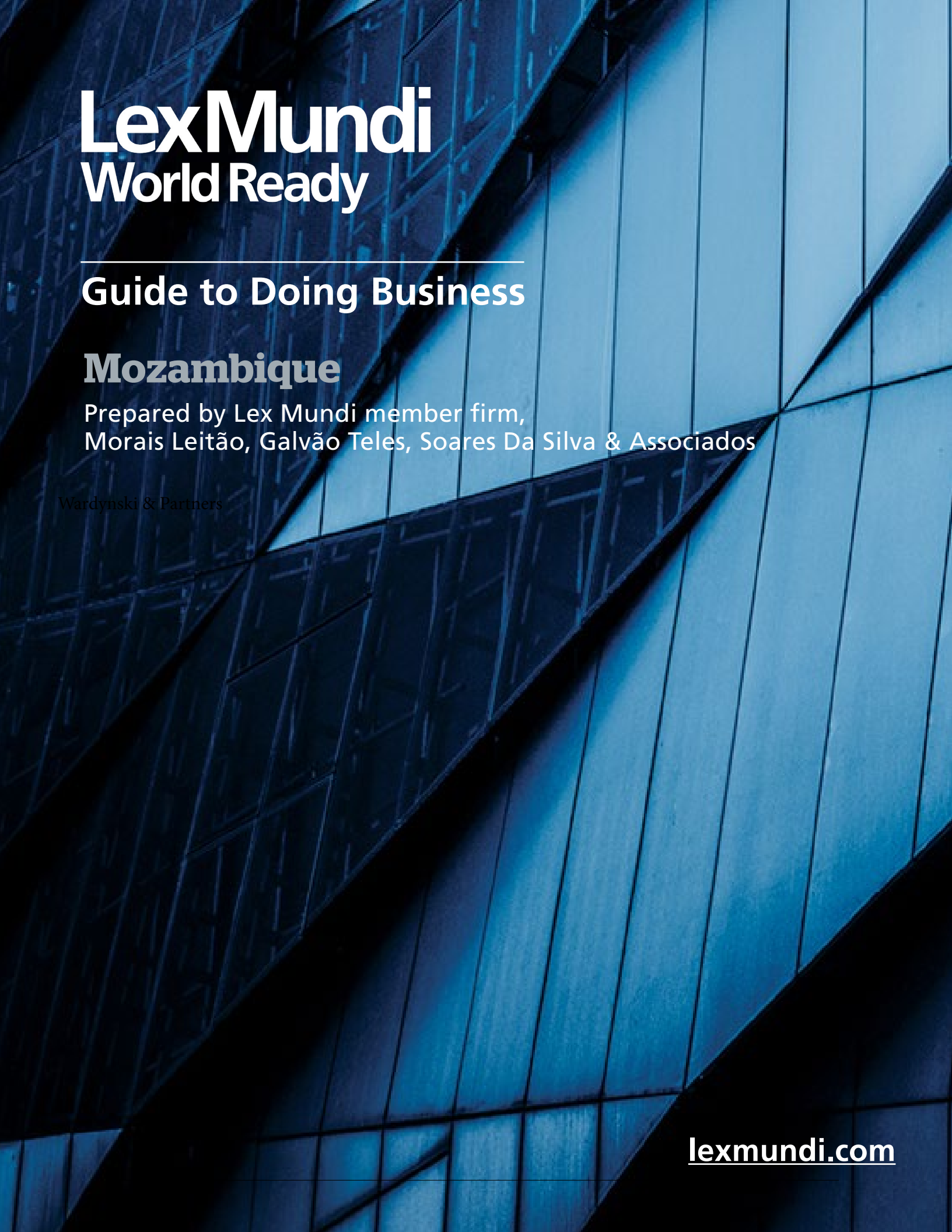

# Lex Mundi World Ready

## Guide to Doing Business

# Mozambique

Prepared by Lex Mundi member firm,
Morais Leitão, Galvão Teles, Soares Da Silva & Associados

Wardynski & Partners

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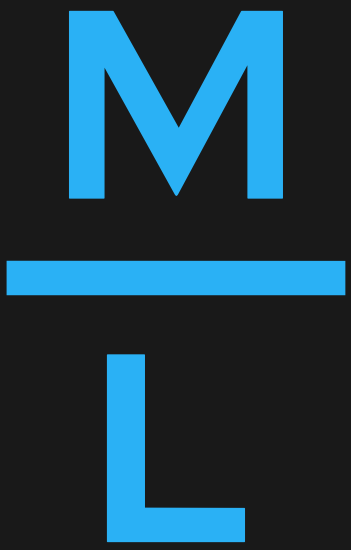
MORAIS LEITÃO
LEGAL CIRCLE

HRA
ADVOGADOS

# GUIDE TO DOING BUSINESS

## MOZAMBIQUE

March 2020



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Doing Business Mozambique is a guide jointly prepared by Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão) and HRA Advogados (HRA), member of Morais Leitão Legal Circle.

**Morais Leitão Legal Circle** is a network of law firms in various jurisdictions, based on shared values and common operating principles, created for the purpose of providing the highest quality legal services through its offices in Angola and Mozambique, as well as in Portugal. All offices are independent and leaders in their jurisdictions and provide, through the established partnerships, a legal practice geared to meeting the needs of their clients, ensuring quality and professionalism of the service in any of the jurisdictions.

Morais Leitão has dedicated internal teams of lawyers able to advise clients on international transactions, particularly in matters involving or relating to the jurisdictions of Portuguese-speaking African countries. They work closely with the firms that are part of the Morais Leitão Legal Circle.

HRA, a member of the Morais Leitão Legal Circle in Mozambique, was founded by a group of Mozambican lawyers whose project and ambition was to become a centre of excellence and a leading law firm in Mozambique.

Doing Business Mozambique, intended for informational purposes only, seeks to provide a brief description of several aspects of Mozambican legislation that may be relevant to clients of Morais Leitão and HRA and other parties potentially interested in some areas of the Mozambican legal system. It does not therefore intend to be nor shall be construed as legal advice on any of the matters addressed.

# 1. INTRODUCTORY CHAPTER: MOZAMBIQUE IN 2019

Mozambique is an important destination in what refers to foreign direct investment in Southern Africa. Apart from the abundant natural resources, the country's access to the sea offers a significant advantage when compared to other land-locked neighbouring countries.

The Mozambican Government has consistently implemented reforms, maintaining sound economic policies and approving privatisations programmes for public companies, which has had a positive effect on the potential investors universe.

In 2019, the World Bank forecasted the gross domestic product growth of the Mozambique to reach 2%, below the average of 3,7% in the period between 2016-2018; the lowest since 2000. This is mainly due to the devastating impact of tropical cyclones Idai and Kenneth. The World Bank expects the economic growth to recover to *circa* 4% by 2021.

As many other countries, Mozambique has been facing its fair share of hurdles in its recent past, namely regarding public debt, inflation and the impact of previously undisclosed debt, which has taken a toll on public opinion.

Politically, Filipe Nyusi is, since 2014, the President of Republic (having been re-elected in 2019) and the leader of party in Power, FRELIMO (*Frente de Libertação de Moçambique*). There is some floating political instability in what refers to the relation of FRELIMO with the major opposition party.

Mozambique has sought, over the past few years, to re-establish the macro economical stability and trust and is trying to overcome the difficult scenery verified in 2016/2017. Pursuant to the hidden debt crisis, the Government has taken various measures aiming at stabilising the bank sector, while the Central Bank has also faced the low foreign exchange reserves, the inflation pressures and the devaluation of the national currency. Notwithstanding this, the country remains in debt distress.

Mozambique still presents potential – in many cases unparalleled – for foreign investors seeking to invest in Sectors such as Oil and Gas, Mining, Construction, Energy, Agriculture and Tourism, among others.

Mozambique is the country with the third highest proven reserves of natural gas in Africa, surpassed only by Algeria and Nigeria. In accordance with recent data from the National Institute for Petroleum, these reserves are of circa 100 trillion cubic feet. Without prejudice to the existence of onshore fields located in the southern part of the country, the offshore field in the area of the Rovuma Basin has become the focus of international attention, with several international players showing their interest in the area (ENI, Total, Anadarko/Occidental Petroleum and Exxon) over the last few years.

In what refers to the Liquified Natural Gas (LNG), despite there currently being LNG infrastructures in Mozambique, it is expected that the first floating LNG facility to be constructed in the African Continent will be in Mozambique and that it shall commence operations by 2024.

Mozambique is also renowned as a metal exporter and, in what refers to the Mining Sector, it shall be highlighted that the Country has significant deposits of coal, ruby, titanium, marble, copper, gold, among others. In this Sector also, world-renowned international players, from Brazil, Australia and India, namely, have been investing therein. As such, a continuous and growth investment influx is expected, which shall grant Mozambique with an even more significant competitiveness in this area.

Mozambique is a country with enormous potential in what refers to the tourism sector, whether regionally, whether internationally. Such is a result not only from its features from a natural resources standpoint and its history and culture, but also due to the proximity of the Republic of South Africa, one of the most thought destinies in Africa and in the World. In this Sector there is a hardly paralleled range of opportunities for potential investors, especially when compared to other countries of Southern Africa.

As such, in all the Sectors referred above, the possibility for investors seeking to enter into the Mozambican market, as investors, providers of services, of know-how, of equipment, among others, is very vast.

# 2. GENERAL PRIVATE FOREIGN INVESTMENT LEGISLATION

The Investment Act (*Lei de Investimentos*, Act no. 3/93, of June 24) establishes the basic legal framework for domestic and foreign investments that can benefit from the established guarantees and incentives. The investments covered under the Investment Act must contribute to the sustainable economic and social development of Mozambique and are subordinate to the principles and objectives of the national economic policy.

This Act does not apply to investments in the areas of prospecting, research and production of oil and gas, mining of mineral resources or to public investments financed by funds from the General State Budget or investments of an exclusively social nature.

Investments covered by the Investment Act are regulated by Decree no. 43/2009, of August 21 (Investment Act Regulation/*Regulamento da Lei de Investimentos*), as amended by Decree no. 48/2013, of September 13.

Up to 2017, the governmental entities responsible for the approval of investment projects in Mozambique were the Investment Promotion Centre (CPI) and the Accelerated Economic Development Zones Office (GAZEDA), depending on the place the project would be implemented, both operating under the tutelage of the former Ministry of Planning and Development (which was extinct and incorporated in the Ministry of Economy and Finance). In 2017 and to optimize resources and create synergies, through Decree no. 60/2016, of December 12, both CPI, GAZEDA as well the Mozambican Agency for the Promotion of Exportations (IPEX) were extinguished and merged into one single entity this being the Agency for the Promotion of Investment and Exportations (hereinafter APIEX), now operating under the tutelage of the Ministry of Industry and Trade.

An important note, to the present date there hasn't been any material change other than the fact that all matters relating to foreign investment are to be presented to APIEX, following the same known procedures and under the same rights and duties provided for in the Investment Act and the Investment Act Regulation.

## 2.1 Forms of foreign investment

Direct foreign investment may assume, either individually or cumulatively, any of the following forms (provided it is quantifiable in monetary terms): *(i)* freely exchangeable foreign currency; *(ii)* equipment and respective accessories, materials and other imported goods; and *(iii)* the assignment, under certain circumstances, of rights to use patented technologies and trademarks.

Indirect foreign investment, in turn, may assume, individually or cumulatively, any of the following forms: *(i)* loans; *(ii)* shareholder loans; *(iii)* supplementary capital contributions; *(iv)* patented technology; *(v)* technical processes; *(vi)* industrial secrets and designs; *(vii)* franchising; *(viii)* trademarks; and *(ix)* technical assistance and other forms of access to the use or transfer of technology or trademarks, whether on an exclusive basis or restricted licensing by geographical area and/or commercial areas of activity.

## 2.2 Conditions for eligibility and procedure

In order for foreign investors, whether natural persons or enterprises, to benefit from the guarantees and incentives set out in the Investment Act (particularly the right to repatriate the invested capital and profits obtained, tax and customs incentives and the State's guarantee of security and protection of the investments and private property), they must comply with certain requirements and procedure.

On one hand, for profits to be transferred out of country and for the invested capital to be re-exported, the minimum direct foreign investment, resulting from equity investment, is MZN 2,5 million.

The foreign investor who at least fulfils one of the requirements set out below may also benefit from the right to repatriate profits and the invested capital:

- generate an annual turnover of no less than MZN 7,5 million from the third year of activity;

- present annual exports of goods or services in the minimum amount of MZN 1,5 million;

- create and maintain direct employment for at least 25 national employees, registered in the national social security system from the second year of activity.

On the other hand, the investment project or investment contract must be registered in the name of the implementing company or the company name that was reserved for such purpose.

The investment project proposal, for investments to be carried out in in Special Economic Zones (*Zonas Económicas Especiais*/ZEE), in Free Industrial Zones (*Zonas Francas Industriais*/ZFI) or outside those areas, should be presented to APIEX. These applications should be submitted on the official forms preferably in Portuguese and should be accompanied by the required documents for its analysis: *(i)* copy of the applicants identification document; *(ii)* commercial register certificate or reservation of corporate name of the implementing enterprise; *(iii)* plant or drawing of the location where the project will be implemented; and *(iv)* copy of the commercial representation license (only when the project implies the establishment of a foreign commercial representation).

After the presentation of the proposed investment project, the APIEX will notify the applicants of its decision.

If the project is approved, its implementation must occur within 120 days (unless another deadline has been set in the authorisation), and the foreign investor must register the direct foreign investment with the Bank of Mozambique within 90 days of the date of authorisation by the relevant authority or of the actual entry of the amount of the investment.

For purposes of export of profits and re-export of the invested capital, the status of foreign investor will remain in force indefinitely (for as long as the terms and conditions that contributed to the award of this status remain unchanged), while the position of the investor can be transferred (by transfer or assignment of shares held by the

respective investors) provided that the transfer occurs within Mozambican territory, the relevant deciding authority is notified (and the consequent authorisation is obtained) and the fulfilment of certain legal obligations is demonstrated.

Authorisation granted for execution of a project may be revoked by the granting authority when any of the following circumstances occurs: *(i)* a justified request presented by the investors themselves; *(ii)* the deadline set for the start of the implementation of the project has been exceeded; *(iii)* stoppage of the implementation or operation of the enterprise for a continuous period of more than three months without prior communication to the relevant authority; or *(iv)* breach either of the Investment Act and of the Investment Act Regulation or of the conditions laid down in the respective authorisation or other applicable legal instruments.

## 2.3 Guarantees and incentives

The Investment Act provides a set of guarantees and incentives to promote investment in Mozambique, which can be classified in three large groups.

### 2.3.1 Protection of property rights

The Mozambican State guarantees the security and legal protection of the ownership of assets and rights, including industrial property rights forming part of the authorised investments and carried out in accordance with the Investment Act and its regulations. The nationalisation or expropriation of property and rights forming part of the authorised investment confers the right to fair and equitable compensation.

Claims lodged by investors that are not resolved by State institutions and which cause the investor losses due to the immobilisation of the invested capital, also confer the right to fair and equitable compensation.

### 2.3.2 Transfer of funds abroad

Provided certain requirements are met, the Investment Act allows the investor to transfer abroad funds related to the following operations:

- exportable profits resulting from investments eligible for export of profits under the Investment Act Regulation;

- royalties or other income on indirect investments associated with the assignment and transfer of technology;

- amortisation and interest on loans taken out on the international financial market and applied in investment projects carried out in Mozambique;

- product of compensation for nationalisation or expropriation of property and rights constituting authorised investment; and

- re-exportable foreign capital invested, irrespective of the eligibility of the respective project for export of profits in accordance with the regulations of the Investment Act.

### 2.3.3 Tax and customs incentives

The Tax Incentives Code (*Código de Benefícios Fiscais*/CBF), approved by Act no. 4/2009, of January 12, establishes a wide range of benefits for foreign investment in Mozambique, that can be grouped into two categories: generic benefits and specific benefits.

#### GENERIC BENEFITS

The generic benefits provided for in the CBF are as follows:

- exemption from payment of Customs Duties and Value Added Tax on capital goods classified in class K of the Customs Tariff (during the first five years of implementation of the project);

- tax credit for investment – possibility of the investment benefiting from a deduction of 5% or 10%, depending on whether the investment is in the city of Maputo or in the other provinces, on the total investment actually realised, from the Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*/IRPC) assessment, up to a maximum of the assessment itself, in respect of the business carried within the framework of the project (during five tax years);

- accelerated depreciation and amortisation – allows accelerated depreciation of new buildings used in pursuit of the investment project, which consists of a

50% increase of the normal rates legally established for the calculation of the depreciation and amortisation that may be considered as costs in determining the taxable income under Corporate Income Tax or Personal Income Tax (this benefit is also applicable to rehabilitated buildings and to machines and equipment for industrial and/or agro-industrial activities);

- deductions from taxable income and from assessment – possibility of deducting costs with the modernisation and the introduction of new technologies and the training of Mozambican workers from the taxable income up to a ceiling of 10% or 5%, respectively (during the first five years);

- other expenses considered tax costs – eligible investments for the enjoyment of tax benefits under the CBF may also be considered as costs in the determination of the taxable amount under Corporate Income Tax, the following limits:

  – 110% (for investment in Maputo) and 120% (for investments in other provinces) of expenditures incurred in the construction and rehabilitation of highways and railways, airports, postal services, telecommunications, water supply, electricity, schools, hospitals and other works deemed to be of public utility (during five tax years), and

  – 50% of expenditures incurred in the purchase, as own assets, of works considered works of art and other objects representative of Mozambican culture, as well as activities that contribute to its development, under the Protection of Cultural Heritage Act (*Lei de Protecção do Património Cultural*, Act no. 10/88, of December 22, as amended).

#### SPECIFIC BENEFITS

The CBF also provides for several specific benefits for investments in sectors of activity, projects and territorial areas directed at: *(i)* creation of basic infrastructures; *(ii)* trade and industry in rural areas; *(iii)* manufacturing and assembly industries; *(iv)* agriculture and fishing; *(v)* hotel trade and tourism; *(vi)* science and technology parks; *(vii)* major projects; *(viii)* fast-development zones; *(ix)* industrial free zones; or *(x)* special economic zones.

## 2.4 Other investment incentives

To promote and strengthen investment relations between Mozambique and other countries, several agreements have been signed for the promotion and reciprocal protection of investments and agreements to avoid double taxation in the matter of income taxes and to prevent tax evasion.

# 3. MAIN LEGAL FORMS OF COMMERCIAL ESTABLISHMENT

## 3.1 Limited liability companies

### 3.1.1 Types, process of incorporation and registration

The legislation regulating the conduct of business in Mozambique is embodied in the Mozambican Companies Code (*Código Comercial Moçambicano*/CCM), enacted by Decree-Law no. 2/2005, of December 27, and subsequently amended.

The CCM enshrines three types of unlimited liability companies (partnerships/*sociedades em nome colectivo*, limited partnerships/*sociedades em comandita simples* and partnerships by shares/*sociedades em comandita por acções*) and three types of limited liability companies (capital and industry companies/*sociedades de capital e indústria*, private limited companies/*sociedades por quotas* and public limited companies/*sociedades anónimas*). In practice, however, only private limited companies and public limited companies are numerically significant.

The choice of the type of company depends on the weighing of factors such as the greater or lesser simplicity of the structure and operation of the company, the amount of capital to invest, as well as confidentiality issues regarding ownership of the share capital.

In general, there are no requirements for share capital to be held exclusively by Mozambican nationals or companies having a registered office in Mozambique, with few exceptions.

#### PRIVATE LIMITED COMPANIES

Traditionally used as small investment vehicles, private limited companies (SQ) often have a family structure.

Number of shareholders – private limited companies must have a minimum of two shareholders (except in the case of a single-shareholder company, necessarily incorporated by a sole natural person).

Share capital – there is no legal requirement as to the amount of share capital. It is freely set by the shareholders, although the amount must be appropriate for the company to carry out its corporate purpose. Industry contributions are not allowed.

Quotas – the share capital is divided into participations called quotas, whose par value is expressed in local currency. Quotas are always nominative (that is, the identity of their holders must always be stated in specific corporate documents such as the articles of association, company registration, etc.).

Transfer of quotas – the transfer of quotas *inter vivos* requires the drafting of a written document signed by the parties and must be communicated in writing to the company and registered at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*). First the company and then the shareholders (proportionally to their holdings in the company) have pre-emptive rights in case of transfer of quotas *inter vivos*, unless otherwise provided in the articles of association.

Where the Investment Act applies, the transfer of quotas may involve the assignment of the investor's contractual position in accordance with the terms of the Investment Project Authorisation, for which the prior authorisation of the *Agência para a Promoção de Investimento e Exportações* (APIEX) is required. It should also be noted that in some sectors (banking, insurance, telecommunications, among others), the APIEX will only authorise this assignment after obtaining the opinion of the regulatory authority of the respective sector.

