value established for Limited Tenders (i.e., for public works, 15% (fifteen percent) of MZN 3.500.000 (three million five hundred

²¹⁷ Decree no. 5/2016, of March 8th.

thousand Meticaís) or less; and goods and services, 15% (fifteen percent) of MZN 1,750,000 (one million, seven hundred and fifty thousand Meticaís) or less;

- Direct Award is also applicable when the previous public tender has had no bidders, in cases of emergency, war and civil unrest situations, defense matters and leases.

Regarding the tender evaluation criteria, the general criterion is that of the lowest price.

The Regulation also contains rules on the material regime of contracts for public works, regulating, *inter alia*, the execution and release of bonds, provisional and final acceptance, deficient performance, supply or provision, amendment and termination of contracts.

It is also important to highlight Law no. 8/2015 of October 6th, which subjects contracts of any nature related to personnel, public works, loans, concessions supplies and provisions of services concluded by the State and other public entities, including departments and agencies within central, provincial or local Public Administration, public institutes and other entities determined by law, for preventive supervision by the Administrative Court through a grant or refusal of prior approval (“*visto*”).

CHAPTER XIX – TAX

Mozambican tax law is unwavering regarding the most important taxes on income – Personal Income Tax (“*Imposto sobre o Rendimento das Pessoas Singulares*” - IRPS) and Corporate Income Tax (“*Imposto sobre o Rendimento das Pessoas Colectivas*” - IRPC) – which are both from 2007 and have not been subject to many amendments.

An individual is deemed a resident for tax purposes if, in the year to which the income relates:

- He/she was present in the country for more than 180 (one hundred and eighty) days, consecutively or not;
- He/she was present in the country for less than the above referred period, but owns a house or occupies it as a permanent residence in Mozambique;
- He/she works abroad exercising functions of a public nature for the Republic of Mozambique.

Personal Income Tax (IRPS)

The taxation of individuals in Mozambique is established by the Personal Income Tax Code (IRPS Code). A resident taxpayer is subject to tax on his/her worldwide income. On the other hand, a non-resident taxpayer is only subject to Mozambican sourced income.

Income of an individual is taxed under separate categories depending on the type of income obtained: employment income (first category); business and professional income (second category); capital income and capital gains (third category); real-estate income (fourth category) and other income (fifth category).

There are specific deductions for each income category; and global deductions to taxable income, such as health, education and other expenses.

Generally, Personal Income Tax is taxable under progressive rates that vary between 10% (ten percent) and 32% (thirty two percent).

Taxable income (MZN000's)	Rate (%)	Less flat rebate (MZN000's)
up to 42	10	-
42-168	15	2.1
168 -504	20	10.5
504-1,512	25	35.7
Over 1,512	32	141.54

However, certain categories of income are not taxed by the total amount, such as:

RESIDENT INDIVIDUALS	
Capital gains on:	
Immovable property	only 50% taxable
Intellectual/industrial property works and know-how from original creator	only 50% taxable
Shareholdings and securities	between 55% and 100% taxable, depending on ownership period

In case there is no tax treaty for the Avoidance of Double Taxation between Mozambique and a specific country, non-residents that obtain income in Mozambique are subject to the following final withholding tax rates:

Laws and Regulations Related to FDI in Mozambique

Non-residents individuals	
Dividends	20%
Income dependent work and independent work and compensation for the reduction, suspension and termination of activity, including temporary assignment and any subsidies received from rendering of services	20%
Income from Swaps	20%
Bonds admitted to the Mozambique Stock Exchange	20%
Capital income	20%
Commissions and other income from rendering of services	20%
Royalties and know-how	20%
Interest from bank fixed-term deposits	10%
Income from shares admitted to the Mozambique Stock Exchange	10%
Gains in cash from social and entertainment games, lottery, lotto, bingo, sweepstakes and contests	10%
Artists of diversified nature, except with regular remunerations of dependent work	10%

Corporate Income Tax (IRPC²¹⁸)

As mentioned above Mozambican and foreign legal entities are subject to tax on their profits. Mozambican resident legal entities (as companies with their head office or place of effective management in Mozambique) are taxed on their worldwide income. Non-resident legal entities (as companies that do not have their head office or place of effective management in Mozambican territory) will only be taxed on Mozambican sourced income. Mozambican law also allocates to the permanent establishment income derived directly by non-residents. IRPC general tax currently in force is at a rate of 32% (thirty two percent).

More recently²¹⁹, Mozambican law extended its scope and now deems that capital gains will be taxed in Mozambique in the case of such gains being derived from the direct or indirect transmission of shareholding between non-resident entities that involve assets located in Mozambican territory. This provision, being very recent, does not set out a threshold or a shareholding limitation.