Asset liability – shareholders are jointly and severally liable for the whole of the share capital contributions. Claims of creditors are limited to the assets of the company for its debts. The law allows for the articles of association to stipulate that one or more shareholders are also liable for the company's debts up to a certain amount. In this case, this liability may be jointly with the company or subsidiary in relation to it but must be equal for all shareholders that are under this obligation. In any case, this liability only binds the shareholder while he/she is a shareholder and it is not transmitted on decease.

Governing bodies – general meeting (deliberative body) and management. The supervisory board, to which the legislation regulating public limited companies applies, is optional in this type of company.

All shareholders participate in the general meeting. Unless otherwise provided by the articles of association, resolutions are taken by simple majority of votes cast. Each MZN 250 of the par value of the quota represents one vote.

Private limited companies are managed by one or more directors, who may be unrelated to the company, and are appointed in the articles of association or by resolution of the shareholders to hold office for re-eligible terms of four years (unless otherwise provided by the articles of association). As a rule, directors are entitled to receive a remuneration, the amount of which is to be fixed by shareholders' resolution.

If the articles of association establish that the company will have a board of directors, this will have, at least, three members. Board resolutions are taken by the favourable votes of the directors' majority.

Directors may not carry on, without specific authorization by the general meeting, on their own behalf or on behalf of others, any business competing with that of the company.

Profits – distributable profits are allocated as decided by the shareholders. However, the articles of association may stipulate that a percentage no less than 25% or more than 75% of the distributable profits of each fiscal year shall mandatorily be distributed among the shareholders.

Legal reserve – at least 20% of the year's profits shall be retained by the company as a legal reserve, until the accumulated reserve amounts to one fifth of the share capital. Notwithstanding the above, articles of association may define higher minimums.

### PUBLIC LIMITED COMPANIES

This type of vehicle is generally chosen for larger companies. Despite involving a more complex structure than a private limited company (SQ), a public limited company (SA) allows greater flexibility to its shareholders, in particular in that the transfer of shares is not subject to any special form.

Number of shareholders – an SA must be incorporated with a minimum of three shareholders, who may be natural or corporate persons, nationals or foreigners. Where the State is a shareholder, directly or through a state-owned company or any entity alike, the company may be incorporated with one single shareholder.

When any of the shareholders is resident or domiciled abroad, he shall communicate to the company the complete identity of the person that will be entitled to receive, on such shareholders behalf, the company's communications, as well as notices and citations relating to administrative and judicial proceedings.

Share capital – company law does not set a minimum capital requirement. The amount of share capital must be appropriate to carry out the corporate purposes and must be expressed in local currency. Regarding the payment of the share capital, an SA may only be incorporated when the entire share capital has been subscribed and when at least 25% has been paid up.

Shares – an SA's share capital is divided into shares, which may be nominative or bearer shares, represented by certificates of shares. Nominative shares may also be classified as registered or book entry shares.

Transfer of shares – the transfer of shares is not subject to any special form and depends on the type of shares issued by the company. In the case of bearer shares, the transfer involves simple delivery of the certificates to the transferee; in the case of registered nominative shares, the transfer takes effect by means of a declaration of assignment in the nominative share register book or in any instrument that may replace it; in the case of nominative dematerialised shares, the transfer takes place by the depositary bank recording the transaction in its books or records to the debit of the transferor's share account and to the credit of the transferee's share account. The articles of association may provide for pre-emptive rights of the shareholders, as well as require the company's consent for the transfer of shares.

Asset liability – the liability of each shareholder is limited to the value of the shares subscribed. Furthermore, claims of creditors are limited to the assets of the company.

Governing bodies – general meeting (deliberative), board of directors (management body) and supervisory board or statutory auditor (supervisory body).

The general meeting involves the participation of all the shareholders, and resolutions are passed by simple majority, except where the law requires qualified majorities (such as resolutions related to the merger, demerger, transformation or dissolution of the company) and in cases where the articles of association provide otherwise. Each share represents one vote, unless the articles of association determine otherwise.

The board of directors comprises an odd number of directors, who may be unrelated to the company appointed in the articles of association or by resolution of the shareholders to hold office for re-eligible terms of four years (unless otherwise provided by the articles of association). The company may have a sole director provided the share capital does not exceed MZN 500,000. As a rule, the directors are entitled to receive remuneration, the amount of which is to be fixed by shareholders' resolution. In addition, directors' liability should be guaranteed if so determined by the company's articles of association.

Among others limitations settled in the law, directors may not carry on, without specific authorization by the general meeting, on their own behalf or on behalf of others, any business competing with that of the company. The breach of such a duty entails the penalty of being removed for cause and becoming liable to pay an amount equal to the value of the unlawful act or contract.

Supervision of an SA is entrusted to a board of auditors (comprising three or five members) or to a statutory auditor, who must be an official auditor or a firm of auditors.

Mandatory dividend – shareholders are entitled to receive, as a mandatory dividend and on each fiscal year, the share of profits established in the articles of association or, if these are omitted, the amount determined by applying the following rules: *(i)* 25% of the net profit less the amounts allocated to the legal reserve; *(ii)* limited to the amount of the net profit of the achieved year. The mandatory dividend may only be less than 25% of the net profit when so stipulated in the articles of association or when so decided by the shareholders, on the board's proposal.

Legal reserve – of the net profit for the year, 5% shall be set aside as a fund for the legal reserve, which shall not exceed 20% of the share capital.

#### CAPITAL AND INDUSTRY COMPANIES

Despite having similar characteristics to those of an SQ, a capital and industry company differs mainly in that it comprises two types of shareholders:

- shareholders who contribute to the constitution of the share capital with cash, credits or other material goods and limit their liability to the value of the contribution that they paid up (capitalist shareholders); and

- shareholders who do not contribute to the share capital, merely participate in the company with their work and are exempt from any liability for the company's debts (industry shareholders).

Management – management is entrusted to one or more capitalist shareholders. Industry shareholders may have a seat on the management only if they post a bond, which is stipulated in advance in the articles of association, and the amount of which equals the amount of the share capital subscribed by the capitalist shareholders, unless otherwise provided by the articles of association.

Profits – industry shareholders share profits in the proportion stipulated in the articles of association. In case the articles of association are silent on the matter, the share shall be equal to that of the capitalist shareholders having the smallest holding in the share capital.

### 3.1.2 Common aspects

Regardless of the type of company, the process of incorporation of a company in Mozambique is fairly simple and fast, consisting mainly of the following formalities:

- application for certificate of name reservation of the company at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*);

- drawing up of the articles of association, to include, among others, the following elements: the full identity of the founding shareholders, and, with regard to the company, its type, the company name, the corporate object, the registered office and the share capital, essential aspects relating to the running of the governing bodies, their structure and other matters considered relevant by the shareholders;

- deposit of the share capital in an account opened in the name of the company to be incorporated at a banking institution in Mozambique (the share capital deposited may be used after the start-up of activity with the Tax Authorities);

- incorporation of the company by private document signed by the shareholders, their signatures having to be certified by a notary in person; if a more solemn form is required for the transfer of the goods that the shareholders put up for the company (including real estate), the law requires the contract to be executed by public deed;

- registration of the incorporation of the company at the Commercial Registry Office (within 90 days), a certificate attesting its essential elements being subsequently issued;

- publication of the company's incorporation in the *Boletim da República* (Official Gazette);

- registration of the company with the Tax Authority, by obtaining the Single Tax Identification Number (*Número Único de Identificação Tributária*/NUIT);

- licensing of the company's business (in the case of economic activities which, by their nature, have no negative impact on the environment, public health, safety and the economy in general, the issue in person of a permit to carry on such activities by the Single Service Offices (*Balcões de Atendimento Único*), district administrations and municipal councils is sufficient);

- submission of the commencement of business declaration to the Labour Directorate (*Direcção do Trabalho*) and registration of the company and of each of its employees with the National Institute of Social Security (*Instituto Nacional de Segurança Social*).

### 3.1.3 Time and cost of the processes

The fees payable to set up a company vary depending on the amount of its share capital and on its business. The process of incorporation may take an average of 15 days (excluding the time required for licensing purposes).

## 3.2 Unlimited liability companies

The CCM establishes the existence of three types of unlimited liability companies: general partnerships, limited partnerships and partnerships limited by shares. These types of companies have very little practical relevance and are few in number.

## 3.3 Possibility of formation of joint ventures and respective requirements

Mozambican law allows for the creation of joint ventures involving companies of any of the types referred to above.

Company law allows shareholders' agreements to be entered into. In this regard, a specific provision regulates SAs, according to which shareholders' agreements shall be concluded in writing and cannot counter the interests of the company and legally applicable norms.

Provided these provisions are complied with, a shareholders' agreement may govern, in general terms, matters such as the right to vote, and, in the specific cases of SA's, matters such as the transfer of shares, the appointment of directors, the exercise of control of the company or the investment and profit-distribution policies. It should be noted that shareholders' agreements have contractual nature, that means that they are only binding to their signatories (shareholders that executed such shareholder agreement), but do not bind the company (that is, the company incorporated to implement the joint venture). Acts by the company or of the shareholders towards the company based on such agreements cannot, therefore, be challenged.

## 3.4 Forms of local representation

Any foreign company intending to do business in Mozambique for a limited period (minimum of one and maximum of five years, renewable) or that creates a permanent establishment in Mozambique can register a commercial representation in the form of an affiliate, delegation, agency or any other form of representation, and for this purpose shall appoint a representative ordinarily resident in Mozambique.

Whatever the type of foreign commercial representation, it is an entity without legal personality whose representation is always referred to the parent company. Moreover,

the articles of association and the name of the parent company apply to the foreign commercial representation.

In general, the licensing process for a foreign commercial representation is more complex and time consuming than the incorporation of a commercial company. The foreign commercial representation is also subject to the requirement of submitting audited accounts (for companies registered locally, this obligation only arises in cases where they have received an Investment Authorisation or when notified to do so by the Tax Authority).

The process of opening a foreign commercial representation and the process of incorporation of a company have some similarities, namely:

- registration at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*);
- obtaining of a Single Tax Identification Number (*Número Único de Identificação Tributária*/NUIT);
- obtaining of a license to operate (Representation Permit issued by the Ministry of Industry and Trade);
- declaration of commencement of business for tax purposes; and
- registration of the commercial representation and its employees with Social Security.

The exercise of specific activities subject to specific licensing (civil construction, mining, oil and gas) through foreign representation in Mozambique is subject to the obtaining of prior opinion of the supervisory body of the respective industry.

The licensing process and the opening of a commercial representation can take about two months.

# 4. FOREIGN EXCHANGE LEGISLATION

Act no. 11/2009, of March 11 (Foreign Exchange Act/*Lei Cambial*), governs acts, deals, transactions and operations of all kinds: *(i)* taking place between residents and non-residents and resulting or may result in payments to or receipts from foreign countries; or *(ii)* that are classified as foreign-exchange transactions by law.

The Foreign Exchange Act applies:

- to currency transactions conducted by non-residents, provided they relate to goods or securities located in Mozambican territory and to rights to such goods or monetary instruments or refer to activities undertaken in Mozambique;

- to currency operations performed by residents when they relate to goods, monetary instruments or rights acquired located or generated abroad which are subject to the legal obligation of repatriation; and

- to goods and monetary instruments located in Mozambican territory or rights to such goods or monetary instruments.

The Foreign Exchange Act also applies to foreign exchange transactions related to foreign investment.

For the purposes of the Foreign Exchange Act, services rendered, the transfer of rights and of goods encumbered or sold, when located, produced, used or operated in the country, are deemed to be activities carried on in Mozambique.

In applying the Foreign Exchange Act, it is essential to make a distinction between forex residents and forex non-residents, and what foreign-currency transactions are allowed within its scope. Thus, the following are considered resident in Mozambique:

- Mozambicans residing in Mozambique or whose stay abroad does not exceed one year;

- Mozambicans whose stay abroad for a period equal to or greater than one year is for health or study reasons;

- all foreign nationals living in Mozambique for over a year, excluding diplomats, consular representatives or similar, foreign military personnel performing governmental duties in the country, as well as members of their families;

- private-law corporate persons having their registered office in Mozambique;

- public-law corporate entities;

- Mozambican citizens who are diplomats, consular representatives or similar, military personnel performing governmental duties abroad, as well as members of their families; and

- the affiliates, agencies, delegations and commercial representations of non-resident private business entities, legally represented in Mozambique.

## 4.1 Foreign-exchange transactions

All foreign-exchange transactions are subject to registration, but not all require the prior authorisation of the Bank of Mozambique, as in the case of foreign exchange transactions classified as current transactions (and certain capital transactions, as further explained below).

The following foreign exchange transactions require the prior approval of the Bank of Mozambique, which is obtained through the submission of the relevant application to the credit institutions and financial companies:

- acquisition and sale of gold and silver coins;

- export of gold, silver, platinum and other precious metals in bar, ingot or in other not-worked form;

- opening and using accounts by non-residents in domestic currency, when related with capital transactions;

- opening and using accounts in foreign currency or in units of account used in international settlements or payments;

- granting credit to residents in foreign currency, including by means of discounting bills, promissory notes, invoice statements, expressed or payable in domestic or foreign currency, where one of the parties is a non-resident;

- purchase and sale of foreign credit securities;

- transactions denominated in foreign currency in units of account that involve or may involve total or partial settlement of capital transactions carried out between residents and non-residents;

- transactions denominated in domestic currency in units of account that involve or may involve total or partial settlement of capital transactions carried out between residents and non-residents;

- transfer to and receipt from abroad of monetary instruments or means of payment;

- exchange-rate arbitrage; and

- import, export or re-export of foreign currency or other means of payment as well as bills of exchange, promissory notes and invoice statements, shares or bonds, whether domestic or foreign, or coupons and public debt securities.

## 4.2 Capital transactions

Capital transactions that require prior authorisation by the Bank of Mozambique, which is obtained through the submission of the relevant application to the credit institutions and financial companies, include the following:

- real-estate investment;

- transactions involving participation units of collective investment undertakings;

- opening and using bank accounts with financial institutions abroad;
- credits related to the transaction of goods or provision of services;
- financial loans and credits, when all the requirements listed below are fulfilled, if those requirements aren't fulfilled, they won't need previous authorization;
- guarantees;
- transfers in execution of insurance contracts;
- transactions on securities and other instruments traded on the money and capital markets;
- physical import and export of monetary instruments; and
- personal loans.

Despite the general rule indicated above, according to Order no. 20/GBM/2017, of December 27, issued by the Bank of Mozambique, which repealed the Foreign Exchange Act Regulation previous in force (following Decree no. 49/2017, of September 11, which established that as foreign exchange regulatory authority the Bank of Mozambique is the entity entitled to approve the applicable Foreign Exchange Act regulation), certain transactions listed above are free of previous authorization upon fulfilment of certain requirements, *e.g.*:

a) Foreign direct investment;

b) Financial loans: prior authorization by the Bank of Mozambique is not required, provided that the amount does not exceed USD 5 million and provided that:

*(i)* the interest rate is not higher than the base lending rate of the currency of credit denomination, plus four basis points;

*(ii)* the sum of the reference rate and the margin does not exceed the interest rate of credit practiced in the national banking system; and

*(iii)* it has a maturity of three years or more; and

c) Shareholder loans: prior authorization by the Bank of Mozambique is not required, provided that:

*(i)* the interest rate is 0%, with a maturity period equal to or greater than three years and free of commissions and other charges; or

*(ii)* the interest rate is higher than 0%, but lower than the base lending rate of the currency of credit denomination, with a maturity of more than three years, free of commissions and other charges, up to the amount equivalent of USD 5 million.

## 4.3 Current transactions

Current transactions (not currently subject to prior authorisation by the Bank of Mozambique, but only to registration with commercial banks) include any payments or receipts in foreign currency that are not for the purpose of transfer of capital, including payments due in connection with foreign trade, remittances for family expenses and other current obligations, under the terms of the respective regulations.

The Bank of Mozambique establishes a table of classification of foreign exchange transactions as well as a detailed classification of current transactions.

As per Order no. 20/GBM/2017, of December 27, the following are classified as current transactions:

- payments for imports of goods and services;
- revenues relating to export of goods and services or rental or use of industrial and intellectual property rights;
- transfers abroad of the income generated by capital transactions previously approved by the Bank of Mozambique (including dividends from foreign direct investment, interest, dividends and other capital gains on portfolio investment, interest on loans, including shareholders' loans, and income from other forms of capital investment); and

- transfers made unilaterally, without any consideration, such as donations of money, alimony or family expenses.

For each current transaction to be made by entities authorised to conduct foreign exchange business, certain procedures must be followed and specific documents provided, the said entities being charged with the control of transactions of this type. Banks, exchange *bureaux*, travel agencies, hotels and similar establishments, and other entities that come to be defined by law are authorised to carry on foreign exchange trade.

## 4.4 General principles and duties

Order n.º 20/GBM/2017, of December 27, establishes the rules and procedures to be followed in foreign exchange acts, deals, transactions and operations under the Foreign Exchange Act.

All foreign exchange transactions (that is, capital operations and current transactions) are subject to registration with the credit institutions and financial companies which will, in turn, proceed with the mandatory registrations with the Bank of Mozambique on behalf of the investors. The investor may only approach directly the Bank of Mozambique in cases in which it is not possible to resort to the credit institutions and financial companies having such impediment to be duly justified.

The foreign exchange registration procedure includes: *(i)* collecting all information about the foreign exchange transaction, including the identity of the parties, the nature, amount, purpose and legitimacy of the transaction; *(ii)* electronic or manual processing of the information; *(iii)* the filing of copies of supporting documents; and *(iv)* the issue of the Foreign Exchange Registration Bulletin (*Boletim de Registo Cambial*).

Resident entities are obliged to declare monetary instruments and rights acquired, generated or held abroad, and to remit to Mozambique the proceeds of the export of goods, services and foreign investment, under the terms and conditions set out in the relevant regulations. The remittance of proceeds must be made by bank transfer and reflected in domestic currency in the beneficiary's account at the exchange rate, on the date of the actual remittance, of the bank that brokered the export operation.

According to Order n.º 4/GBM/2018, of April 13, an exporter or investor may open bank accounts in foreign currency with the purpose of receiving the revenues of the exportation of goods and services or the investment made abroad by such investor, having such accounts limitations on transfer of funds in country as its main purpose is to receive and pay abroad.

On a case-by-case basis, the Bank of Mozambique may authorise that part of the proceeds received by exporters be kept in foreign bank accounts, for the following purposes:

- repayment of loans and payment of debts, such as taxes, abroad;
- urgent payments to international carriers, under terms defined by the Bank of Mozambique;
- payments for maintaining accounts and fulfilling immediate obligations abroad towards tourism companies; and
- other cases duly authorised by the Bank of Mozambique.

Other amounts not held in foreign bank accounts are transferred to Mozambique and a monthly bank statement issued by such foreign banks is sent to the Bank of Mozambique.

## 4.5 Breaches

The conduct of foreign exchange operations without the authorisation of or registration with the Bank of Mozambique is punishable with fine and the goods or monetary instruments used or obtained in the course of illegal foreign exchange transactions may be forfeited to the State. Other accessory penalties may also be applied, such as the impossibility of exporting profits/dividends or reexporting the invested capital.

# 5. IMPORT AND EXPORT REGULATIONS

The entry and exit of goods, persons and means of transport into or from customs territory is subject to Customs control and must take place at ports, airports and Customs houses duly empowered for that purpose.

The Mozambican customs system includes the following special customs mechanisms, defined as a set of specific customs procedures applicable to merchandise, means of transport and other goods by the Customs authority: *(i)* temporary import; *(ii)* temporary export; *(iii)* reimport; *(iv)* re-export; *(v)* customs transit; *(vi)* transfer; *(vii)* bonded warehouses; *(viii)* special economic zones; *(ix)* free zones; and *(x)* duty free shops.

The special customs mechanisms are governed by their own rules.

Within the context of the regional integration of Mozambique, some goods from the Southern African Development Community benefit from reduction of and/or exemption from Customs Duties, on presentation, at the time of import, of the certificate of origin.

The Single Electronic Window system (*sistema de Janela Única Electrónica*) is the platform to be used for the submission of the customs declaration and to provide other information regarding the customs clearance of goods.

Foreign-trade operators are registered with the Ministry of Industry and Trade (*Ministério da Indústria e Comércio*/MIC), which issues an identity card authorising foreign trade activity; those who import, or export occasionally are not barred from this activity.

The following do not need MIC authorisation:

- importers who import goods worth less than USD 500;

- passengers bringing in personal property (as baggage or separately) of a value less than MZN 25,000;
- diplomatic missions and officials when importing goods intended for the representations or for personal use;
- foreign employees of international organisations, with regard to goods for personal use, under the United Nations Convention;
- United Nations agencies, when importing goods for their own use; and
- entities importing samples of no commercial value.

Import or export licenses are issued according to the specific categories of products stipulated in the applicant's permit. Import permits are renewable annually and export permits every five years, the renovation following the same procedure as the initial application.

The customs clearance process for both imports and exports must be arranged by a Customs Broker duly authorised by the Directorate General of Customs (*Direcção Geral das Alfândegas*) hired by the importer/exporter.

A Customs declaration is required to authorise arrival in or departure of goods from the customs territory, which takes the form of Single Document (*Documento Único*/DU), Abbreviated Single Document (*Documento Único Abreviado*/DUA) or Simplified Document (*Documento Simplificado*/DS).

For imports, the base value is, as a rule, the CIF value (cost, insurance and freight). Exports are generally free of duty, subject to the over-valuation charge on a limited number of products.

Some imported goods are subject to pre-shipment inspection.

Besides Customs Duties, imported products are subject to payment of Value Added Tax and Excise Duty.

# 6. FINANCIAL MARKET

## 6.1 Financial institutions

Act no. 15/99, of November 1 (Credit Institutions and Financial Companies Act/*Lei das Instituições de Crédito e Sociedades Financeiras*), as amended by Act no. 9/2004, of July 21, governs the process of establishment and the business of financial institutions and the supervision and control of financial institutions.

Financial institutions may be credit institutions or financial companies. Credit institutions are banks, finance lease companies, credit co-operatives, factoring companies, investment companies, micro-banks and electronic cash institutions. Financial companies are financial brokerage companies, brokerage firms, investment fund management companies, asset management companies, venture capital companies, group purchasing management companies, credit card issuer or management companies, exchange *bureaux* and discount houses.

To carry on any of the activities governed by the Financial Institutions Act, the company will have to adopt one of the forms prescribed by law and obtain authorisation to carry on the business from the respective regulator.

The business of taking deposits or other repayable funds from the public for their own use and of acting as an intermediary in the settlement of payment transactions may only be carried on by banks.

## 6.2 Type of financial system

The mission of the Bank of Mozambique, as a central bank, is to preserve the value of the national currency by taking steps to maintain a low and stable inflation rate.

Mozambique has undergone significant growth of its financial system, increasing from five banks in 1997 to 18 in 2011. This evolution of the financial system has

also been seen in the greater robustness of the system itself in that the reduction of non-performing loans and the current solvency ratios are above the level defined by the Basel Committee. Despite this robustness, the financial system still has difficulties to overcome in terms of bank financing of the economy.

## 6.3 Structure of the banking system

Currently and according to the regulations in force, the national banking system consists of 19 banks, largely involving the four biggest.

Credit institutions and financial companies authorised to operate in Mozambique must be properly registered with the Bank of Mozambique. The list of authorised credit institutions and financial companies is available on the Bank of Mozambique website on the Internet (http://www.bancomoc.mz/).

## 6.4 Possibility of foreign investors obtaining bank loans

A foreign investor may obtain credit from the Mozambican banking system. However, since it is not a forex resident under the Foreign Exchange Act (*Lei Cambial*), it is subject to the restrictions and requirements of this Act and the related regulations mentioned above.

There are, however, restrictions on granting credit in foreign currency. Loans and associated guarantees are subject to registration with or authorisation by the Bank of Mozambique unless they are taken out under an investment project properly documented and approved.

# 7. TAX LEGISLATION

The Mozambican tax system has undergone substantial changes in recent years, undertaken with a view to modernising, simplifying and attracting more foreign investment. Obvious examples are the introduction of Value Added Tax (VAT) in 2007 and the reform of direct taxation, which also begun that year.

There are several State taxes in Mozambique. The direct taxes in force comprise the Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*/IRPC) and the Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*/IRPS) which are very comprehensive, taxing all concepts of income. In the field of indirect taxation, the tax system is formed by VAT, Excise Taxes and Stamp Tax. Wealth and its manifestations are taxed via the Property Transfer Tax (Sisa) and the Gift and Inheritance Tax (*Imposto sobre Sucessões e Doações*). Municipalities also charge a number of local taxes.

## 7.1 Corporation taxes

The structure of the Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*/IRPC) is very similar to that of the contemporaneous corporate income taxes of the Organisation for Economic Co-operation and Development (OECD) countries, encompassing in a single tax all types of income obtainable by all persons and entities liable to it.

### 7.1.1 Who is taxed

Article 2 of the IRPC Code defines who are subject to this tax, making a distinction, firstly, between residents and non-residents, and for the latter, between entities having legal personality and entities having no legal personality. Non-resident taxpayers are deemed to be all entities that, though not resident entities, earn income from a Mozambican source not taxed under IRPS. Resident entities are all those having their registered office or effective management in Mozambique.

As regards corporate entities, the following are expressly considered corporation tax payers: *(i)* commercial companies; *(ii)* civil companies under a commercial form; *(iii)* co-operatives; and *(iv)* any public and private corporate persons having their registered office or effective management in Mozambique. However, some of these entities may qualify for subjective exemptions, including public corporate persons and others that by law or decree of the Ministry of Economy and Finance may qualify for exemptions granted in view of their social purpose. This exemption also applies to legally-recognised social solidarity institutions, as well as to social welfare institutions and non-governmental organisations that, having met certain requirements, perform cultural, recreational, sports and other activities recognised by law.

Also subject to IRPC are estates in abeyance, irregularly-incorporated companies and associations having no legal personality.

Nevertheless, provided certain conditions are met, some entities with legal personality may be taxed on a flow-through basis (that is, transparent), their income being attributed directly to their shareholders or partners and taxed in their respective spheres.

### 7.1.2 What is taxed

From a territorial standpoint, resident entities are taxed on their worldwide income. Non-resident entities, on the other hand, are only taxed according to their income sourced in the territory of Mozambique, except where they exercise their activities therein through a permanent establishment, in which case all income attributable to that permanent establishment will be liable to IRPC.

The concept of permanent establishment laid down in the IRPC Code is very similar to the one established in Article 5 of the OECD Model Tax Convention on Income and on Capital.

As for the tax period, entities subject to IRPC may adopt an annual tax period different from the financial year (which coincides with the calendar year) when this option is motivated by the type of activity exercised and when they are held in more than 50% by entities that adopt a different tax period. The period chosen shall be maintained for a minimum of five years and must be authorized by the Minister of Finance.

### TAXABLE INCOME

Computation of the taxable income for IRPC purposes may be based on the accounting profits, adjusted as foreseen in IRPC Code, or on the sum of the net income of each of the income categories, also modified according to the same rules. The first method applies to resident companies engaged in business activities and also to permanent establishments of foreign entities. The second method applies to resident entities not engaged in business activities and to non-residents with no permanent establishment in Mozambique which derive income of one or more categories.

In general, all sorts of gains and income contribute to the computation of taxable profits, including gains from unlawful activities and also windfall gains like capital gains. Costs are deductible as long as they are necessary for generating taxable income or for maintaining the source thereof. The list of the types of deductible costs is long and comprises items such as depreciation, provisions and impairment charges, capital losses, bad debts, and also certain social responsibility expenses such as certain medical costs of the employees and costs related with kindergartens, libraries, canteens, etc.

Non-deductible expenses are mainly those which are not incurred or are deemed or presumed not to have been incurred in the interest of taxpayer. This group of expenses includes typical non-deductible expenses such as:

- IRPC payments and taxes due by third persons;
- fines and penalty charges arising from tax infractions;
- half of the amount of the allowances related with workers' travels in their own vehicles;
- costs evidenced in documents issued by taxpayers with a missing or invalid tax identification number or by taxable persons which activity has been declared terminated;
- interest and other forms of remuneration of loans granted by shareholders to the company, only in the amount exceeding the reference rate (MAIBOR – 12 months), plus two percentage points;

- expenses paid to residents of low-tax countries.

The taxable base corresponds not only to the adjusted profits computed as per the entity's financial statements for the year in question but also to any positive or negative changes in the equity, except where they arise from contributions or repayment of formal or informal capital to the shareholders.

Yearly taxable profits may also be determined through an indirect method whereby taxable profits may be computed via the use of certain express indices that reveal the normal profits of a taxpayer that fails to submit a tax return or whose financial statements are not available.

Losses may only be carried forward for five years. In reorganizations, carry forward losses may be transferred if authorized by the Minister of Finance, but are not eligible for an extension of their utilization period.

There is a Simplified Tax for Small Taxpayers (*Imposto Simplificado para Pequenos Contribuintes*/ISPC), which is levied on natural and corporate persons engaged in agricultural, commercial, industrial and provisions of services activities, whose annual turnover is less than or equal to MZN 2,5 million.

This tax regime is intended to allow taxpayers to opt for a simpler taxation, with very low rates, instead of the Personal Income Tax, IRPC and Value Added Tax.

The ISPC may be paid at a specific annual rate of MZN 75,000. Alternatively, a rate of 3% is levied on the annual turnover.

Tax losses can only be carried forward up to the end of the fifth after the year in which they were incurred. However, tax losses cannot be carried forward if they were incurred by activities that benefited from partial exemptions or reductions of tax rates or where there is a substantial change of the economic activity carried on. Following corporate reorganisations, the period for carrying forward tax losses may be transferred between the companies involved if so authorised by the Minister of Finance, but with no extension of the time during which losses can be carried forward.

### MAIN EXEMPTIONS AND DEDUCTIONS

Apart from the sectorial exemptions and deductions, the Tax Incentives Code (*Código dos Benefícios Fiscais*, enacted through Act no. 4/2009, of January 12) provides for some general deductions and exemptions:

- accelerated depreciations (50%) for tangible assets subject to a higher than normal attrition, in case of new investments;

- deduction of 110% (if situated in Maputo) or 120% in expenditure for the construction or rehabilitation of infrastructure or for public utility works for a period of five years;

- expenditure in modernization and introduction of cutting-edge technology may be deducted when incurred but up to a limit of 10% of the taxable income of each tax year for a period of five years;

- investment credit corresponding to 10% of the investments made within a five-year period (5% in Maputo) in new tangible assets (excluding light passenger vehicles, buildings, land, furniture, among others).

Professional training expenses incurred by companies for their personnel may benefit from a tax credit of 10% and 5%, respectively in relation to the use of new technologies and other recognized investment areas.

Mergers and divisions may benefit from a special neutrality scheme provided: *(i)* the companies involved have their head-office or place of effective management; *(ii)* the accounting values of the assets transferred by virtue of the reorganization are rolled-over in the accounts of the beneficiary of the transfer; and *(iii)* depreciation, impairment adjustments and provisions relating to the assets transferred are treated as if the latter remained with the transferor. Share-for-share exchanges also benefit from a similar neutrality regime.

### INCOME: CAPITAL GAINS, DIVIDENDS, INTEREST AND ROYALTIES

Intra-group dividends received by a parent company may be relieved from double taxation if certain conditions are met. Those conditions are: *(i)* a holding period of

at least two years or less, if the consecutive two-year old period is completed subsequently; and *(ii)* a minimum shareholding percentage of 20%. If the parent company is a pure holding company, risk capital company, an insurance company, or a consortium (*associação em participação*), there are no thresholds as regards holding percentages and periods.

Shareholdings not qualifying for this exemption will still benefit from a 60% credit in regard to the corporate tax underlying any dividends paid by resident companies.

Capital gains are generally taxable, but those that relate to tangible assets or to shares or other corporate rights may be adjusted to inflation via coefficients published by the Minister of Finance, but only when the assets have been held by the seller for more than two years.

There is a rollover relief for capital gains deriving from the sale of tangible assets used in the taxpayer's activity, subject to the full reinvestment of the proceeds therefrom.

The concept of "capital gain" is comprehensive, encompassing not only the positive result from a disposal of assets but also the result from an expropriation or damages compensation, and also from reorganizations and exchange of assets, in accordance with the market values of the assets received in exchange. There is no exemption for disposals of shareholdings, but capital losses are deductible to a company's taxable profits irrespective of their ordinary or capital nature.

### CORPORATION TAX RATES

The general flat rate of the IRPC is 32%. It should be added that for undocumented and illicit expenses there is an autonomous taxation of 35%, and these expenses are not deductible from the taxable income for IRPC purposes.

A withholding tax of 20% is also applied to the income paid to companies with head office and effective management in Mozambican territory and deriving from: *(i)* interest on treasury bills and debt securities listed on a stock exchange; and *(ii)* interest on liquidity swaps between banks, whether secured or unsecured.

### TAXATION OF NON-RESIDENTS: RETENTION RATES AND CONVENTIONS TO AVOID DOUBLE TAXATION

Foreign investors deriving income from investments made in Mozambique are, in general, taxed according to specific withholding tax rates, unless their activity is carried out through a permanent establishment situated therein.

Interest payments are subject to a final IRPC rate of 20%. However, the few tax treaties entered into by Mozambique stipulate much lower withholding tax rates on outbound interest payments, ranging from a 0% to 10%.

As regards dividend payments to non-residents, Mozambique also imposes a 20% flat final withholding rate charged on the gross amount of the dividends, unless the companies distributing the dividends are listed in the Mozambique Stock Exchange, in which case the rate is reduced to 10%. Finally, the royalties' internal withholding tax rate is also 20%, but can be reduced in case the investor resides in a treaty country, varying between 5% to 10%.

In addition, income from certain services rendered in Mozambique, namely income derived from: *(i)* telecommunication and international transport services (as well as from the assembling and installation of equipment related to those services); *(ii)* services related with the maintenance and freight of aircrafts; *(iii)* services related with the construction, rehabilitation and production of infrastructures or with the transport and distribution of electricity in rural areas, in the context of public projects; *(iv)* the chartering of maritime vessels to carry out fishing and cabotage activities; and *(v)* securities listed on the Mozambique Stock Exchange, except the interests on treasury bills and debt securities listed on a stock exchange, is subject to a final 10% IRPC rate.

Mozambique has, until this date, entered into tax treaties with the following jurisdictions: Ethiopia, India, Italy, Macau, Mauritius, Portugal, South Africa, United Arab Emirates, Botswana and Vietnam.

### ANTI-ABUSE PROVISIONS

The IRPC Code embodies a significant part of the anti-avoidance mechanisms which are currently present in the majority of the most developed countries.

- *Transfer pricing* – the transfer pricing regime of Mozambique, which is in force since January 1st, 2018, has been approved by the Decree no. 70/2017, of December 6, and is applicable to tax residents (including permanent establishments) subject to Mozambican Personal Income Tax or Mozambican Corporate Income Tax within the scope of transactions with related parties, whether these are residents or non-residents for tax purposes.

For the purposes of this regime we are before related parties, namely when one entity/individual has:

a. direct or indirect control over another entity;

b. an interest in another entity, provided that such interest grants significant influence;

c. is associated in a joint venture in which the other entity is an investor;

d. is member of the key management personnel of the relevant Entity or its respective Holding;

e. belongs to the close family of any individual included in a. or c.

The applicable transfer pricing methods, to be determined considering which should be the most appropriate to achieve the maximum effect of arm's length principle, are the following:

a. Comparable Uncontrolled Price;

b. Resale Sale Price;

c. Cost-Plus Method;

d. Profit Split Method;

e. Transitional Net Margin; or

f. other method deemed appropriate to assure the maximum respect of arm's length principle, considering the specific conditions of each transaction.

Furthermore, specific rules are foreseen for arrangements that are common to occur between corporate groups, such as: *(i)* cost sharing arrangements; and *(ii)* intra-group services agreements.

On the other hand, the entities that in the previous financial year have obtained an amount of net sales and other revenues of at least MZN 2,5 million will have to prepare a transfer pricing file.

- Thin capitalisation – any situation of excessive indebtedness towards a non-resident related party may generate non-deductible interest in the proportion above which such excessive indebtedness is deemed to arise. Interest in those conditions will be excessive whenever the amounts lent by related non-resident entities exceed more than twice the value of a resident borrower's equity. The special relationship between lender and borrower will namely occur when the former owns, directly or indirectly, more than 25% of the latter's share capital, exercises a significant influence over its management, or has the same parent company. However, excessive indebtedness will not be presumed if a Mozambican borrower proves that, in the same conditions, it could have obtained the same level of indebtedness from an independent party, by presenting such proof within 30 days of the end of the tax year concerned.

- CFC provisions – Mozambican controlled foreign companies (CFC), that is, overseas companies controlled by Mozambican persons or companies which are domiciled in low-tax jurisdictions may see their profits, distributed or not, being attributed to those persons or companies. Such attribution may take place when those Mozambican shareholders hold:

  – directly or indirectly, 25% of the share capital of the CFC; or

  – directly or indirectly, 10% of the share capital of the CFC, when it is owned in more than 50% by persons resident in Mozambique.

- Payments to companies resident in tax havens – payments made to any persons or companies resident in low-tax countries (that is, taxed at an effective rate of less than 60% of the IRPC rate of 32%) are not deductible, except where the resident payer is able to prove that those payments relate to real and effective transactions and the amounts thereof are not exaggerated.

### SECTORIAL TAXATION AND INCENTIVES SCHEMES

According to the Investment Act (*Lei de Investimentos*, Act no. 3/93, of June 24), tax incentives may be granted to investment or development projects in specific areas, by means of candidatures lodged through application to the effect submitted to the Investment Promotion Centre (*Centro de Promoção de Investimentos*/CPI).

These tax incentives are granted to investments in the following sectors:

- creation of basic infrastructure – incentives to develop basic public infrastructure in order to attract investment in manufacturing and certain economic activities, such as construction and rehabilitation of highways, railways, airports, water supply, electricity, telecommunications, among others;

- agriculture and fisheries – in this area, any kind of investment (provided it is conducted under the Investment Act), regardless of size and geographical location, can benefit from the exemptions and reduced rates provided for in the Tax Benefit Code;

- hotels and tourism – this scheme applies to investment projects that promote the rehabilitation, construction, enlargement or modernisation of hotels and other infrastructure related to tourism and/or development of nature parks and reserves. However, the law specifically excludes restaurants, bars, nightclubs and similar activities, as well as car rentals and travel agencies;

- commerce and industry in rural areas – this scheme is available for investment in construction and/or rehabilitation of infrastructure and industrial activities in rural areas;

- manufacturing and assembly – this scheme is available for investments in manufacturing and assembly with a turnover of less than MZN 3 million and whose value added in the final product is at least 20%;

- science and technology parks – this scheme is available for investments in the area of scientific research, technology development related to telecommunications and information as well as research and development in general;

- major investment projects – this scheme is available for industrial investment projects involving investment of at least MZN 12,5 billion or are related to public infrastructure considered relevant to Mozambique's economy;

- Rapid Development Zones – Rapid Economic Development Zones (*Zonas de Rápido Desenvolvimento*) are geographical areas having great potential in natural resources, but lack infrastructure and have little economic activity. The Rapid Development Zones are: the Zambeze valley, the Niassa province, the district of Nacala, Mozambique island and Ibo and others that may be qualified as such by resolution of the Council of Ministers. Among others, the following activities carried out in these areas of rapid economic development qualify for tax incentives: agriculture, forestry, livestock, aquaculture, water production and supply, housing construction, construction and management of hotels and their infrastructures, construction of commercial infrastructures, telecommunications, education, and health;

- Industrial Free Zones – Industrial Free Zones (*Zonas Francas Industriais*/ZFI) are created by the Council of Ministers at the proposal of the Investment Commission. Proposals for the creation of ZFI may be submitted to the Special Economic Zones Office (*Gabinete de Zonas Económicas de Desenvolvimento Acelerado*/GAZEDA) by any potential investors;

- Special Economic Areas – The Government of Mozambique has also created the so-called Special Economic Areas (*Áreas Económicas Especiais*), among which are the regions of Nacala, and Manga-Beluluane Mungassa, opening up the possibility of granting tax incentives to entities operating in these geographic areas. Depending on the investment area, tax incentives may take the nature of deductions from taxable income, tax deductions, exemptions, reductions of the tax rate and deferred payment of tax.

In parallel with the tax incentives already mentioned, Acts no. 27/2014, and no. 28/2014, both of September 23, have created tax incentives for the petroleum and mining industries, respectively, providing access to a system of exemption from customs duties on imports of equipment for exploration and exploitation, provided this equipment is not produced in Mozambique, for a period of five financial years.

## 7.2 Personal Income Tax

### 7.2.1 Who is taxed

Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*/IRPS) is levied on income obtained by any person who has a personal or material connection with Mozambican territory, particularly when that person is deemed to be a tax resident therein or derives income from sources located in Mozambique. Residents are all persons who, in the year to which the income relates:

- are present in Mozambique, continuously or intermittently, for more than 180 days;
- are present in Mozambique for less than 180 days, but maintain a permanent residence therein;
- perform public duties in the service of the State of Mozambique abroad; or
- are crew members of ships and aircraft operated by companies having their registered office or effective management in Mozambique.

Should the head of the household reside in Mozambique, all members of the household are also considered resident in Mozambique. Any change of residence must be notified to the Mozambican Tax Authority.

Even in the case of a household, the tax is levied individually on each person that forms part of the household and on the respective income of each person. The household may be composed of: *(i)* spouses and dependants; *(ii)* either the father or the mother, if unmarried, and the dependants; or *(iii)* the unmarried adopter and dependants.

### 7.2.2 Main exemptions or deductions

The following, among others, are excluded from taxable income under IRPS: *(i)* contributions by employers to compulsory social security schemes to cover retirement, disability or surviving relative benefits, *(ii)* social utility activities within companies, and *(iii)* expenses incurred with training, subject to certain conditions.