Regarding the taxation of non-resident entities, the taxation is made through withholding tax at a tax rate of 20% (twenty percent), as long as such income is deemed to be Mozambican sourced.

The law exempts several types of entities from IRPC, such as:

- The Mozambican State (State and public companies are not tax exempted);
- Municipalities and the Associations or Federations of municipalities, regarding activities that do not pursue profit;
- Social Security institutions duly recognized;
- Associations of public utility, cultural, recreational and sports activities, although tax exempt, will still be subject to withholding tax regarding specific types of income;
- Income derived from activities subject to Special Tax on Gambling.

²¹⁸ IRPC Code was approved under Law no. 34/2007 from December 31st.

²¹⁹ Article 5 (5) of the IRPC Code was amended by Law no. 19/2013 from September 23rd.

Notwithstanding the above tax exemptions, investments made in Mozambique under the investment law regime, may be entitled to several tax benefits that may comprise reduced taxation or full exemption under the Corporate Income Tax code, VAT exemption, and Custom Duties exemption, among others. The specific measure of the benefits will depend on the economic sector of investment and location.

In addition, cooperatives with farming, artisanal and cultural objectives will have a 50% (fifty percent) reduction of the general tax rate of 32% (thirty two percent) (*i.e.*, tax rate of 16% (sixteen percent)).

The following types of income, when deriving from Mozambican source, are subject to a 20% (twenty percent) withholding tax:

- Income derived from intellectual or industrial property, as well as know-how in the industrial, commercial or scientific sectors;
- Income derived from the use of concession of use of farming, industrial, commercial or scientific equipment;
- Capital income and real estate income, in specific situations;
- Income earned as a member of statutory bodies of corporate entities;
- Income derived from gambling, lotteries, betting, as defined in the Social Recreation Gambling Law;
- Income derived from the professional activity of artists or sportsmen, unless they evidence that they do not control the entity that pays the income, as long as the paying entity is subject to IRPC or is subject to Personal Income Tax and has organized accountancy;
- Income derived from the mediation of any agreements and income derived from the rendering of services executed or to be effective in Mozambican territory.

The tax withheld will be deemed as tax payment in advance, unless the taxable person is a non-resident, in which case the tax withheld is final.

Entities that do not have their head office or place of effective management in Mozambique are also subject to 10% (ten percent) definitive withholding tax on the following services:

- Telecommunications services, and international transportation, as well as related services, such as assembly and installation of telecommunications equipment;

- Construction and rehabilitation of infrastructures for the production, transport and distribution of electric power to rural areas, within public projects of electrification to rural areas;
- Freight of marine vessels for fishing and cabotage activities, and maintenance of freight aircraft;
- Securities traded in the Mozambican Stock Exchange, except debt securities.

Under the Mozambique controlled foreign corporation (CFC) regime, corporate profits (whether or not distributed) of a non-resident company that is subject to a more favorable tax regime may be attributed to Mozambique-resident corporate shareholders in case a Mozambican resident holds, directly or indirectly, 25% (twenty five percent) or more of the share capital; or 10% (ten percent) or more of the share capital, where more than 50% (fifty percent) of the company's share capital is owned (directly or indirectly) by Mozambican resident shareholders. Such shareholders will be taxed on their proportionate share of their holdings in the non-resident company. A non-resident company is considered to be subject to a more favorable tax regime if: (i) the company's income is not subject to tax in its country of residence; or (ii) the tax effectively paid by the company is equal to or less than 60% (sixty percent) of the 32% (thirty two percent) IRPC tax.

For this purpose, an entity is deemed to have its head office, domicile or place of effective management in a low tax jurisdiction when such jurisdiction has an effective income taxation tax rate of 60% (sixty percent) or less than the IRPC tax rate of 32% (thirty two percent).

It is also important to stress that the Mozambican banks are obliged to report any transfers of funds that may indicate money laundering activities.

Mozambique has transfer pricing and thin capitalization rules. In terms of the transfer pricing rules, the Tax Administration Authorities may make corrections on the determination of the taxable profit when the transactions between related parties are not at arm's length.

Thin capitalization rules are applied when the debt/equity ratio exceeds 2:1, *i.e.*, the amount of the debt is more than twice the value of the concerned holding in the capital of the respective entity. In such cases, the interest of an excessive indebted amount cannot be deducted as costs for computation of the company profits.

Gift & Inheritance Taxation

Inheritance and gift tax is levied on gratuitous transfers of property to resident individuals and of Mozambican-*situs* property to non-residents (regardless the transfer title). The applicable tax rate is 2% (two percent) for descendants, spouses and ascendants; 5% (five percent) for siblings and relatives in a direct line and up to the third degree; and 10% (ten percent) for other people.