The law considers as exempt for IRPS the: *(i)* death allowance; *(ii)* subsidies; and *(iii)* pensions (namely retirement, old age, disability, survival or alimony pensions, including those of a private nature); as well as *(iv)* temporary or life annuities.

No specific deductions are available for first-category income (employment income). However, second-category income (self-employment income) and fourth-category income (property income) may benefit from specific deductions that, in the latter case are basically restricted to maintenance costs and other expenses with income generating properties. With regard to the second category, only costs connected with assets and liabilities related with the taxpayer's business are deductible, with certain limitations. With regard to the third and fifth categories (other gains from games of chance and net-worth increases not duly justified) there are no specific deductions.

However, losses incurred in the second and third income categories, and 50% of losses arising from the sale of real-estate, intellectual and industrial property and derivative financial instruments may be carried forward for five years, and are deductible from income of the same category.

The annual taxable income that does not exceed MZN 225,000 is not taxed, only the surplus being subject to tax. Taxpayers may waive the obligation of submitting their income statement if, in the year which the tax relates to, they have only received income subject to withholding tax rates.

### 7.2.3 Rates

Employment remuneration is subject to IRPS withholdings (usually monthly), the rates of which are determined on the basis of the personal situation of the respective taxpayers (that is, factors such as marital status or whether or not there are dependants are considered), ranging from 0% to 29.9%. However, other types of income may be subject to special fixed rates ranging between 10% and 20% (for example, payments of dividends and interest).

Some income is taxed at a withholding rate of 20% (this is the case of employment income earned by non-residents in Mozambique; of self-employment income; of capital gains which are not expressly taxed at a different tax rate; of income from isolated acts, among others). A withholding tax of 10% is applied to income derived from securities listed on the Mozambique Stock Exchange (excluding debt securities) and gains, in cash, derived from social gaming and entertainment.

Determination of the tax attributable to the total net income of taxpayers not subject to the application of these special rates is done by application of tax brackets and progressive rates ranging from 10% to 32%.

Lastly, taxpayers who are domiciled for tax purposes in Mozambique and pursue industrial, commercial or agricultural activities may, as long as their turnover does not exceed MZN 2,5 million, opt for a simplified taxation mechanism, whereby they will pay a lump sum of MZN 75,000 by way of IRPS, or alternatively, tax amounting to 3% of that turnover.

The assessment of IRPS is primarily a responsibility of the Tax Authority. However, IRPS due on employment income must be withheld at source by the payor with organized accounting, in accordance with a table annexed to the IRPS Code. Self-assessment is mandatory only for taxpayers that earn income of the second category whenever they are obliged to maintain organized accounting, being optional for other taxpayers.

#### 7.2.4 Social security contributions

Employers' contributions amount to 4% and that of employees to 3% of the total gross remuneration. The notion of "remuneration" for purposes of these contributions has several relevant exclusions, including a number of different subsidies paid to employees.

### 7.3 Value Added Tax

Value Added Tax (VAT) was introduced in Mozambique in 2007 (Act no. 32/2007, of December 31, and Decree no. 7/2008, of April 16) and has been subject to some important changes in 2012. Recently, Decree no. 7/2008, of April 16, has been subject to a new amendment, which has been putted in place by Decree no. 8/2017, of March 30. It is mainly inspired in the EU VAT Directives and, as such, works on the basis of an assessment of tax at every stage of the economic chain and a deduction of the same amount of tax by all agents involved, except for the final consumer.

#### 7.3.1 Who is taxed

There is no express overarching concept of taxable person for VAT purposes in Mozambique, but it can be said that the typical taxable person is the one who carries on,

in a habitual and independent manner, a business activity, be it commercial, industrial or agricultural.

Nevertheless, there are many other situations where a person or company that do not fit in the aforesaid definition, are, nonetheless, liable to VAT:

- a person, resident or non-resident even if without a permanent establishment in Mozambique carrying out, in an independent fashion, a transaction subject to corporate income tax;
- an importer of goods;
- a person or entity incorrectly charging VAT on an invoice or equivalent document;
- a person bound by an obligation to refrain from an act, or to tolerate an act or situation; and
- Government and other public bodies, when engaged in certain listed activities, such as radio/television broadcasting, telecommunication, distribution of water, gas and electricity, transportation of goods and passengers, warehousing, port or airport services, etc. These bodies are not subject to VAT in respect of those activities or transactions in which they engage within their *jus imperii*.

### 7.3.2 What is taxed and where

VAT is levied on the provision of goods and services as well as on the import of goods. According to the principle of territoriality, the transfer of goods is taxed in Mozambique provided that:

- the transport of goods begins in Mozambique;
- if there is no transport, the goods are made available to the acquirer in Mozambique;
- the importer or the successive purchasers provide, dispatch or transport the goods from a third country, before being imported.

As a rule, only services provided by entities resident in Mozambique are subject to VAT. However, this general rule has several exceptions, notably where what is involved are immovables located outside Mozambique and artistic, scientific, sports, recreational or educational services that occur outside Mozambique. Nonetheless, all these services are taxed in Mozambique if they occur in Mozambican territory, even if the person or entity that provides them is not resident in Mozambique.

This "residence of the provider" rule has a further exception where the purchaser of the goods or services is a person resident in Mozambique, registered for VAT purposes, who acquires one of the following services: copyrights, patents, licences, trademarks and similar rights, engineering and consultancy services, lawyers, accountants, economists, and consultants in any area of economic activity, including organisation, marketing and development, advertising, telecommunications, databases and provision of information, banking and financial activities, insurance and reinsurance, and personnel services, among others.

### 7.3.3 Taxable event and enforceability

VAT is chargeable when the goods are made available to the purchaser (supply of goods) or where services are provided (provision of services). As far as imports are concerned, VAT is due when the respective number is assigned to the import document (Single Document) or when the imported good is transferred. All payments received prior to the issue of the invoice give rise to payment of VAT on the respective amounts.

The VAT tax base is the value of the supply irrespective of its nature. There are a number of specific rules for certain types of transactions, for example, gratuitous transfers, auctions, supplies by public entities, fuels and electricity supply.

### 7.3.4 VAT rates

There is a single VAT rate of 17%.

### 7.3.5 Exemptions

VAT exemptions may be full (or "zero-rate") or partial. Full exemptions allow the economic agent to recover in full the VAT on goods and services already acquired,

while they exempt from VAT goods sold or services provided by that economic agent. This group includes exports of goods and services related therewith, the import and sale of ships and aircraft for use in international trade and other services related to transportation and distribution. The law also provides for the possibility of an economic agent setting up a storage depot, allowing him to store and handle goods under the full-exemption mechanism.

A broad range of operations may qualify for partial exemptions, such as financial services, insurance, education, health and commercial or residential leases, services performed in connection with farming, forestry, life stock or fishing activities and the acquisition of services related with the drilling, research and construction of infrastructures in the context of mining and oil activities which are in a prospecting and research phase.

### 7.3.6 Methods of deduction

If the taxpayer carries out supplies of services and goods part of which do not confer the right to deduct VAT, the whole input VAT will be deductible *pro rata temporis* of the total turnover of the operations conferring the right to deduct VAT. However, the taxpayer may choose to exercise the right of deduction through the real allocation of the taxable inputs to related taxable outputs, and this method may even be imposed by the Tax Administration of Mozambique whenever the taxpayer exercises distinct economic activities and the application of the *pro-rata* method generates relevant distortions.

Tax assessed on transactions in which the supplier has failed to pay such tax cannot be deducted by the acquirer whenever he knows (or should know) that the supplier has no proper business structure to exercise his declared activity.

Deduction rights must be exercised on the issuance date of the invoice, or if not possible, until 90 days after the corresponding VAT became due.

## 7.4 Taxation of property

### 7.4.1 Tax on transfers for consideration (Sisa)

Property transfer tax levies the consideration paid for any transfers of a full property right or a limited right like an usufruct or a similar right, and also includes other operations which do not consist, from a legal point of view, in transfers of rights, but that are economically equivalent, such as: *(i)* long-term leases with a clause of mandatory transfer of the leased property on the final payment of the lease agreement; and *(ii)* leases or sub-leases of urban buildings with a term longer than 20 years.

The applicable rate is *2%* for resident or non-resident persons or entities and 10% for persons or entities domiciled in territories with a clearly more favourable tax regime. The taxable value is the higher of the declared value or the registered value for tax purposes. However, if the value for tax purposes is distorted when compared with the market value, the latter will prevail.

### 7.4.2 Inheritance and Gift Tax (*Imposto sobre Sucessões e Doações*)

This tax is payable on gratuitous transfers of movable or immovable property, including inheritances or legacies, gifts or legal settlements. The tax rates are as follows:

- descendants, spouses and ascendants – *2%*;
- brothers and other relatives (with limitations) – 5%;
- other beneficiaries – 10%.

## 7.5 Stamp Duty

Stamp Duty is payable on any act, document or operation, as set out in the Schedule to the Stamp Duty Code. The list of operations subject to stamp duty includes, among others:

- financial transactions, including the purchase of public-debt securities (1% of the par value), loans with a term of less than one year (0.03% per month), loans with a term of between one year and five years (0.4% per year), loans with a term of five or more years (0.5% per year);

- mortgages and other collateral (0.02% per month or 0.2% and 0.3% per annum for guarantees less than one year, between one and five years or more than five years);

- interest, commissions and consideration for financial services, in particular resulting from discounts of bills of exchange and public debt securities, loans, credit accounts and credits pending settlement (2% of their value);

- transfer of shareholdings (0.4% of the par value); and

- purchase and sale, swap, assignment for consideration of real estate (0.2% of the value).

There are also a number of relevant exemptions, such as those enjoyed by finance lease transactions and related guarantees, intra-group loans (under certain conditions), life insurance policies, transfers of shares in companies listed on the Mozambique Stock Exchange and public debt securities and the interest thereon, and also the initial subscriptions or share capital increases of commercial companies resident in Mozambique.

## 7.6 Customs Duties and Excise Duty

Customs Duties are levied on the import of goods in accordance with the following rates:

- raw materials – 2.5%;

- consumer goods – 5% to 7.5%;

- luxury goods –20%.

Additionally, importers have to pay a customs fee in an amount ranging between MZN 250 and MZN 1,500.

Excise Duty (*Imposto sobre Consumos Específicos*/ICE) is levied on the production and import of certain products or goods such as alcoholic beverages, tobacco, cosmetic

products, jewellery and gems, motor vehicles and aircraft, among others. The tax base is broad and includes not only the selling price (for imported products, the base is the customs value), but also any legal charges that may be imposed on such goods, including levies and taxes.

Exemption from tax is granted to raw materials and finished or intermediate products, either imported or locally produced, which are intended for use in the activity of national industries or for incorporation in items produced by the latter.

ICE levied on goods produced in Mozambique must be assessed and paid by the producer or holder, through the appropriate statement model, during the month following that when the tax falls due. The ICE paid at the moment of import should be stated on the customs declaration for imported goods and recorded in the company's books. Whenever the introduction into consumption of the product results from an import, ICE shall be assessed by the customs office.

Whenever there is a special relationship between the producer and the distributor, the taxable amount falling upon the latter shall be obtained by deducting 20% of the price charged by the reseller of the goods concerned.

## 7.7 Oil and mining taxation

### 7.7.1 Oil taxation

The new oil taxation regime, under Act no. 27/2014, of September 23, as amended by Act no. 14/2017, of December 28, applies to individuals and corporate entities, whether residents or non-residents in Mozambique, which perform petroleum operations in Mozambique under a concession agreement.

Taxpayers performing petroleum operations under a concession agreement are subject to the application of the general taxation rules in Mozambique, namely regarding income taxation (IRPS and IRPC) and consumption taxation (VAT). Cumulatively these entities are also subject to the special rules established in this law (that is, application of a specific tax on petroleum operations and special rules determining IRPS and IRPC, which differ from the general rules foreseen for most taxpayers).

### PETROLEUM PRODUCTION TAX

The Petroleum Production Tax (*Imposto sobre a Produção do Petróleo*/IPP), is levied on oil and natural gas produced in each concession area and is due by corporate entities performing petroleum operations under a concession agreement in Mozambique.

This tax rate remains at 10% for oil and 6% for natural gas, and it is levied on the value of the produced oil and gas.

The value of oil and gas, for the purpose of applying the tax rate, is determined under specific rules which are based on the average selling prices of oil and gas in the month the tax refers to. It should be noted that the tax must be paid in cash but may, in some circumstances, be demanded in kind.

IPP is a self-assessment tax and taxpayers must apply the tax rate to the value of oil or natural gas produced. However, the Tax Administration may correct the tax base if the prices used by the taxpayer are not compliant with the legal requirements.

The cost recovery and production sharing mechanisms are also regulated, drawing on the traditional concepts of cost oil, available oil, profit oil and produced oil. Costs incurred by the concessionaire on petroleum operations, excluding interest and other financial costs, are recovered from 60% of the annual available oil (the portion exceeding this limit is carried forward to the following years). In turn, profit oil is shared between the State and the concessionaire according to a variable scale.

### SPECIAL RULES DETERMINING IRPC OR IRPS

Some special rules applicable to determine the taxable income and assess the tax due concern: *(i)* the characterization and clarification of deductible and non-deductible costs and expenses; *(ii)* amortization rules; *(iii)* thin capitalization rules; *(iv)* registration of inventory; and *(v)* the payment of services related to concession agreements undertaken by non-resident entities, regardless of their location, as long as the beneficiary of the services performed is a resident entity, or a permanent establishment, in Mozambique (application of a withholding tax rate of 10%).

As to what concerns costs and losses deemed allowable for the purposes of determining IRPC, this regime regulates, in particular, costs incurred overseas paid to affiliates.

Services (rendered overseas) connected to the management of petroleum operations, consulting and assistance to staff, including financial, legal, and accounting services and labour expertise acquired to an affiliated corporation of the entity which is subject to IRPC (resident in Mozambique) are deductible under the generable terms.

However, the deductibility of expenses incurred under the concession agreement are subject to a tariff deduction limit to be determined by the competent authorities. The above mentioned tariff must meet the following criteria: *(i)* 5% of all costs up to the limit equivalent of USD 5 million; *(ii)* 3% of the fraction of the total costs between the equivalent to USD 5 million and up to USD 10 million; and *(iii)* 1.5% of the total costs exceeding the equivalent to USD 10 million.

The "arm's length principle" and its practical application have been further developed concerning the allocation of an asset to a different concession agreement, since this allocation is deemed to be a transfer.

The application of such a principle determines that certain operations, explicitly mentioned in the law, are treated as if performed by independent entities, namely:

- transactions regarding different concession agreements concerning the same taxpayer;
- transactions regarding a concession agreement and other activities concerning the same taxpayer;
- transactions regarding downstream petroleum operations concerning the development plan/point of delivery;
- services rendered through downstream activities of the point of delivery; and
- any transactions between entities which maintain special relations (*relações especiais*), as defined in the IRPC Code.

It has also been made clear that the IRPC due by entities performing petroleum operations under a concession agreement should, as a general rule, be assessed individ-

ually for each concession area (costs and income should also be determined separately in relation to each area) and each concession agreement area must have its own Tax Identification Number (*Número Único de Identificação Tributária*/NUIT).

Concerning the assignment of taxation on interest, it is clear that non-resident entities in Mozambique transferring oil rights, even if only indirectly involving oil assets in Mozambique, may be subject to tax in Mozambique. A similar regime applies to mining operations.

Therefore, it is clear that gains obtained by non-resident entities in Mozambique derived from direct or indirect transfer (whether or not for consideration) of oil rights in Mozambique, including gains obtained through the sale of interests, share or equity in entities holding oil rights are regarded as gains derived from real estate located in Mozambican territory and are subsequently subject to income tax.

Furthermore, the territorial rule also covers as income from Mozambican source the income deriving from the direct or indirect transfer (whether or not for consideration) of shares of entities between two non-resident entities that hold oil rights in Mozambique, regardless of where the sale occurs. To ensure this rule's enforceability, the law provides that the purchaser and the company which holds the oil rights are jointly and severally liable.

Gains obtained by resident and non-resident entities in Mozambique are subject to tax at the general tax rate of 32%. A similar regime applies to mining operations.

Moreover, it also introduced the buyer stepping into the seller's shoes rule regarding the amortization of costs incurred at the stage of research and development. In these circumstances, the buyer should amortize tangible and intangible assets, as well as any operational cost attributable to petroleum operations under the terms defined by the original concessionaire.

### TAX BENEFITS

Tax benefits expressly granted under the petroleum operations special tax regime refer to exemptions from Customs Duties. This exemption is applicable for five years starting from the approval of a development plan for the import of certain goods according to the Annexes published with the above mentioned Act no. 27/2014, of

September 23 (namely the equipment intended for usage in petroleum operations under class K of the Customs Tariff and the goods in the Annex II that are equivalent to the goods under class K of the Customs Tariff). This exemption may be transferred with the authorization of the Minister of Finance.

It is also regulated the option for a tax stabilization regime, which is applicable for 10 years from the approval of a development plan. This tax stabilization mechanism may be extended for more than 10 years and may be applied until the conclusion of the initial concession against the payment of 2%, additional to the rate on Petroleum Production Tax or Tax on Mining Production, from the eleventh year of production onwards.

#### LIQUEFIED NATURAL GAS PROJECT ON THE ROVUMA BASIN

In late 2014 the legal and special contractual conditions applicable to the Liquefied Natural Gas Project on the Rovuma Basin were published (Decree-Law no 2/2014, of December 2).

These provisions are applicable to each enterprise on the Rovuma Basin (*empreendimento da Bacia do Rovuma*), provided these are only operated under the terms of the research and production concession agreements or the combined terms of the research and production concession agreements and governmental agreements, as well other contractual instruments of which the Government is a part of, provided these contractual instruments are related with the implementation of the Rovuma Basin Project.

These special conditions regulate petroleum operations, land and infrastructure rights, the exchange rate regime, funding and lenders' rights, applicable labour regime to both employers and workers, the regime of insurance and reinsurance contracts, as well as registration and special accounting obligations (the obligation to prepare consolidated accounts and financial statements in the Portuguese and English languages and the obligation to pay the taxes in US dollars).

### 7.7.2 Mining operations' taxation

The current mining operations' taxation regime entered into force on January 1, 2015, and it is applicable to both individuals and legal persons, regardless of their residence, which perform mining operations in Mozambique.

These entities are subject to the general taxation regime and cumulatively to the special taxation regime, established under Act no. 28/2014, of September 23, as amended by Act no. 15/2017, of December 28, namely: *(i)* Tax on Mining Production (*Imposto sobre a Produção Mineira*/IPM); *(ii)* Surface Tax (*Imposto sobre a Superfície*/ISS); *(iii)* Tax on Income Deriving from Mineral Sources (*Imposto sobre a Renda de Recurso Mineiro*/IRRM); and *(iv)* special rules to determine the taxable income under IRPS and IRPC.

### TAX ON MINING PRODUCTION

Entities which perform mining operations in Mozambique (license holders or not) are subject to this tax.

The Tax on Mining Production (IPM) tax obligation occurs once the mineral product is extracted, or once the mineral water is collected.

There are a number of exemptions, if certain conditions are met, although in the cases where the exemptions are applicable, the beneficiary is not released from its reporting obligations.

Exemptions from IPM include namely: *(i)* the mineral products intended for construction, extracted in areas which are not under a mining title or mining authorization, provided the extraction is operated by qualified agents; *(ii)* mineral products extracted for geological research if operated by qualified agents; *(iii)* the self-consumption of the mineral, provided it is approved; and *(iv)* mineral samples with no commercial value, if extracted by qualified entities.

IPM tax rates vary between 8% for diamonds, 6% for precious metals, precious and semiprecious stones and heavy sands, 3% for basic metals, charcoal and ornamental rocks, and 1.5% for sand and stone, and are levied on the value of the extracted mineral product after treatment. The value of the mineral product is determined by specific rules, which also set the quantitative limit for its tax deduction. For instance, transport costs from the mine to the point of export are deductible from the value of the mineral product, including transhipment and mineral handling costs at the port or from the mine until the national point of sale, depending on the case.

Regarding exported minerals not in their final form, their value is obtained calculating the amount of the final product covered in the exported final product, multiplied by the international market reference price regarding the final mineral product (some costs are deductible). The export of mineral product is only allowed after the due payment of IPM.

This tax is assessed monthly by the taxpayer and must be paid to the Tax Authority services. In certain circumstances, the Tax Administration may correct the filed taxable income, specifically where documents which evidence the transfer for consideration of the mineral product do not exist, or when anomalies and inaccuracies are detected in documents or where mineral product is transferred at a lower price than the international market reference price.

### SURFACE TAX

Entities which perform mining operations in Mozambique (title holders or not) are subject to this tax from the moment they have been granted the area subject to prospecting and a research license, mining concession or mining certificate.

Surface Tax (ISS) is due annually and is levied on the area of the mining exploration in question; as to what concerns mineral water, it is levied on each mining title.

Surface tax rates vary between MZN 17.50/ha and MZN 210/ha, whether they relate to the first year of prospecting and research or if they relate to the seventh and eighth year of the mining concession, respectively, and are levied on the number of hectares of the area subject to a prospecting license, research, mining concession or mining certificate.

As regards mining concessions for the prospection of mineral water, the applicable rate of ISS is MZN 85,000 per mining title.

ISS taxpayers are exempt from paying the annual land usage and exploitation fee (*taxa anual de uso e aproveitamento da terra*) concerning the mining title area.

### TAX ON INCOME DERIVING FROM MINERAL RESOURCES

Mining concession or mining certificate holders are subject to this tax.

The IRRM tax rate is 20% and IRRM tax rate is levied on the cash earnings accumulated (*ganhos de caixa líquidos acumulados*) during the year.

For the purpose of this tax, cash earnings (*ganhos de caixa líquidos*) refer to the taxable income (determined under the general rules of IRPC) before deducting any tax losses, added to interest, other financial expenses and amortizations (provided they are filed and declared as deductions for IRPC purposes), and provided it is deducted *(i)* total capital costs, excluding mining title acquisition costs, and *(ii)* costs incurred during the seven years prior to the mining concession, including exploration costs (in the first calculation year alone).

The tax is paid annually in two instalments: the first in August and the second in November, each corresponding to 50% of the estimate submitted at the beginning of the year.

### SPECIAL RULES DETERMINING THE TAXABLE AMOUNT OF IRPS OR IRPC

To determine IRPS or IRPC due as a result of the income derived from the performance of mining operations, the law foresees special rules which are, for the most part, similar to the ones applicable to petroleum operations with the particularities of the mining activity.

These rules regulate, namely: *(i)* the characterization of deductible and non-deductible costs and expenses; *(ii)* amortizations; *(iii)* thin capitalization; *(iv)* registration of inventory; and *(v)* a withholding tax rate of 10% on the payment of services related to mining operations undertaken by non-resident entities, regardless of their location, as long as the beneficiary of the services performed is a resident entity or a permanent establishment in Mozambique.

Special rules determining the taxable amount of IRPS or IRPC due on income deriving from mining operations are specially regulated as to what concerns costs incurred overseas. As such, costs which include deductible expenses of a resident legal entity in Mozambique on behalf of consulting connected to hired staff, assistance with legal and

financial services to an affiliated corporation which is a non-resident in Mozambique may not exceed 3% of the total costs of the resident entity in Mozambique in the same year.

Costs incurred by an entity performing mining operations in Mozambique with the amortization of assets used to the benefit of different mining titles and general administrative costs which may not be directly attributable to a mining title must be proportionately attributable to various different mining titles belonging to the same holder.

### TAX BENEFITS

The tax benefits applicable to mining operations are in all aspects similar to the regime applicable to petroleum operations above described, specifically as to what concerns assets listed in Annex II (assets which may benefit from the exemption of Customs Duties if imported).

# 8. REAL ESTATE INVESTMENT

## 8.1 Right to use and enjoyment of land

In accordance with Mozambican legislation (Act no. 19/97, of October 1), land is owned by the State and cannot be sold or otherwise disposed of or encumbered. Nevertheless, the law provides for a lesser real right known as the use and enjoyment of land right (*direito de uso e aproveitamento da terra*/DUAT), which allows use of the land.

The DUAT may be held by Mozambican natural and corporate persons, as well as by local communities (groups of families and individuals living in a village or territorial constituency smaller than a village, which aims to safeguard common interests through the protection of residential areas, agricultural areas, sites of cultural importance, pastures, water sources and expansion areas). The DUAT acquired by the local community is governed by joint-ownership principles.

Foreigners may also be DUAT holders provided they have an approved investment project and meet the following conditions: *(i)* if natural persons, they have resided at least five years in Mozambique; *(ii)* if corporate persons, they are incorporated or registered in Mozambique.

Acquisition of the DUAT can take place in three ways:

- occupation by natural persons and local communities, according to customary norms and practices, provided they do not contravene the Constitution;

- occupation by Mozambican natural persons who, in good faith, have been using the land for at least 10 years; or

- authorisation of an application lodged by natural or corporate persons.

In urbanised areas, acquisition of the DUAT may also take place in the following ways (Decree no. 60/2006, of December 26):

- draw – of plots or parcels located in areas of basic urbanisation (this method is for Mozambicans only);

- public auction – of plots or parcels located in fully or intermediately urbanised areas intended for the construction of residential, commercial and services buildings (the opening bid cannot be lower than the value of the urbanisation charge);

- private negotiation – negotiation between local State and local government authorities and those submitting projects related to setting up industrial and agro-livestock facilities and supermarkets, construction of housing at the initiative of co-operatives or associations, as well as residential construction associated with major investment projects.

Acquisition of the DUAT is proven through a title deed. The title-deed procedure includes the opinion of the local administrative authorities, preceded by a hearing of the respective communities for the purpose of confirming that the area is free. Besides the title deed, acquisition of the DUAT can also be proved by witnesses presented by local community members or by specialists.

DUAT holders may transfer it *inter vivos* or by legacy. This transfer includes infrastructures, buildings and improvements thereon and is done by public deed, with prior authorisation of the proper State authorities. In the case of urban properties, the DUAT of the land is transferred together with the property and permission does not have to be requested. It should also be noted that holder of the right may place a mortgage on the real property and improvements thereto, and that the DUAT acquired for the home of its holder is not subject to term.

Regarding the DUAT for economic activities, a business plan must be presented, and provisional authorisation is granted to pursue the business, with a maximum duration of five years for Mozambican persons and two years for foreign persons. If the said business plan is complied with during the period of provisional authorisation, definitive authorisation of the respective deed is granted, for a maximum term of 50 years, renewable for a like period at the request of the interested party. On urban areas, the

term for starting the use of the plot of land cannot be more than 10 years (counted from the acquisition date of the DUAT).

Causes of extinction of the DUAT include:

- failure to comply with the business plan or investment project without due cause, within the calendar set out in the approval of the request, even if tax obligations are being met;
- revocation of the DUAT for reasons of public interest, preceded by payment of fair indemnity and/or compensation;
- on expiry of the term or its renewal; and
- termination by the holder.

All acts relating to the DUAT (including acquisition, modification, transfer and termination) are subject to registration. Registration must take place at the Land Registry of the area where the properties are located within 15 days, in the order of their presentation, except in cases of urgency, where registration must take place within five days. Registration is proved by certificate.

Obtaining authorisation under the DUAT does not waive the need to license the exercise of the planned economic activity in accordance with the legislation applicable to the sector. DUAT holders are also subject to payment of an authorisation fee and an annual charge of a value that depends on whether the investor is Mozambican or foreign, the location of the land, its size, and the purpose of the use of the land.

## 8.2 Rental

Rentals are governed essentially by several items of legislation: the Tenancy Act (*Lei do Inquilinato*, Decree no. 43 525, of March 7, 1961, and subsequent amendments), without prejudice to the provisions of the Civil Code relating rentals that do not conflict with it, and rentals for the housing, industry, commerce and services act (Act no. 8/79, of July 3, and subsequent amendments). The former applies to the legal relationship between individuals and the latter to the legal relationship between the State, as landlord, and tenants as individuals.

### 8.2.1 Tenancy Act

The Tenancy Act covers rental of urban properties (that is, both the buildings put up on the land and the ground that forms its yard or garden) and rental of rustic properties other than for production purposes or on which commercial establishments operate with the consent of the landlord. Leases may be concluded for residential, commercial or industrial purposes, for the exercise of liberal professions or for any other lawful purpose.

Currently, all leases must be in writing, with notarial presential authentication of the signatures of landlord and tenant.

In the absence of stipulation to the contrary, leases remain in force for a period of six months. The maximum term may be no more than 30 years.

The rent must be paid in local currency, and clauses fixing the rent in foreign currency are null. However, such invalidity does not determine the invalidity of the other terms and conditions of the contract.

The law further provides that the landlord can increase the rent at the end of each five-year period of the lease. This provision does not prevent another period being agreed upon by the parties in the lease contract itself.

Also underscored with regard to payment of rent is that the rent is owed by the tenant even after termination of the contract, until such time as the leased property is actually handed back. On the other hand, the contract cannot stipulate more than one month's rent paid in advance, and only a personal guaranty (*fiança*) is accepted as collateral for the obligation.

The tenant answers for the maintenance of the property and for handing it back in the condition in which it was received, fair wear and tear excepted.

The Regulation of the Legal Framework of the Condominium provides that lease agreement shall define who should take responsibility for the payment of dues as well as the duty of the landlord to notify the administrator of the occupancy of the unit by the tenant.

Subleasing is lawful only if authorised by law, by the contract or with the subsequent consent of the landlord. The sublease expires on termination of the lease, without prejudice to the sub-lessor's liability towards the subtenant where the grounds for the termination are attributable to it.

At end of the contract, it is successively extended until the tenant terminates it, that is, opposes the extension of the lease, giving notice and meeting the formalities set out in law or the contract, but not less than that provided for in the Civil Code, namely: *(i)* six months, if the term is equal to or greater than six years; *(ii)* 60 days, if the term is one to six years; *(iii)* 30 days, if the term is three months to one year; and *(iv)* one third of the term if less than three months. Where the term of the extension has not been agreed, it shall be equal to the period for which the contract was concluded, unless the period is longer than one year.

The landlord may, through the courts, terminate the lease at the end of its term if the property is needed as his own residence or to set up an economic activity undertaken by himself on a professional basis, or to enlarge the building or replace it with a new one.

Termination of the rental agreement may also occur by revocation, rescission and expiry.

Revocation is termination of the lease by agreement of the parties. As a rule, this agreement must be in the same form as the contract. However, if the agreement is not subject to registration, revocation is valid, regardless of form, provided that the tenant return the use of the property to the landlord and the latter accepts it. In case of doubt, the agreement shall be presumed revoked if, during its life, the property is returned and accepted, as stated.

Rescission is a form of unilateral termination to which either party may have recourse in the event of contractual breach by the other party. Rescission by the landlord must be declared judicially by means of an eviction action, which may have, *inter alia*, the following grounds: *(i)* non-payment of rent; *(ii)* use of the property for other than the intended purpose; or *(iii)* closure for more than a straight year of a property leased for trade or industry, unless the closure occurs as a result of *force majeure* or forced absence of tenant.

Rescission by the tenant may take place, regardless of the responsibility of the landlord, when for some reason foreign to his own person or to his relatives, the tenant is deprived of enjoyment of the property, even if temporarily, or if the property has a defect that puts his health or that of his relatives or subordinates in serious danger.

Lastly, expiry is a form of termination which occurs automatically where certain legal requirements are met. Thus, the rental agreement shall expire:

- when the right or legal powers of administration under which it was concluded cease;
- on the decease of the tenant (other than in connection with rentals for trade or industry) or by its extinction, if a corporate person;
- in the event of loss of the property, its demolition by order of the local authority or expropriation for public utility (unless, in the latter case, the purpose of the expropriation allows the rental to subsist); and
- if the property is subject, by administrative or police imposition, to consolidation works incompatible with the continuation of the tenant in the premises.

Even if the lease expires as set out above, the law provides for the possibility of its renewal if, once the lease is revoked, rescinded or expires, the tenant or his successor remain in the enjoyment of the property during one year without opposition of the other party, in which case the lease is considered in force once again, as if it had not expired.

The Tenancy Act also stipulates special provisions for residential rentals and leases for commerce or industry.

With regard to the special provisions for commercial or industrial leases, it should be noted that they do not lapse on the death of the tenant, his position being transferred to his legal heirs if, within 30 days, they do not communicate their renunciation of the lease to the landlord. Where the lease may be legally terminated by reason of expiry or when it comes to an end, by decision of the landlord, the lessee is entitled to compensation if, because of an act of his, by virtue of the clientele built up, the rent of the leased property is greater than it was worth at the time the lease was entered

into, even though it does not come to be leased again. The tenant may also transmit its legal position, without consent of the landlord, in the case of transfer of business (*trespasse*); the landlord has, however, right of preference and the lease must take the form of a public deed.

### 8.2.2 Lease of State Property Act

The law governing the rental of property for housing, commerce and services (Act no. 8/79, of July 3) contains provisions totally different from those established in the Tenancy Act. This mechanism applies only to contractual relations in which the State is the landlord.

Residential contracts are concluded for an indefinite period and the rent is payable at the place and by the deadlines fixed in the contract, under penalty of punishment by a fine and termination of the contract. If the lessor is also the employer, the rent is deducted from the earnings of the tenant. The tenant may take in paying guests if it obtains the prior consent of the landlord. In this type of lease, sublease of real estate is prohibited.

The contract may be extinguished: *(i)* on the decease or incapacity of the tenant; *(ii)* if the tenant moves or changes residence; *(iii)* by decision of the tenant; and *(iv)* by decision of the landlord.

These rules also apply to leases for industry, commerce and services, which however can only be concluded by tenants duly authorised to carry on the respective activities.

The following aspects must be taken into account in concluding lease contracts both for housing and also for industry, commerce or services:

- lease applications are submitted by means of an appropriate form;
- the contract is drawn up in proper form and signed in three copies (one for the landlord, one for the tenant and the third for the department charged with receiving the rents);
- an inspection document must form part of the contract;

- should the tenant not sign the contract within 15 days of the date of the landlord's communication he loses the right to the lease;

- late payment of the rent is liable to a fine calculated on the amount of debt (50% in the first month, 100% in the second month and 200% in the third month) and implies termination of the contract when overdue by more than three months;

- the tenant may terminate the contract at any time provided it so gives the landlord at least 30 day notice;

- in the event of any cause for termination of the contract, the landlord may give written notice of his decision to terminate the contract;

- the State, as landlord, has the right to inspect the properties to verify their use, inspections to be notified in advance.

## 8.3 Land registry

Land registry is intended to give publicity to the ownership of rights over immovable property. The principal effects of registration are the presumption that the registered right exists and belongs to the person in whose name it is registered (and thus enforceable against third parties), as well as the principle of priority (that is, the record entered in the first place takes precedence over those that follow in respect of the same good, even if the record is initially a provisional one, insofar as it has since been converted into definitive).

Thus, the legal facts that determine the formation, recognition, acquisition or modification of rights are subject to registration, among others.

The parties to the legal relationship and, in general, all persons having an interest therein are entitled to request a registration act.

## 8.4 Tourism

Tourism is recognised by the Mozambican State as an industry that promotes employment and generates foreign exchange, and sundry legislation specifies and comple-

ments the main legislation. The following should be underscored in this connection: *(i)* obtaining the DUAT for tourism purposes; *(ii)* the categories of tourism enterprises; *(iii)* requirements for their licensing; and *(iv)* areas of interest to tourism.

### 8.4.1 Obtaining the DUAT for tourism purposes

The construction of a tourism undertaking involves acquisition of the respective DUAT through an authorisation granted at the request of the interested parties. The process of acquisition of the DUAT through this authorisation requires the following documents:

- identity of the applicant, if a natural person, and the articles of association, if a corporate person;
- map of the location of the land;
- indication of the nature and size of the undertaking that the applicant intends to carry out;
- opinion of the district administrator, which must be preceded by a hearing of the local community; and
- proof of payment of provisional authorisation charge.

DUAT holders may also transfer existing infrastructure and buildings, by public deed, to parties that want to acquire them, the transfer of necessity being preceded by State authorisation.

Therefore, if the intention is to build a tourism undertaking from scratch, a DUAT must be obtained, fulfilling the requirements listed above. However, the DUAT may also be obtained by public deed, provided that it refers to an urban property whose income derives mainly from the existing buildings.

### 8.4.2 Categories of tourism undertakings

The Tourism Regulation stipulates a number of categories that are sub-divided according to the type of service they provide. For each type of category and sub-category, minimum service and comfort requirements must be met.

There are therefore the following categories of tourism undertakings: *(i)* hotels, from five-star luxury to one star; *(ii)* resort hotels, from five-star luxury to three star; *(iii)* lodges, from five star to one star; *(iv)* service flats, from four star to one star; *(v)* residential hotels, from four star to one star; *(vi)* boarding houses, from four star to one star; *(vii)* residential boarding houses, from four star to one star; *(viii)* inns, from five star to two star; *(ix)* motels, from three star to two star; *(x)* holiday villages; *(xi)* campsites, from four star to one star; *(xii)* guest houses; *(xiii)* private accommodation; *(xiv)* room rental; *(xv)* farms for tourism purposes; and *(xvi)* resorts.

## 8.5 Common requirements for licensing of tourism undertakings

The application for licensing tourism undertakings is done through a signed application that must be authenticated and addressed to the minister responsible for tourism, stating:

- the identity of the applicant or developer (name, nationality and address in the case of a natural person, or articles of association, registered office and representative, if a corporate person);
- where the undertaking is located or is to be located;
- opinions of authorities and/or local authorities of the respective area;
- environmental-impact assessment; and
- DUAT for tourism purposes.

After submission of application, one must apply for approval of the location, which, if granted, allows the applicant 180 days as from the notification of the decision to present the working plans. The working plans comprise several documents that specify in detail the composition of the tourism undertaking. However, the items to be submitted differ depending on whether the undertaking is to be located in buildings to be built or in existing buildings. The elements for approval of the location, of the preliminary plans and of the working plans may be submitted at the same time.

As from the date of reception by the applicant of a written notice of approval of the working plans by the licensing authority, construction must begin within: *(i)* one year for green-field projects; or *(ii)* 180 days for projects in existing buildings.

Upon completion of construction, the applicant must request an inspection. This request is made in writing to the licensing authority, together with a likewise written request for the issue of a manager certificate and for approval of the price list proposed for the undertaking. In parallel, the applicant must submit an application for classification of the undertaking by the proper classification authority.

Should the inspection be favourable to the opening of the undertaking, the respective permit is issued. However, since this issue is not swift, the applicant may request a certificate from the licensing authority stating that it is awaiting the issue of the permit, which it can then present to other governmental entities. The permit is valid indefinitely. It should also be noted that the licensing is subject to payment of a fee.

The transfer of business of the undertaking, the assignment of its management, the suspension or closure of the activity and the revocation/lapse or amendment of the permit is subject to registration.

### 8.5.1 Zones of Interest to Tourism

The legislation on Zones of Interest to Tourism (*Zonas de Interesse Turístico*/ZIT) was enacted by Decree no. 77/2009, of December 15, and is intended primarily to favour regions that have relevant features, including natural and historical and cultural resources able to attract domestic and foreign tourists, or areas having potential for the development of integrated projects. The advantage of obtaining a ZIT declaration has to do with the adoption of fast, priority procedures and priorities for the implementation of tourism undertakings, as well as the total or partial suspension of land use instruments.

# 9. CAPITAL MARKETS

The fundamental legislation in this regard is the Securities Code (*Código do Mercado de Valores Mobiliários*/CMVM), enacted by Decree-Law no. 4/2009, of June 2, which repealed Securities Regulation (*Regulamento dos Valores Mobiliários*, enacted by Decree no. 48/98, of September 22), among other pieces of legislation.

The capital markets in Mozambique comprise a primary market (market for new issues of securities) and a secondary market (trading market for previously issued securities between third parties). On the other hand, a distinction must also be made between the stock market and over-the-counter market, the latter being a market in which supply and demand are dealt with outside the stock markets, with the involvement of authorised financial intermediaries.

Equally important are the public subscription companies, which have part or all of their share capital dispersed among the public, by virtue of: *(i)* having been incorporated with subscription by the public; *(ii)* having resorted to public subscription in a share capital increase; or *(iii)* their shares are or were admitted to trading on the stock market or have been the subject of a public offer for sale or exchange.

The Regulation no. 1/GPCABVM/2010, of May 27, which revoked the Circular no. 2/GPCDBVM/99, of September 15, determines the rules to be observed governing the preparation, procedure and decision on applications for listing of securities, as well as laying down the content of the prospectus to be published at the time of admission (Article 1).

In turn, Notice no. 4/GGBM/99, of February 25, lays down the mechanism applicable to the registration with the Bank of Mozambique of public offerings for subscription and public offerings for sale of securities, as well as the form and content of advertising these offerings (Article 1).

The following legislation must also be taken into account:

- Decree no. 25/2006, of August 23, which establishes the principles and fundamental provisions governing the nature, organisation, management and working of the Central Securities;

- Ministerial Order no. 130/2013, of September 4, and the Regulation no. 1/GPCABVM/2014, of February 20, both which determine the rules and necessary operational procedures for the activities of the Central Securities;

- Notice no. 6/GGBM/2003, of September 30, governing the procedures for investments, transfers of capital, interest, dividends and other income related to transactions in securities admitted to trading on the Mozambique Stock Exchange, involving non-resident entities.

- Regulation no. 2/GPCABVM/2010, of 28 May, which determines the conditions for admission to listing and permanence of the securities in the Second Market, the information to be provided to the competent authorities and the public, and the admission and maintenance of the listed securities.