Value Added Tax (“VAT”)

Mozambique has introduced a VAT system in 2002²²⁰ that is presently established under a VAT Code²²¹ and a VAT Regulation.²²²

Under VAT Code rules taxable entities are:

- a) individuals or legal entities resident or with permanent establishment or representation in the national territory that in an independent and habitual character, do exercise, with or without a profit aim, production, trade or services activities, including extraction activities, agricultural, forestry, livestock and fisheries;
- b) individuals or legal entities, not exercising an activity, conduct, also independently, any taxable transaction provided that it meets the real incidence of Personal Income Tax or Corporate Income Tax;
- c) individuals or legal entities not resident and without permanent establishment or representation, yet independently, carrying out any taxable transaction, provided that the transaction is related to the performance of its business activities wherever it occurs or when, regardless of that connection, such an operation meets the real incidence of Individual Income Tax or of the Corporate Income Tax;
- d) individuals or legal entities that according to customs legislation, carry out imports of goods;
- e) individuals or legal entities that in an invoice or equivalent document unduly mention VAT; and
- f) The Mozambican State and other public law legal entities, except when they carry out (i) operations within its powers of authority, even if there is a payment; or (ii) operations for the people without a payment.

²²⁰ Law no. 15/2002 of June 26th.

²²¹ Law no. 32/2007 of December 31st which approves the VAT Code presently in force.

²²² Decree no. 7/2008 of April 16th which approves the VAT Regulation presently in force.

In general terms, VAT taxes the supply of goods and rendering of services and also the import of goods. There are some VAT tax exemptions for specific services and sale of goods²²³ and for import of goods²²⁴ and export of goods²²⁵ and also other exemptions²²⁶. VAT has a sole tax rate of 17% (seventeen percent).

Under the VAT Code rules, tax payers must deliver a monthly VAT return, until the last day of the following the month when the income was generated²²⁷.

²²³ Article 9 of the VAT Code.

²²⁴ Article 12 of the VAT Code.

²²⁵ Article 13 of the VAT Code.

²²⁶ Article 14 of the VAT Code.

²²⁷ Article 32 (1) of the VAT Code.

Schedule 1

List of Terms

ACP	African, Caribbean, and Pacific Group of States
AfDB	African Development Bank Group
AML	Anti-Money Laundering
AU	African Union
BIT	Bilateral Investment Treaty
CACM	Mozambican Arbitration Center (<i>Centro de Arbitragem, Conciliação e Mediação</i>)
CBA	Collective Bargaining Agreement
CBM	Central Bank of Mozambique
CD	Customs duties (<i>Taxas do Serviço de Alfândega</i>)
CIF	Cost, Insurance and Freight
CIS	Stamp Duty Tax Code (<i>Código do Imposto de Selo</i>)
CPI	Investment Promotion Centre (<i>Centro de Promoção de Investimentos</i>)
CPLP	Community of Portuguese Speaking Countries (<i>Comunidade dos Países de Língua Portuguesa</i>)
CSD	Central Securities Depository
DIRE	Resident permit for foreign nationals
DTT	Double Taxation Treaty
DUAT	Right to Use and Benefit from the Land (<i>Direito de Uso e Aproveitamento da Terra</i>)
EAS	Simplified Environmental Study
EIA	Environmental Impact Study
EPDA	Pre-Feasibility Environmental Study
EU	European Union
ED	Excise Duties (<i>Imposto sobre Consumo Específico</i>)
FDI	Foreign Direct Investment
FOREX	Foreign Exchange
FX Law	Foreign Exchange Law no. 11/2009 enacted on 11 th March 2009

FX Regulation	Foreign Exchange Decree no. 83/2010 enacted on December 31 st 2010
GAZEDA	Offices of Accelerated Development Economic Areas (<i>Gabinete das Zonas Económicas de Desenvolvimento Acelerado</i>)
GIFIM	Financial Information Cabinet (<i>Gabinete de Informação Financeira de Moçambique</i>)
Government	Prime-Minister and the Ministers, together forming the Council of Ministers
ICSID	International Centre for Settlement of Investment Disputes
IP	Intellectual Property
IPEX	Institute for Export Promotion
IRPC	Corporate Income Tax (<i>Imposto sobre o Rendimento das Pessoas Colectivas</i>)
IRPS	Personal Income Tax (<i>Imposto sobre o Rendimento das Pessoas Singulares</i>)
ISSM	Mozambique Insurance Supervision Institute (<i>Instituto de Supervisão de Seguros de Moçambique</i>)
MITADER	Ministry for Land, Environment and Rural Development
MZN	Meticais, the lawful currency of Mozambique
NSSI	National Social Security Institute
OECD	Organization for Economic Co-operation and Development
SADC	Southern Africa Development Community
TIS	Stamp Duty Table
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
USD	United States Dollars
VAT	Value Added Tax
WTO	World Trade Organization