Within the competence of the Bank of Mozambique, the legislator establishes that, as the regulatory authority, it must exercise its powers with a view to the security, efficiency, modernisation and development of the securities market, fundamental objectives of the Mozambican capital markets, importance also being given to the growing reduction of the formalities of the system, particularly with regard to its support and transfer of securities. It should also be noted that the CMVM establishes numerous duties of information, both by issuers and financial intermediaries and also by investors themselves.

Other principles stem from or are an instrumental part of these principles, as under:

- efficiency and proper working of the securities market;

- transparency and information;

- control of information;

- prevention of systemic risks;

- prevention and repression of activities contrary to the law; and
- independence of the subjects of the market.

With regard to public offerings, the common mechanism is still underdeveloped, limited to defining the terms of their acceptance and implementation, as well as the responsibilities and powers of the Bank of Mozambique. Moreover, financial intermediation is required for takeover bids, but not for public offerings and public exchange offers.

## 9.1 Market structures

The Mozambique Stock Exchange (*Bolsa de Valores de Moçambique*/BVM), established by Decrees no. 48/98, and no. 49/98, both of September 22 (which were revoked by the CMVM and the Internal Regulation of the Mozambique Stock Exchange, approved by Decree no. 45/2007, of October 30, respectively), deals with the creation and maintenance of the place and of the systems provided with the means required to operate a free and open market for the purchase and sale of securities. The stock market also provides registration, clearing and settlement services, and sufficient and timely disclosure of information on transactions undertaken.

Financial intermediation activities, which are regulated by Ministerial Diploma no. 10/99, of February 24, to be undertaken at the BVM may be carried on by firms of brokers and dealers, as well as by credit institutions (Act no. 15/99, of November 1, modified by Act no. 9/2004, of July 21). However, of these, only financial intermediaries that have been formed as stock-market operators may trade directly on the stock market.

Contrary to what happens in other countries, in Mozambique the regulator is not a commission (or other entity) having its own duties and powers and differentiated from other regulators, and these duties are entrusted to the Bank of Mozambique. In addition to other powers conferred upon it by law (for example, oversight of takeovers, public offerings or public exchange offers), the following fall within the remit of the Bank of Mozambique:

- monitoring the evolution of the securities markets;

- monitoring and, where it deems necessary, supervising or inspecting the activities of the stock market, of the market operators and financial intermediaries in general, and of the issuers and investors as part of its intervention in the securities market;

- ensuring compliance with the requirements of informing the public imposed on issuers of securities, and with the information requirements imposed on investors or other entities legally obliged to provide information;

- determining the admission to listing of securities;

- registering public offerings for subscription, public offerings for sale and public exchange offers;

- authorising or prohibiting takeover bids;

- taking steps to allow determination of responsibilities and the institution of disciplinary proceedings within its jurisdiction, as well as informing the proper judicial authorities of irregularities subject to criminal proceedings in the working of the securities market;

- applying the fines to which the CMVM and complementary legislation refer; and

- exercising such other powers as may be assigned to it by legislation or regulations governing the securities market seen to be necessary for the effective discharge of its duties.

The Third Market service was recently launched, aiming at reverting the weak participation of the companies in the Mozambique Stock Exchange, overcome some obstacles registered in the implementation of the legal regime in force and optimize the registration process with the Stock Exchange, by promoting the following:

- the possibility of subscription by small or large companies, provided they commit to organize internally in a way that cumulatively meet the admission requirements established to ascend to official markets and the extension to two years of the deadline for the fulfillment of the relevant requirements;

• reduction of fees, admission costs, readmission and maintenance of securities in the Stock Exchange;

• reduction or exemption in the payment of liberalization fees in operations in the Stock Exchange;

• de-bureaucratization of the process.

# 10. COMPETITION

The competition rules in Mozambique are contained in the Competition Act (*Lei da Concorrência*, enacted by Act no. 10/2013, of April 11), in the Competition Regulation (*Regulamento da Lei da Concorrência*, enacted by Decree no. 97/2014, of December 31), and in the Statute of the Competition Regulatory Authority (*Estatuto Orgânico da Autoridade Reguladora da Concorrência*, enacted by Decree no. 37/2014, of August 1).

The Competition Regulatory Authority (*Autoridade Reguladora da Concorrência*/ARC) is an independent and impartial entity in the performance of its duties, endowed with administrative, patrimonial, financial and technical autonomy, and wide regulatory, supervisory and sanctioning powers. The ARC has exclusive competence for investigating and deciding on sanctioning procedures with regard to restrictive competition practices, as well as clearing or prohibiting concentrations between undertakings that are subject to mandatory notification in Mozambique.

## 10.1 Prohibited practices

The Competition Act prohibits agreements, decisions of associations and concerted practices between competing undertakings (horizontal practices), as well as agreements and practices between undertakings and their suppliers and customers (vertical practices), which have the object or effect of appreciably impeding, distorting or restricting competition in the market.

The abuse of a dominant position by one or more undertakings is also prohibited. It is presumed that dominance exists when companies have (individually or jointly) a share above 50% of the relevant market. The abuse of economic dependence is prohibited in cases where a company is economically dependent on a supplier or client for not having an equivalent alternative.

The Competition Act contains an extensive non-exhaustive list of prohibited practices.

Prohibited agreements and abuses of dominant position may nevertheless be exempted if they lead to economic efficiencies or promote the public interests set forth in the Law (such as the promotion of competitiveness of small and medium enterprises or the consolidation of national companies). The exemption is assessed and issued further to previous notification by the interested parties, pursuant to a procedure to be approved by the ARC.

## 10.2 Merger control

Concentrations between undertakings meeting the jurisdictional thresholds of the Competition Act are subject to prior mandatory notification to the ARC and cannot be implemented before an express or tacit clearance decision is adopted, under the threat of invalidity of all legal acts and of heavy fines to the infringing companies.

The concept of concentration includes all acquisitions of control over one undertaking or parts of an undertaking (as a result of the acquisition of a majority of the share capital or of veto rights conferring a decisive influence over the commercial strategy of the target company).

Concentrations are subject to mandatory filing to the ARC when meeting at least one of the following thresholds:

- the combined turnover of the undertakings concerned in Mozambique in the preceding year is equal to or exceeds MZN 900 million;

- the transaction results in the acquisition, creation or reinforcement of a share of or above 50% of the national market of a given good or service;

- the transaction results in the acquisition, creation or reinforcement of a share of or above 30% of the national market of a given good or service, as long as each of at least two of the undertakings concerned achieved in the preceding year a turnover of at least MZN 100 million in Mozambique.

Transactions subject to mandatory filing should be notified within seven working days from the conclusion of the agreement or of the acquisition project, using a form to be approved by the ARC.

Notified concentrations are assessed according to their prospective effects over competition in the relevant markets. Concentrations that create or reinforce a dominant position which may significantly impede competition in the relevant markets are in principle prohibited, although such transactions may be justified under certain public interest reasons set forth in the Competition Act.

## 10.3 Sanctions

The violation of the provisions regarding prohibited practices, as well as the early implementation of a concentration subject to mandatory filing before clearance, subjects the infringing undertakings to fines up to 5% of the annual turnover of the economic group of each undertaking concerned in the previous year. Not filing a concentration within the legal deadline, the provision of false, incorrect or incomplete information and the refusal to cooperate with the ARC in the context of its investigative powers are punishable with fines up to 1% of annual turnover.

The Competition Act also provides for periodic penalty payments as well as ancillary sanctions with potentially serious consequences, such as exclusion from participating in public tenders for five years and even the possible break-up of the offending undertaking.

The ARC's decisions in the case of procedures leading to the application of fines and other sanctions may be appealed to the Judicial Court of the City of Maputo, whereas decisions on merger control procedures and requests for exemptions relating to restrictive agreements are appealable to the Administrative Court.

# 11. PUBLIC PROCUREMENT

The legislation governing public procurement stems from the Regulation on Contracting Public Works, and Procurement of Goods and Services by the State (*Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado*, Decree no. 5/2016, of 8 March), applicable to all State bodies and institutions (both direct as indirect), including their representation abroad, local government and other public authorities. The State-owned companies and companies where the State has shareholdings are governed by a specific framework.

Covered by the Regulation are public-works contracts and the supply of goods and services, including leasing, consulting and concession contracts.

The Regulation includes a general mechanism (public tender), a special contracting mechanism and an exceptional contracting mechanism (limited call for tenders by prior qualification, limited call for tenders, two-stage tender, tender by auction, small tender, tender by quotations and direct award):

- public tender – the general mechanism for entering into public works contracts, and for the supply of goods and provision of services to the State. This is a procedure in which any interested party may take part, provided it meets the requirements set out in the tender documents. It begins with the publication of a notice in the press and at the headquarters of the procuring entity;

- limited call for tenders by prior qualification – specific and restricted contracting mechanism, involving bidders who have been qualified to tender in a preliminary stage. It is adopted when competitiveness through public tender may be restricted in view of the complexity of eligibility requirements and the cost of preparing the tenders. It begins with publication of a notice under the terms defined for public tenders;

- limited call for tenders – contract mechanism that can be used when the estimated contract value does not exceed MZN 5 million in the case of construction contracts, or MZN 3,5 million in cases of supply of goods and provision of services. It targets natural persons, micro, small and medium enterprises registered in the single register maintained by the contracting entities. It begins with publication of a notice under the terms defined for public tenders;

- two-stage tender – mechanism in two stages in which the bidders submit, in the first stage, the initial technical proposal and, in the next stage, the final technical proposal and the price. It may be used when the nature of the works, goods or services do not allow the procuring entity to accurately define the technical specifications which are more satisfactory and adequate to the public interest to be hired in advance or where the public interest can be satisfied in several ways. It begins with publication of a notice under the terms defined for public tenders;

- tender by auction – type of procurement that can be used to purchase goods and services indicated on the list to be approved by the Minister overseeing the area of finance, in which interested parties submit bids successively at public acts, destined for legal persons and corporate entities registered in the single register of contractors. It begins with publication of a notice under the terms defined for public tenders;

- small tender – procurement mechanism for situations where the estimated price is less than MZN 750,000 in the case of construction contracts, or MZN 525,000, for the supply of goods and services. It begins with publication of a notice under the terms defined for public tenders;

- tender by quotations – procurement mechanism applicable when the estimated price is equal or higher than MZN 500,000 in the case of construction contracts, or MZN 350,000 in the case of supply of goods and services, if the previous tender has been deemed deserted, due to disqualification of all the bidders, and it may not be repeated without public interest being harmed and the contracts entered into between diplomatic and consular missions. The quotations are requested by means of public invitation

- direct award – procurement mechanism applicable in certain situations listed in the Regulation (such as emergency situations or where the contract may be executed only by a particular contractor, supplier or service provider) or where the estimated value of the contract to be awarded is less than MZN 250,000 in the case of consultancy for works contracts, or MZN 175,000 in the case of consultancy supply of goods and services. Unlike other types, publication of a notice is not required.

In the special procurement mechanism the procuring entity may, with the prior authorisation of the Minister of Finance, implement rules different from those defined in Regulation:

- procurement stemming from a treaty or other form of international agreement between Mozambique and other State or international organisation, which requires the adoption of a specific mechanism;

- procurement within the scope of projects funded wholly or substantially by resources provided by donations or funded by official foreign co-operation agencies or multilateral financial bodies, where the adoption of distinct rules is expressly stated as a condition on the respective agreement or contract.

Regarding the tender evaluation criteria, the general criterion is that of the lowest price assessed, except in public works or services concessions. Exceptionally, if it is not feasible to decide based on this criterion, the procurement entity may adopt a combined criterion that takes into account the technical evaluation, the price and other assessment factors, and it must provide grounds for its selection.

The Regulation includes measures favouring domestic bidders, which are defined as: *(i)* natural persons of Mozambican nationality and which are duly registered for the exercise of the economic activity; or *(ii)* corporate entities that have been incorporated under Mozambican legislation and more than 50% of whose share capital is held by a Mozambican natural person or a Mozambican corporate person the majority of whose share capital is owned by Mozambican natural persons. The natural persons or corporate entities registered in Mozambique for more than five years with the share capital held in the majority by foreigners are also deemed as domestic bidders.

The application of the preference margin for domestic bidders is mandatory and corresponds to: *(i)* 10% of the amount of contract, without taxes, in the case of work contracts and supply of services; and *(ii)* 15% of the amount of the contract, without taxes, for the supply of goods. In order for the margin to be applied, the domestic bidder at issues shall comply with the established in the tender documents. Other situations are also set forth in the Regulation.

Foreign bidders must have an attorney resident and domiciled in the country, with special powers to receive notifications and subpoenas and to answer administratively and judicially for their acts, appending the power-of-attorney during the public tender or applicable procedure.

The Functional Procurement Oversight Unit (*Unidade Funcional de Supervisão das Aquisições*, the body responsible for co-ordinating and supervising all activities related to public procurement) maintains a register of contractors, suppliers of goods and service providers eligible for or excluded from taking part in tenders.

The Regulation establishes three types of guarantees which may be demanded from the bidders: *(i)* provisional guarantees; *(ii)* definitive guarantees; and *(iii)* the guarantee for payment of advance amount (which shall be provided by the hired entity, as a condition for an advance payment to be made by the contracting authority, prior to the execution of the contract). The provisional guarantee is granted upon presenting the bid for tenders whose estimated price is higher than the following thresholds: MZN 5 million in the case of work contracts and MZN 3,5 million in the case of supply of services and goods. The amount of the provisional guarantee may not be higher than 1,5% of the estimated hiring price.

The price of the bid shall be submitted in Mozambican currency, the Metical, save in exceptional, reasoned cases provided for in the tender documents.

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

It is also important to highlight Act no. 14/2014, of August 2, altered and republished by Act no. 8/2015, of October 6, which subjects contracts of any nature or amount

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*).

Exempted from preventive supervision by the Administrative Court are contracts non related to personnel of a value less than that established by law enacting the State Budget, provided they are concluded with entities listed in the single register of contractors, suppliers of goods and service providers and which may participate in public tenders.

Contracts are considered tacitly approved if the grant of approval is not refused within 45 days of the date of their reception by the Court. Approval by the Administrative Court is a *sine qua non* condition for a contract to produce effects and, as such, contract execution may only start after such approval is obtained.

# 12. LAND USE AND URBAN PLANNING

The legislation on land use is enshrined in Act no. 19/2007, of July 18, regulated by Decree no. 23/2008, of July 1. This act stipulates that land use comprises the following levels of intervention:

- national – land use instruments include national territorial development plans and special territorial land use plans;
- provincial – land use instruments are the provincial territorial development plans;
- district – land use instruments are the district land use plans; and
- local authority – land use instruments include the urban-structure plan, the general town-planning plan, the partial town-planning plan, and the detailed plan.

Land use instruments keep a vertical hierarchy to ensure compatibility of intervention across the territory. Compatibility of the various land use instruments is essential to their validity, and plans approved in violation of any land use instruments with which they ought to be compatible are null and void. In turn, the compatibility of acts committed in relation to land use instruments in force is a *sine qua non* condition for their validity and acts performed in breach thereof are therefore null and void.

Preparation of any land use referred to above does not depend on the existence of a hierarchically superior instrument. However, the elaboration of land use instruments at the district and municipal level is mandatory.

The effectiveness of the land use instruments depends on their publication in the *Boletim da República* (Official Gazette).

In the matter of urban planning, the General Urban Buildings Regime (*Regime Geral das Edificações Urbanas*, Legal Diploma no. 1976, of May 10, 1960, amended by Legal Diploma no. 2643, of September 25, 1965, by Legal Diploma no. 38/73, of April 28, and by Ministerial Order no. 9/2000, of January 12) establishes, as a general rule, the need to obtain a licence granted by the administrative bodies for the construction of new buildings, their alteration, enlargement or demolition. However, this licence may be waived on request, in cases of simple maintenance works and other works not governed by the General Urban Buildings Regime.

Licensing applications for construction works must always be accompanied by respective plans and elements that justify the concept of the work, being also necessary to show the processes and materials adopted, as is an indication of the conditions under which it will be undertaken.

Use of a new, reconstructed, enlarged or altered building (provided the result is a substantial change of its characteristics) also requires a permit.

The General Urban Buildings Regime also enacted several administrative provisions to which buildings are subject, so as to ensure the minimum safety, health, comfort and aesthetic conditions.

# 13. ENVIRONMENTAL LICENSING

In what concerns the Environment Act (*Lei do Ambiente*), enacted by Act no. 20/97, of October 1, and amended by Act no. 16/2014, of June 20, attention is drawn to the chapter on prevention of environmental damage through environmental impact assessment procedure and environmental licensing.

The issue of an environmental licence is based on an assessment of the environmental impact of the activity and it precedes the issuance of any other licences legally required in each case.

The Environmental Impact Assessment Regulation (*Regulamento sobre o Procedimento de Avaliação Ambiental*) is set out in Decree no. 54/2015, of December 31. Environmental impact studies for oil and mining activities are governed by special legislation.

For the definition of the type of environmental impact assessment to be conducted, the activities described in the Regulation fall within four categories: category $A^+$ activities (subject to an environmental impact study and supervision by independent expert reviewers with proven experience), category A activities (subject to an environmental impact study); category B activities (subject to a simplified environmental study); and category C activities (subject to the presentation of good practice procedures for environmental management to be drafted by the applicant of the project and approved by the entity overseeing the area of environmental impact assessment). In general, all activities that may cause an environmental impact must first be assessed by the Ministry for Land, Environment and Rural Development (*Ministério da Terra, Ambiente e Desenvolvimento Rural*/MITADER).

Competence in the matter of environmental impact assessment is shared between the Environmental Impact Assessment Authority (MITADER, through the National Environmental Impact Assessment Directorate/*Direcção Nacional de Avaliação de Impacte Ambiental)* and the Provincial Directorates for Co-ordination of Environmental Action (*Direcções Provinciais para a Coordenação da Acção Ambiental*).

To begin the environmental impact assessment process, interested parties must submit to the Environmental Impact Assessment Authority, at the central level, or to the respective Provincial Directorate for Co-ordination of Environmental Action, at local level, an application accompanied by the documentation stipulated in the Regulation.

It should be mentioned that activities classified as category $A^+$ and A are subject to an environmental pre-viability and definition of scope study (EDPA) to determine the possible existence of fatal issues pertaining to the implementation of the activity, to define the scope of the environmental impact study (EIS) and consequently the outline of the Terms of Reference (ToR), in the cases where there are no fatal issues which deem the activity as not viable.

Before preparing the environmental impact study (EIS) in the case of category $A^+$ and A activities, or the simplified environmental study (SES) in the case of category B activities, the ToR must also be prepared and submitted for approval; they constitute the guidelines which contain the parameters and specific information which shall preside the undertaking of the said studies, the minimum content of which is also set out in the Regulation.

The EIS and the SES are governed by approved ToR, their content defined in the Regulation. Environmental studies may only be performed by individual consultants, consultancy firms and consortiums of consultancy firms registered in the register of environmental impact assessment consultants referred to in Article 23 of the Regulation.

There is public participation in the process of environmental impact assessment.

The Technical Assessment Committees set up under the Regulation review the EPDA, ToR and EIS reports for category $A^+$ and A activities and the ToR and SES reports for category B activities, issuing a final assessment statement that will constitute the grounds of the decision regarding the licensing of the proposed activity and must form an integral part of the environmental licensing process.

When the environmental viability of the activity has been demonstrated, the body responsible at central or local level notifies the applicant and the supervisory entities and issues the respective environmental permit within fifteen business days after the payment of the fees due.

When the analysis of the environmental viability of the activity leads to its partial rejection, environmental licensing may be subject to alterations to and/or reformulation of the activity, which is then subject to a new assessment and subsequent decision.

An environmental permit in respect of which the activity is not actually started within two years of its grant shall be deemed to have expired. Should the applicant still be interested in the implementation of the licensed activity, it must apply to the MITADER for an extension of the respective environmental permit licence within 90 days of its expiry.

All environmental permits for activities in operation are valid for a period of five years, renewable for a like period, upon request addressed to the MITADER and subject to the payment of the respective fee. The updating of permits may be subject to the presentation of an environmental management plan and / or management plan for the presented biodiversity counterbalances (for category $A^+$), is subject to presentation of an updated environmental management plan in case the undertaken environmental audits and the current practices justify it (for categories A and B activities) or of the environmental performance report in accordance with the conditions laid down in the environmental license of the activity (for category C activities).

## 14. PUBLIC-PRIVATE PARTNERSHIPS

Mozambican legislation (Act no. 15/2011, of August 10, regulated by Decree no. 16/2012, of June 4) defines public-private partnerships (PPP) as undertakings in the area of the public domain (excluding petroleum and mineral resources) or in the area of public provision of services, in which, under contract and with the funding provided in whole or in part by a private partner, the latter undertakes to the public partner to make the necessary investment and to manage the activity for the efficient provision of the services or goods that the State is charged with providing to its users.

There are two models distinct from the PPP governed by this legislation:

- business concessions (BC) – undertakings involving prospecting, researching, extracting and/or exploiting natural resources or other resources or national assets, carried out under the respective contract or other means whereby the Government grants the rights within the scope of the undertaking;

- major projects (MP) – investment undertakings authorised or contracted by the Government, whose value exceeds, as of January 1, 2009, the sum of MZN 12,5 billion;

both PPP and BC may be elevated to MP.

As a rule, the procedure for the contracting of PPP undertakings is public tender, being subsidiarily applicable the legislation governing public procurement. However, for reasons of public interest and provided the legal requirements for the purpose are met, PPP contracting may be preceded by a limited call for tender by prior qualification or two-stage tender. Exceptionally, in duly reasoned situations and as a last resort subject to government permission, contracting a PPP can take the form of negotiation and direct award.

The entity implementing the PPP undertaking must be a commercial company having as its clearly-demarcated, verifiable corporate object the implementation of the

undertaking and having a duration not less than the life of the contract relating to the undertaking.

The grant of a PPP undertaking takes one of the following contractual forms: *(i)* concession contract; *(ii)* operating contract; or *(iii)* management contract.

The legislation also sets out the set of clauses that each PPP project contract must contain.

The PPP contract is subject to prior approval of the Administrative Court, as well as publication of the main terms of the contract in the *Boletim da República* (Official Gazette) and on the Government Web Portal, and publication of the reports and accounts of the business carried on by the undertaking.

The sectoral supervision of the PPP undertaking is entrusted to the Government entity responsible for the area or sector of activity of the PPP, while its financial supervision is entrusted to the Government entity that oversees the finance area.

The life of the PPP undertaking contract must be adequate to the time needed for its implementation and amortisation of the investment, and the law stipulates a maximum duration depending on whether the undertaking is in full operation, already exists but requires rehabilitation or enlargement, or is to be implemented from the start (the maximum period amounting, respectively, to 10, 20 and 30 years, and situations in which such deadlines may be extended are contemplated).

In each PPP the user-payer principle must be observed, and the price paid for the services rendered, under the contractually agreed terms, must cover the costs incurred and provide a profit margin. There should also be an equitable sharing of the benefits of the venture between the parties (financial and social-economic benefits). In that regard, Act no. 15/2011, of August 10, states that the financial benefits for Mozambique from the venture shall be expressly referred to in the PPP contract, namely:

- the reserved participation, between 5% and 20%, in the share capital of the venture or in the consortium equity, for sale, via the stock market, preferably to Mozambican individual persons;

- the opportunity for Mozambican public or private corporate persons to participate in the share capital of the venture or the equity of consortium, under terms to be negotiated by the parties;
- the generation of positive exchange effects on the balance of payments;
- the generation of tax revenues;
- the generation and distribution of profits or dividends;
- the equitable sharing of the extraordinary direct benefits; and
- concession fees.

Pursuant to article 69 of the Decree no. 16/2012, of July 4, the minimum annual value of financial benefits attributable to the State cannot, in any case, be inferior to 35% of the total net profit determined for tax purposes in each economic year.

The PPP contract must also include clauses that expressly address the social economic benefits of the venture towards the national economy, namely:

- creation, rehabilitation or expansion of infrastructures for production or provision of services, in connection with the venture;
- offer of work posts and professional training programs for Mozambican employees;
- program and actions of technical-professional training;
- increase and maintenance of the production and export capacity and of the capacity to supply to internal market needs;
- contribution to the development of Mozambican small and medium enterprises; and
- carrying out social responsibility projects with the local communities, at the account of the venture.

Act no. 15/2011, of August 10 (regulated by Decree no. 16/2012, of July 4), establishes the financial guarantees to be rendered by the contracted party in a PPP venture.

In the matter of risk-sharing, the law determines, among other things, that:

- a private partner is responsible for the prevention and mitigation of economic and financial, business and management risks and for risks involving the performance of the undertaking, risks of declining demand or market supply, design and construction risks and environmental-impact risks resulting from events subsequent to the taking-over of the undertaking by the private partner or contractor;

- a public partner is responsible for the prevention and mitigation of political and legislative risks arising from unilateral measures taken by the Government or public institutions having negative or adverse effects on the normal implementation, operation and management of the PPP undertaking, risks of conflict of interest of an institutional nature, as well as risks relating to the grant of land and public planning.

Events stemming from *force majeure* shall be subject to mitigation in fair terms to both parties.

Each PPP undertaking is eligible for the enjoyment of guarantees and incentives applicable to investments made in the country.

In the case of a PPP considered strategic or of special socio-economic interest to Mozambique that is not of itself financially viable in respect of which the State should contribute to its viability, financial guarantees may be granted to the undertaking by the entity responsible for financial supervision (co-financing or providing financial guarantees, facilitating access to funding guarantees, grant of subsidies or compensation for providing services or selling products below their actual cost).

In terms of termination of a contract, the procurement entity may redeem the contract for public interest, the contractor being entitled to compensation taking into account the time still remaining for the recovery of the investments made and the profitability of the undertaking, should no other criterion have been contractually agreed.

Finally, one should also point out Decree no. 69/2013, of December 20, which regulates PPP and BC whose investment does not exceed MZN 5 million (small dimension ventures).

In general, the contracting of PPP and BC of small dimension ventures is made through public tender and, exceptionally, by direct award.

The forms for the contracting of small dimension PPP and BC ventures are the following:*(i)* management contract; *(ii)* operation contract; and *(iii)* concession contract. The term of the contracts for small dimension ventures is defined considering the investment to be made, the nature and complexity of the service to be rendered, the object and public interest underneath (the maximum term varies between six, 10 or 15 years whether it regards a management contract of an operational venture, an operation contract of an existing venture requiring rehabilitation or expansion, or concession contract for a green field project).

The contracted entity must submit a financial guarantee for good performance in the amount equivalent to 2% of the investment to be made.

In what concerns fees, PPP and BC of small dimension must pay a monthly fee to the grantor, for the object of an activity of the contract during its term, in an amount not inferior to 3% of proceeds net of indirect taxes. Whenever an asset is allocated to the venture, a fixed fee must be paid in the amount not inferior to 2% of the value of such asset.

# 15. LABOUR RELATIONS

Current labour legislation, notably Act 23/2007 of August 1 (Labour Act), is directed at facilitating investment and business development, and it is seen as more ample, liberal and flexible than previous legislation, although it meets, among others, the principles of right to work, stability in employment and at the workplace, and non-discrimination.

The Labour Act (*Lei do Trabalho*/LT) applies to the legal labour relations established between employers and employees, domestic and foreign, of every branch of activity and whose activity is carried on in the country, as well as to those constituted between public-law legal entities and their employees, except those whose relationship is governed by specific legislation (State employees and persons employed by municipalities).

LT does not govern employment contracts concluded before October 31, 2007, regarding the trial period, vacation, lapse of rights and procedures, as well as procedures for disciplinary action and termination of an employment contract, matters that regarding those contracts continue to be subject to previous legislation (Act no. 8/98, of July 20).

LT defines the employment contract in broad terms, considering it one whereby the employee undertakes, for remuneration, to provide an activity to the employer, under the management and authority of the latter, and it is presumed to exist whenever a person carries on an activity that is remunerated and does so without the express opposition of the beneficiary thereof or when the employee is economically dependent on the beneficiary. On the other hand, a provision of services contract that, though conducted with autonomy, puts the provider in a position of subordination to the beneficiary of the economic activity is considered to be an employment contract.

Lastly, application of LT legislation depends, in some matters, on the classification of the employer as: *(i)* large enterprise, if it employs more than 100 employees; *(ii)* medi-

um enterprise, if it employs between 10 and 100 employees; or *(iii)* small enterprise, if it employs up to 10 employees.

For this purpose, the number of employees corresponds to the existing average number during the preceding calendar year and, in the first year of activity, the number as of the date of its commencement is taken into account.

## 15.1 Types of employment contract

Essentially, the types of employment contract are as follows:

- permanent employment contract;
- fixed-term employment contract; and
- unfixed-term employment contract.

The first is the rule and the last two are to exceptional situations, subject to fulfilling the respective legal requirements.

Term contracts are only allowed to carry out temporary tasks and during the time strictly required for the purpose, namely: *(i)* replacement of an employee who, for whatever reason, is temporarily unable to perform his activity; *(ii)* performance of tasks required by an exceptional or abnormal increase of production, as well as to carry out seasonal activity; *(iii)* performance of activities that do not relate meeting the employer's permanent needs; *(iv)* performance of construction work, a project or other specific, temporary activity, including execution, management and supervision of civil construction works, public works and industrial repairs, under a contract; and *(v)* provision of services complementing the latter, in particular subcontracting and outsourcing services.

Fixed-term contracts may be concluded for a period not exceeding two years and may be renewed twice by agreement of the parties and for the time they have established in the contract itself (in the absence of contractual provision, it will be renewed for the same period as the original).

Small and medium enterprises enjoy special arrangements allowing them, for the first 10 years of their activity, to freely enter into fixed-term contracts without regard for the limitation on the above mentioned maximum duration or renewals.

As regards the conclusion of unfixed-term employment contracts is only admissible in cases in which it is not possible to predict with certainty the date of termination of the temporary reason that justifies it.

Having exceeded the duration or number of renewals limits or being the purpose null and void, the fixed-term contract is converted into a permanent employment contract, though the parties may opt, as an alternative to conversion, for payment of compensation equivalent to 45 days wages for each year of service, thus terminating the employment tie.

The unfixed-term employment contract is converted into a permanent employment contract if, once verified the termination of the fact that led to his employment, the employee remains in service after being given notice of termination or, in the absence thereof, after seven days following the return of the replaced employee or completion of the activity, service, construction work or project for which he had been hired.

Lastly, although the law stipulates that all types of employment contract shall be reduced in writing (with the exception of the employment contract concluded for instantaneously execution tasks of a duration not exceeding 90 days), non-compliance therewith shall affect neither the validity of the contract nor the employee's rights, absence thereof being assumed to be attributable to the employer, who is thus subject to all the consequences resulting therefrom.

## 15.2 Hiring foreign citizens

LT expressly provides for the possibility of hiring foreign employees, governed by the principle of equal treatment and opportunities. This principle does not preclude, however, the duty imposed on employers, domestic and foreign, to create conditions for the integration of Mozambican employees in jobs of greater technical complexity and management and administration positions in the company, and the possibility that, for weighty reasons including public interest, the Mozambican State may reserve certain functions or activities solely for Mozambicans.

The exercise of gainful employment in Mozambique by a foreign employee is subject to the prior grant of an appropriate entry visa for that purpose.

General rules on hiring foreigners are set out in Decree no. 37/2016, of August 31, under which the employment contract concluded with a foreign citizen must comply with the following:

- it must be expressed in writing;
- it must always be concluded for a fixed-term and for a period not exceeding two years, renewable by submitting a new application;
- it does not become a permanent employment contract, regardless of the number of renewals; and
- in the event of termination for any reason, the employer must give notice of the fact to the entity that oversees the employment area and migration services of the province of the place of work within 15 days of the date of termination.

Under these general rules, hiring foreigners may involve one of four types:

- hiring under the quota system;
- hiring under investment projects approved by the Government;
- short-duration hiring; and
- hiring with authorisation (outside the quota).

In the first type, the hiring in question is undertaken within the available quota applicable to the employer: *(i)* in large enterprises, 5% of all employees; *(ii)* in medium enterprises, 8% of all employees; and *(iii)* in small enterprises, 10% of all employees, with the minimum limit of one employee. For this purpose, it should only be taken into account the number of employees actually employed, mentioned on the employers nominal list.

The admission of foreign employees under the quota system requires communication to the minister who oversees the employment area or the entity which he delegates, accompanied by all documents required by law. The compliance of the communication shall be confirmed by the competent services and communicated within five working days.

In investment projects approved by the Government in which foreign employees are planned to be hired in greater or lesser percentages than the above mentioned quotas, work permits are also waived, and an identical communication to the minister who oversees the employment area or the entity on whom he delegates is sufficient, which should be made within 15 days following the date of entry of the foreign citizen into the country

The hiring of foreign employees for short-term employment (not exceeding 90 consecutive or interpolated days) aims the execution of punctual, unforeseeable work involving high scientific knowledge or specialized professional technician. This type of hiring is subjected to the payment of a fee and also requires a communication of the legally-required elements to the proper provincial entity of where the foreign citizen will perform his activity, being necessary that that communication is made before the foreign citizen enters the country. The compliance of the communication shall be confirmed by the competent services and communicated within five working days.

Besides the three types mentioned, the employer may also hire foreign employees provided that, having submitted an application accompanied by all documents required by law, it obtains the necessary authorisation from the minister who oversees the employment area or the entity on whom he delegates.

In the latter case, hiring foreign employees is only permissible when they have the necessary professional or academic qualifications and there are no domestic citizens having such qualifications or, if there are, their number is insufficient and they are not available in the labour market. The application, having all the legal requirements been met, must be submitted to the proper entity that oversees the area of employment of the province where the foreign citizen will be working and dispatched within a maximum period of 15 working days after being received by the competent authority. The authorization also depends on the confirmation that the employer does not have debts to the Compulsory Social Security System, through a certificate of discharge issued by the managing entity of the Compulsory Social Security System,

valid for 30 days from the date of its issue, whose request relies on the entity that oversees the area of employment of the province.

Since November 28th 2016 a new regime regarding the transfer of foreign employees has entered in force. In accordance to this regime, the foreign employee can be transferred (temporarily or permanently), provided the transfer is communicated to the proper entity that supervises the area of employment of the province where the worker was hired, and the employer must keep copies of the folder, filed in the place where the said foreigner performs his activity. To the said communication shall be attached a copy of several documents, namely copy of a compliance statement of the hiring or working authorization. Nevertheless, should it be a permanently transfer motivated by a total or partial moving of the company or employer, it can only be executed if a quota available exists in the destination location.

Hiring foreign employees to provide service in the industrial free zones and specific sectors of activity, such as civil service and the oil and mining industries, is governed by special legislation.

With regard to mining and oil industries, the hiring of foreign employees does not differ essentially from the general mechanism described above (Decree no. 63/2011, of December 7), with the exception of the qualification of short-duration work as not exceeding 180 consecutive or interpolated days, during a calendar year, even if the foreigner is bound by contract to a company, concessionaire, operator, subcontractor or their principals having their registered office in another country.

Hiring foreign employees is subject to payment of the legally established fees.

Failure to comply with the respective legal rules subjects the employer to sundry penalties, such as suspension, fine or even compulsory termination of foreign employment contracts in cases where the employer promotes the termination of Mozambican citizens' employment contracts.

It is also regulated the power, by the Minister who oversees the area of work, to revoke the administrative act that allowed the hiring of foreign employees in case of: *(i)* mistreatment committed by a foreign worker; *(ii)* serious injury against the national or foreign worker; *(iii)* serious violation of the special rights of working women; *(iv)* conviction of the foreign citizen to the highest prison sentence.

Lastly, included in the scope of supervision and sanctioning, the revocation process was introduced. It may be carried out by the General Inspectorate of Labour or its Provincial Delegation, in cases in which there is knowledge of any fact that may serve as a basis for revocation of the act that apparently justified the hiring of the foreign employee. The revocation of the act must be duly substantiated and communicated to the foreign employee, or, if there is difficulty in locating its whereabouts, through his employer, having the employee the prerogative of filling a complaint within five days or pursue legal action within 10 days.

## 15.3 Working hours

As a rule, normal working hours shall not exceed eight hours per day and 48 hours per week, spread over six-week days, but may however be extended up to nine hours a day, provided the employee is granted an extra half-day of rest per week.

By means of collective bargaining agreement, normal daily work may exceptionally be extended up to 12 hours, provided that the weekly duration does not exceed 56 hours, and the average duration of 48 hours of work per week is calculated by reference to maximum periods of six months.

On the other hand, establishments engaged in industrial activities, except those on shift work, may have normal working hours of 45 hours per week, over a five-day week.

In special cases, reduction or increase of the maximum limits of normal working hours is allowed, provided that it does not cause economic loss for the employees or unfavourable changes to their working conditions.

Determination of work schedule is entrusted to the employer after consultation with the relevant trade union body, and it must be endorsed by the employment administration and posted in the workplace.

Employees who hold leadership and management jobs or occupy positions of trust or of supervision or positions whose nature so warrants may be exempt from fixed working hours.

Unless a longer period is provided for in collective bargaining agreements and special shift-work and continuous working-hour mechanisms, employees are entitled to a daily rest interval not less than 30 minutes or more than two hours.

Lastly, the compulsory weekly rest corresponds to, at least, 20 consecutive hours, as a rule on Sunday, except in those cases expressly stipulated by law.

## 15.4 Vacations, holidays and absences

Employees are entitled to paid vacation of a duration based on the following criteria:

- fixed-term employment contract of a duration greater than three months and less than one year – one day of vacation for each month of active service;
- during the first year of work – one day of vacation for each month of actual work;
- during the second year of work – two days of vacation for each month of actual work;
- from the third year – 30 days of vacation each year of actual work.

For the purpose, actual work is deemed to be the time during which the employee provides actual work to the employer or is at the disposal of the employer, plus public holidays, weekly rest days, vacations and justified absences.

By agreement, employer and employee may exceptionally substitute holidays by additional remuneration, provided that a vacation of at least six working days can be taken.

Lastly, should the nature and organisation of work and production conditions so require or permit, the employer may, after consulting the relevant trade-union body, establish that all employees of the company take their vacation at the same time.

Public holidays are just those defined by law, and employment contract or collective bargaining agreement clauses determining holidays other than those legally enshrined are null. Suspension of work is deferred to the next day whenever the public holiday falls on a Sunday (except in cases of work that, for its nature, cannot be interrupted).

Absence from work may be justified or unjustified, depending on whether or not it was caused by one of the reasons provided for by law. In the first case, provided the

communication procedure is observed, the employee does not lose any rights, including remuneration (except for absences due to illness or accident and assistance to a child admitted to a hospital, which do not imply payment of remuneration).

Unjustified absences determine, on the other hand, loss of pay for the period of absence, as well as the relevant vacation time and seniority, without prejudice to disciplinary proceedings, when applicable.

## 15.5 Remuneration

Remuneration of work comprises the basic wage and all regular, periodic benefits paid, directly or indirectly, in cash or in kind, though the latter may not exceed 25% of the employee's total remuneration.

The remuneration may take the form of remuneration by time (depending on the time actually spent at work), by performance (variable), or mixed, the second of these calculated in the direct light of the results achieved determined on the basis of the nature, quantity and quality of work performed, and applies only when the nature of work, the customs of the profession, of the branch of activity or previously established norm so permit.

Under the contract or collective bargaining agreement or when specific conditions so warrant, there are also additional benefits to the basic wage, either temporary or permanent, including travel costs, cashier's allowance, meal subsidy, night work, sundry bonuses related to seniority and productivity, stock options, among others.

Lastly, the minimum wage is set annually by ministerial order, as a result of tripartite negotiations between the government and the representative of the private sector employers and unions at the Employment Consultative Committee (*Comissão Consultiva do Trabalho*), for the following nine sectors of activity: *(i)* agriculture, hunting, livestock and forestry; *(ii)* fisheries; *(iii)* mineral extraction industry; *(iv)* manufacturing industry; *(v)* production and distribution of electricity, gas and water; *(vi)* construction; *(vii)* non-financial services; *(viii)* financial activities; and *(ix)* public administration, defence and security.

The lowest minimum wage is currently MZN 4,266.68, correspondent to the fisheries sector, and the highest is set for the financial sector, at MZN 12,760.18.

## 15.6 Termination of the employment contract by the employer

Mozambican labour legislation enshrines the right of employees to employment stability, prohibiting and punishing termination of employment contracts based on grounds other than those referred to in the law or in breach of its provisions.

The most common forms of termination of employment contracts at the initiative of the employer are as follows: *(i)* termination during the trial period; *(ii)* disciplinary dismissal; and *(iii)* termination with notice for objective reasons.

During the trial period (initial period of execution of the contract), either party may terminate the contract without need to invoke due cause and without right to compensation, provided that a minimum of seven day notice is given.

The trial period has the following maximum duration:

- term employment contract – 90 days for fixed-term contracts lasting more than one year; 30 days, for fixed-term contracts lasting between six months and one year; 15 days for fixed-term contracts lasting up to six months; and 15 days for unfixed-term contracts whose expected duration is equal to or greater than 90 days;

- permanent employment contract – 180 days for mid-level and senior technicians and employees engaged in leadership and management positions jobs, and 90 days for employees as a whole.

The duration of the trial period may be reduced by means of collective bargaining agreement or employment contract.

Lastly, if the duration of the trial period is not set out in writing in the employment contract, it is presumed that the parties wished to exclude it.

Disciplinary dismissal must be based on the committing of a disciplinary offence embodying serious facts or circumstances that morally or materially preclude the continuation of the contractual relationship, in particular:

- manifest inability of the employee to carry out the agreed service, provided it was preceded by training for the purpose;

- serious and culpable violation of the employee's duties; and

- detention or imprisonment of the employee, unless subsequently acquitted or exempted from prosecution.