Schedule 2

List of Relevant Legislation

1. Constitution of Mozambique, 2004
2. Decree no. 29.883 of August 17th 1939 (applicable to the pledge of bearer shares, as collateral for bank loan payment)
3. Decree-Law no. 44.129 of December 28th, 1961; with the necessary amendments of Decree-Law 1/2005, of December 27th (Civil Procedure Code (CPC))
4. Decree-Law No. 47344 of November 25th, 1966 (Approves the Civil Code)
5. Ministerial Statute no. 116/89 of November 22nd (Approves the amounts to be charged by CPI)
6. Law no. 3/93 of June 24th (Investment Law)
7. Law no. 19/97 of October 1st (Land Law)
8. Law no. 20/97 of October 1st (Environmental Law)
9. Decree no. 66/98, of October 8th (Regulation of the Land Law)
10. Law no. 11/99 of June 8th (Arbitral Law)
11. Ministerial Statute no. 12/2002 of January 30th (Regulation of the Warehouses of Customs Regime)
12. Law no. 15/2002 of June 26th (General Tax Law)
13. Ministerial Statute no. 19/2003, of February 19th (Regulation of the Pre-Shipment Inspection)
14. Decree-Law n. 2/2005 of November 27th (Commercial Code)
15. Decree no. 25/2006 of August 23rd (approves the Regulation on the Functioning of the Central Securities Depository)
16. Decree no. 9/2007 of April 30th (approves the Regulation of Private Security Companies)
17. Law no. 23/2007 of August 1st (Labor Law)
18. Law no. 28/2007 of December 4th (Inheritance and gift tax)
19. Law no. 32/2007 of December 31st (VAT Code)
20. Law no. 34/2007 from December 31 (Corporate Income Tax)
21. Decree no. 7/2008 of April 16th (VAT Regulation)
22. Law no. 4/2009 of January 12th (Tax Incentives Code)
23. Law no. 6/2009 of March 10th (Approves the Preliminary Instructions of the Customs Tariff)
24. Law no. 11/2009 of March 11th (Foreign Exchange Law)
25. Decree no. 34/2009 of July 6th (General Rules for the Customs Clearance of Goods)
26. Decree no. 43/2009 of August 21st (Regulation of the Investment Law)
27. Decree no. 83/2010 of December 31st (Regulation of the Foreign Exchange Law)
28. Ministerial Statute no. 16/2012, of February 1st (Regulation of the Customs Clearance of Goods)

29. Law no. 7/2012 of February 8th (Law of Bases, Organization and Functioning of Public Administration)
30. Law no. 10/2013 of April 4th (Competition Law)
31. Decree-Law no. 1/2013 of July 4th (The Insolvency Code)
32. Decree no. 34/2013 of August 2nd (Business Licensing Regulation)
33. Law no. 14/2013 of August 12th (Law on the Prevention and Combating of Money Laundering)
34. Law no. 20/2014 of August 18th (Mining Law)
35. Law no. 21/2014 of August 18th (Petroleum Law)
36. Law no. 27/2014 of September 23rd (Specific Taxation and Benefits Regime of the Oil Activity)
37. Law no. 28/2014 of September 23rd (Specific Taxation and Benefits Regime of the Mining Activity)
38. Law no. 34/2014 of December 31st (Law of the Revision of the Criminal Code)
39. Decree no. 97/2014 of December 31st (Competition Regulation)
40. Law no. 8/2015 of October 6th (Personal Income Tax Code)
41. Decree no. 28/2015 of December 28th (Regulation of Specific Taxation and Benefits Regime of the Mining Activity)
42. Decree no. 32/2015 of December 31st (Regulation of Specific Taxation and Benefits Regime of the Petroleum Activity)
43. Decree no. 5/2016, of March 8th (Public Procurement Regulation)
44. Decree no. 30/2016 of July 27th (Regulation for the Commission on Labor Mediation and Arbitration)
45. Decree no. 37/2016 of August 31st (Regulation of the Mechanisms and Procedures of Employment of Foreign Workers)
46. UNCITRAL; New York Convention 1958 (Recognition and Enforcement of Foreign Arbitral Awards)
47. Protocol for Free Movement of Persons for the SADC Member Countries signed on August 2012