The employer may also terminate the employment contract with notice, provided that the measure is based on structural, technological or market reasons and is seen to be essential to the competitiveness, economic recovery, administrative or productive reorganisation of the company, following compliance with the formal procedure required for the purpose. In this case, where the termination embraces more than 10 employees at the same time, it is considered a collective redundancy, which involves a specific and distinct procedure.

This type of termination of the contract entitles the term employee to minimum compensation equal to the wages falling due between the date of termination and that agreed as the date of termination of the contract.

In the case of a permanent employment contract, the minimum amount of compensation payable may vary between three and 30 days of pay per year of service (depending on the employee's wage and the date of termination of the contract) or between 45 days of pay and three months of pay for every two years or part thereof (in those cases in which Act no. 8/98, of July 20, still applies, which depends on the date of termination of the contract).

All these types of termination (disciplinary dismissal and termination with notice for objective reasons, individual or collective) must be preceded by lodging and complying with the respective legal procedure.

## 15.7 Collective bargaining

Employers and employees are constitutionally entitled to organise themselves in business associations or trade unions, and to join them to defend and promote their socio-professional and business rights and interests.

Trade unions and employers' associations take part in drafting labour legislation and in the definition and implementation of policies on various employment matters or that impact on employment, and may also exercise the right to collective bargaining, among other rights provided by law.

Collective employment regulation instruments may be negotiated (collective bargaining agreement, accession agreement and voluntary arbitration decision) or not negotiated (compulsory arbitration decision) and have as their object the establishment and stabilisation of collective labour relations through the regulation of reciprocal rights and duties and means of resolving labour disputes, though they cannot set conditions less favourable to employees or limit the employer's management powers. Collective bargaining agreements, in turn, may be a company agreement (signed by a trade union association and a single employer for one company), collective bargaining agreement (signed by a trade union association and several employers for various companies) or collective bargaining agreement (signed between trade union associations and employers' associations).

Collective bargaining instruments are binding on employer parties thereto or covered thereby, as well as all employees of the company, regardless of their membership of the signatory union and date of joining the company.

LT sets no limit to the number of organisations allowed in respect of a given industry or sector of activity.

Trade union organisations may be structured, by order of increasing complexity, in shop steward, union or company committee, trade union, or federation and general confederation of unions. The absence of a structure at the company means that the employees' rights are assured by the structure next following, without prejudice to the possibility of existence of a employees' committee.

The trade unions and their subsidiary bodies (shop stewards and union committees) have the right to meet at the company and to post notices and information related to union affairs at appropriate places in the company. On the other hand, members of the governing bodies of the trade unions and trade union delegates enjoy special protection in transfers of workplace and termination of contract for due cause.

## 15.8 Social Security and employee protection

Under the law, the compulsory social security system includes protection in the events of sickness, maternity, disability, old-age and death, and covers all employees, both domestic and foreign, residing or not in Mozambique, and their dependent relatives (Act no. 4/2007, of February 7, and Decree no. 51/2017, of October 9).

For this purpose, the term employee is deemed to include directors and members of companies' governing bodies under an employment contract, including single-member companies, as well as sole traders having employees in their service or with permanent establishment, employees of embassies and non-governmental organizations, sportsmen and entertainers linked to a club or company, religious confessions, among others Registration of employees and employers at the National Institute of Social Security (*Instituto Nacional de Segurança Social*/INSS) is mandatory. Registration of employers must take place within 15 days of the date of commencement of business or acquisition of the company. Registration of employees is the responsibility of their relevant employer within 30 days of the commencement of the contractual tie, except those already registered, in which case entering the respective social security number on the wage sheet is sufficient.

The employer must, within 30 days from the date of the occurrence of the event, communicate to the INSS both the updates and changes of its data during the course of the exercise of its activity, either the cessation of activities, suspension or termination of the employment contract and the reason that caused them, as well as the alteration of the employment contract. In this second hypothesis, if this is not fulfilled, the existence of the employment relationship is presumed, thus maintaining the contributory obligation.

Both employer and employee are required to contribute to the beneficiary employee's social security, being the former responsible for withholding and paying all contributions due each month to the INSS, to be paid up between the 20th of the reference month and the 10th of the following month, through a contribution payment guide generated by the electronic platform in use at INSS.

The base for the calculation of the contributions includes basic wage, seniority bonus, management bonus, income premiums, productivity and attendance premiums awarded on a regular basis, replacement wages, night work and other bonuses, allowances, commissions and other services of a similar nature which are provided on a regular basis.

The contribution rate in force is 7%, of which 4% is for the account of the employer and 3% of the employee.

Foreign employees providing service in Mozambique who demonstrate that they are covered by the social security system of another country are exempt from contributions to the national social security system, without prejudice to the provisions of international bilateral agreements. To this end, they must demonstrate this situation by means of a supporting document, authenticated by the Mozambican consular services of the country of origin or declared to be in compliance with the formalities of the issuing country by the employer.

A Convention on Social Security between the Republic of Mozambique and the Portuguese Republic is currently in force, ratified by Resolution no. 18/2016, of December 16. The Convention itself has not undergone fundamental changes in the social security systems of both countries, while seeking, in keeping with the existing regimes in each legal system, to establish a series of mechanisms for the facilitation, coordination and integration of both systems, enabling the social protection of migrant workers and their families, under conditions of equality and reciprocity between the two countries.

Lastly, responsibility for the material subsistence of employees with temporary or permanent disabilities resulting from vocational sickness or accidents, as well repayment of the respective expenses, lies with the employer and not with the INSS, and the employer must therefore take out collective insurance covering such situations.

# 16. IMMIGRATION AND THE MECHANISM FOR OBTAINING VISAS AND RESIDENCE PERMITS FOR FOREIGN CITIZENS

Act no. 5/93, of December 28, as amended by Decree no. 62/2014, of October 24 (and regulated by Decree no. 108/2014, of December 31, in the wording given by Decree no. 3/2017, of February 22), establishes the legal regime of foreign citizens in Mozambique, and sets out the rules applicable to the entry, stay and departure from the country, as well as the duties, rights and guarantees.

## 16.1 Types of visas

All non-resident foreign citizens must have a visa to enter and remain in Mozambique. According to the referred Act and its regulation, there are the following types of visas: *(i)* diplomatic visa; *(ii)* courtesy visa; *(iii)* official visa; *(iv)* student visa; *(v)* border visa; *(vi)* business visa; *(vii)* work visa; *(viii)* transit visa; *(ix)* tourism visa; *(x)* residence visa; *(xi)* visitor visa; *(xii)* the visa for sports and cultural activities; *(xiii)* the visa for investment activity; *(xiv)* the visa for temporary residence; and *(xv)* the visa for transhipping.

Entry visas can be obtained from diplomatic and consular missions of Mozambique, at border posts authorized for that purpose, at the Immigration Service and at the Ministry of Foreign Affairs and Cooperation, depending on the type of visa required.

The visa application must be made by the applicant and submitted together with the appropriate form, duly completed, signed by the applicant to the competent Mozambican authorities.

The general requirements for the visa application are:

- the specific form duly completed;

- the presentation of passport or equivalent document valid for at least six months;

- presentation of means of subsistence; and

- payment of the respective fee.

In addition, there are specific requirements depending on the type of visa intended. In Mozambique, foreign citizens are allowed entry with the types of visas listed below, which can be individual, collective, single or multiple.

The diplomatic visa, the courtesy visa, and the official visa are to be issued by the Ministry of Foreign Affairs and Cooperation.

The following visas are to be issued by the Immigration Services:

- student visas – allow for entry to attend an officially recognized school (valid for 12 months, renewable);

- border visas – are for foreign citizens from countries where there is no Mozambican embassy or consular representation. Border visas may also be granted to a foreign citizen from a country where there is a Mozambican diplomatic or consular representation: *(i)* through reciprocal treatment provided by the country of origin to Mozambican citizens; *(ii)* or for tourist purposes; or *(iii)* pursuant justified grounds, it was not possible to apply for a visa in the country of origin, subject to an additional payment of 25% of the tax due (valid for 30 days, non-renewable);

- business visas – are for travels related to the business or economic activity developed by the applicant (valid for 30 days, extendable to 90, and must be used within 90 days from its issuance). To obtain a business visa, the presence of the applicant at the issuing authority's office is required. It is also mandatory to submit letters of support with valid signatures and, in the case of letters issued by companies or organizations, a copy of the proxy or other document which gives legitimacy to the signatory to sign may also be required;

- work visas – are granted to foreign citizens wishing to work in Mozambique (must be used within 60 days following the date of issuance). For such, a health certificate, a letter from an employer assuring that the worker has the means to stay in Mozambique, as well as an employment agreement, work permit, and a guarantee for the eventual repatriation of foreign citizens as well as the family, are required. The applicant must be present at a visa office when applying for a visa. Different from this is the case of foreign nationals employed to work in extractive industry projects. In this case the process must follow separate formalities, that is, the interested company must apply for a work visa for the relevant entities. Only after obtaining authorization and approval of the Immigration Service, will the visa be forwarded to the diplomatic and consular mission in the country where the foreign citizen is;

- transit visas – are granted to foreign citizens who need to stop in Mozambique in order to get to a destination country (must not exceed seven days);

- tourist visas – are for tourism or recreational purposes (usually valid for 30 days and must not exceed 90 days). The letters supporting the application must have valid signatures and, in case of letters issued by companies or organizations, a copy of the power of attorney or other document which gives legitimacy to the signatory to sign may be required. The means of subsistence may consist of funds that a visitor submits as available, such as a hotel reservation previously made or through contact with the person by whom the applicant will be accommodated. For those entering the country by air, the return ticket to the country of origin is required;

- residence visa – are for foreign citizens who want to move to Mozambique (valid for a single entry for 30 days, extendable to 60 days, and after that, a residence permit must be obtained). This application may be extended to spouses and children of the applicant. A criminal record certificate issued by a competent authority of the applicant's country of nationality or the country where the applicant has been resident for the last year, a health certificate, subsistence guarantees and lodging in Mozambique, as well as supporting income documents (if the applicant wishes to live on his own income), liability waiver (if minor or dependent), and usually the applicant's presence in the office issuing the visa are required. Also, letters of support with valid signatures are mandatory, and, in the case of letters issued by companies or organizations, a copy of the

power of attorney or other document which gives legitimacy to the signatory to sign may be required;

- visitor visas – are issued to foreign citizens who move to the country for a visit (valid for a minimum of 15 days, extendable up to 90 days);

- visas for temporary residence – are granted to the spouse and minor or handicapped children of foreign citizens holding work permits, allowing them to stay for a maximum of one year but extendable to the term of their stay in the country;

- visas for transhipping – are granted by the Immigration Services at crossing points (that is, border posts) and allows for the transfer of crew from one vessel to another, or from an aircraft to another, or from one vessel to one aircraft and vice versa, and only allows a stay in the country for 72 hours;

- visas for sports and cultural – activities are granted to granted to foreign citizens duly accredited to participate in competitions or sports training or demonstrations and cultural competitions. The same is valid for a single entry and may be extended for a maximum period of 90 days; and

- visas for investment activity – are granted to foreign investors, representatives or attorney-in-fact of an investing company for the purpose of implementing projects in an amount no less than USD 500 000, approved by a competent authority. The same must be used within 60 days following the date of issuance and allows the holder multiple entries and a stay of up to two years, renewable for equal periods of time, as long as the reasons justify the multiple entries.

## 16.2 Exemption of visas

A foreign citizen with a residence permit (issued by a competent authority and which gives a holder the right to reside in Mozambique) or a citizen of another country with which Mozambique has a visa exemption agreement (namely Angola, Botswana, Cape Verde, Lesotho, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe) or visa exemption agreements for diplomatic and service passports (such as Argentina, Italy, Russia, Vietnam and countries of the Community of Portuguese Speaking Countries) needs to apply for a visa.

## 16.3 Cancellation of visas

Visas granted to foreigners may be cancelled: *(i)* where a holder does not meet or no longer meets the conditions and objectives for which the visa was granted; *(ii)* if it has been issued based on false statements, or using fraudulent means or by invoking reasons different from those that led to the entrance of its holder into the country; *(iii)* when the reasons that supported the granting have ceased; or *(iv)* when the holder has been deported, and his entry ban sanction is still in force.

The cancellation of visas is the responsibility of the Director of the Immigration Services.

## 16.4 Residence permits

Residence permits: *(i)* provisory for refugees; *(ii)* temporary; and *(iii)* permanent can only be granted in Mozambique by the Immigration Services.

Temporary residence is granted to a foreign national who has a residence visa; and permanent residence is granted to a foreigner who holds temporary residence for over than 10 years.

Authorizations for permanent residence and temporary residence are valid for one year, extendable for the same period, while the reasons for its award remain valid. Residence permits are valid for five years and may be extended if the reasons for their award to candidates are still valid.

The general conditions for the application for a residence permit are:

- hold a residence visa or work visa;
- have a valid passport or travel document (passport with at least four blank pages and six months validity);
- the presence of the owner of the collective passport (if applicable);
- be of legal age (or, if less, have written permission from the parent or legal guardian);

- not be forbidden to enter Mozambique or have been expelled or declared *persona non grata*;
- not conduct any activity subject to penalty of expulsion in Mozambique;
- hold proof of means of subsistence or submit term of responsibility signed by a citizen of legal age and resident in the country;
- submit documentary evidence of the right to work, if the application is the intention to work; and
- proof of compliance with tax obligations.

### 16.4.1 Temporary residence

Authorization of temporary residence is granted to a foreign citizen who holds a residence visa, thus intending to take up residence.

The specific conditions for the application for a temporary residence permit are:

- filling out a form obtained with the Immigration Services, along with three current pass-type photographs, subject to payment of a separate fee;
- passport and certified copy of the passport page with the work visa or residence;
- permit or license of the employer;
- tax clearance certificate;
- clearance certificate from the National Institute of Social Security;
- employment agreement entered with the employer (if applicable) and the correspondent communication work (if applicable);
- term of responsibility for minors, spouses and/or dependents provided by the principal applicant;

- marriage certificate for the husband or wife (dependent);
- birth certificate for minors (dependents);
- school statement of minors (if applicable);
- letter from employer, expressly assuming responsibility for any expenses related to this process, including repatriation if necessary; and
- criminal record from the country of origin, with a validity not exceeding ninety days (if this is issued in a country which is not a member of the Community of Portuguese Speaking Countries, it must be translated by a sworn translator).

When submitting an application for authorization or renewal of a residence permit, the physical presence of the applicant at the Immigration Services is required.

### 16.4.2 Permanent residence

A permanent residence permit is granted by Immigration Services to foreign citizens holding a temporary residence permit, whose term is equal to or above 10 years, as long as proof of entitlement to the status of permanent resident is provided

For the purposes of counting the time necessary for the award of permanent residence, it shall begin on the date of the award of the temporary residence permit.

The specific conditions for the application for the Permanent Residence Permit are:

- application addressed to the Director of Immigration Services requesting the status of permanent resident;
- valid passport;
- valid temporary residence permit;
- three pass-type photographs; and
- other documents that the applicant considers relevant for the consideration of his request.

# 17. INTELLECTUAL PROPERTY

The current system of legal protection of intellectual property in Mozambique came about following the country's accession to the World Trade Organisation (and to the TRIPS agreement), the World Intellectual Property Organisation (WIPO) and the 1981 Madrid Agreement and its 1989 Protocol relating to International Registration of Marks administered by WIPO, the Patent Co-operation Treaty and the African Regional Intellectual Property Organisation (ARIPO). Implementation of the provisions of these international and regional treaties was enacted by the First Industrial Property Code approved by Decree no. 4/99, of May 4. The Industrial Property Official Agent Regulation was approved at the same year by Decree no. 19/99, of May 4.

The Mozambican Association of Authors was incorporated on 15 May 2000. At following year was approved the Law of Author's Rights and of the Related Rights, Act no. 4/2001, of February 27.

On 2003 was incorporated the Industrial Property Institute under the Ministry for Industry and Trade with its own structure and autonomy.

With the intention of adjusting the Industrial Property regime to the new dynamics, the Second Industrial Property Code was approved, through Decree no. 4/2006, of May 12.

In order to define precise terms to protect Denominations of Origin and Geographical Indications, the Government of Mozambique approved Decree no. 21/2009, of June 3.

With the approval of the new Penal Code in 2014, through Act no. 35/2014, of December 31, the legislator has established a significant number of provisions that criminalize some acts of violation of rights titled by the creators.

The Third Industrial Property Code was approved, on 2015 through Decree no. 47/2015, of December 31, aiming at: *(i)* systematizing the scarce legislation in a single instrument; *(ii)* the introduction of new categories of industrial property rights; *(iii)* the reduction of the processing time of the processes in the Industrial Property Institute; and *(iv)* introduction of the legal registration system at a regional level.

The year of 2017 was marked by the approval of the Audiovisual and Cinema Law (Act no. 1/2017, of January 6), and its Regulation (Decree no. 41/2017, of August 4) and approval of Electronic Transactions Law (Act no. 3/2017, of January 9). These legal instruments have a special relevance in Industrial Property and demonstrate the efforts that the Mozambican Government has implemented to ensure that there is a strong protection of Intellectual Property Rights in general, and Industrial Property Rights, in particular.

The need to modernize the law and adapt the legal regulations to the various international conventions, allied to the need to criminalize new practices emerging from economic and technological development, the legislator recently approved the new Penal Code, through Law No. 25/2019, of December 6, highlighting several provisions that criminalize acts of violation of Intellectual Property rights, in general, and of industrial property rights, in particular.

## 17.1 Copyright

The purpose of the Copyright Act is the protection of literary, artistic and scientific works and of their authors, performers, record and video producers, and the originals of radio broadcasts and is applicable to:

- works whose author or any other original holder of the copyright is Mozambican or, if a foreigner, has usual residence or a registered office in Mozambique;
- audio-visual works whose producer is Mozambican, or, if a foreigner, has usual residence or a registered office in Mozambique;
- works published in Mozambique or works first published abroad and then in Mozambique;
- architectural works erected in Mozambique; and

- works that can be protected under an international treaty to which Mozambique is a party.

Copyright covers rights of an economic and non-economic nature. Economic rights consist mainly of the exclusive right of economic exploitation of the work, reflected in the option of authorising its reproduction, translation, adaptation, import or export, and of having copies for sale to the public and performing any other type of transfer of ownership. Economic rights are transferable *inter vivos* or by inheritance and are also liable to forfeiture and seizure under the general law. A contract for the assignment of economic rights, as well as the grant of licences must be in writing.

In turn, non-economic rights are of a personal nature and consist of the author's right to claim authorship of the work, to remain anonymous or to use a pseudonym, and to oppose any distortion, mutilation or modification of his work or any attack against it detrimental to honour, reputation, integrity or authenticity. Non-economic rights are not transferable *inter vivos*, only by inheritance.

According to a general principle, the author of a work is the first owner of its economic and non-economic rights, and specific rules are established for determining ownership of the rights in cases of works produced in collaboration, collective works, folklore works, audio-visual works and works created under an employment contract. With regard to the latter, unless otherwise provided by contract, the first holder of economic and non-economic rights is the employee, but the economic rights are considered to be transferred to the employer, to the extent warranted by the customary activities under the contract.

According to a general rule, economic rights expire 70 years after the author's death, even if it is work disclosed or published posthumously; non-economic rights are protected indefinitely.

Copyright is vested by virtue of the creation of a work, by contract or by licence, its registration having a purely declarative role (that is, the copyright does not arise from registration, which merely publicises a right that already exists). The following are subject to registration: *(i)* acts constituting, transferring, modifying or extinguishing a copyright; *(ii)* its encumbrance; *(iii)* the literary or artistic name; *(iv)* the title of the work and its author; and *(v)* the seizure and attachment of copyright.

Violation of copyright is civil and criminally punishable.

The National Book and Record Institute (*Instituto Nacional do Livro e do Disco*/INLD) is charged with promoting and regulating editorial activity and publication in series, promoting and regulating the production of records and recorded tapes, licensing and supporting national publishers and booksellers, the registration of national publications and the organisation of a copyright sector.

## 17.2 Industrial property

The Industrial Property Code (Decree no. 47/2015, of December 31) establishes the special regime for the protection of industrial property rights and sets forth the rights and obligations arising from their grant and registration, including the surveillance mechanisms and penalties applicable upon breach of such rights, with the purpose of promoting innovation, the transferring and distribution of technology, and consumer protection.

The following are entitled to undertake acts with the IPI: *(i)* a natural person concerned or owner of an industrial property right, or his agent with special powers for the purpose, provided they are established or domiciled in Mozambique; *(ii)* a corporate person concerned or owner of an industrial property right, if its registered office is in Mozambique, through its legal representative or employee accredited for the purpose; and *(iii)* an official industrial property agent invested by the IPI. Consequently, any natural or corporate person who is neither domiciled in nor has its registered office in Mozambique can only perform acts before the IPI through an industrial property agent invested by the IPI.

Applications for registration of industrial property at the IPI must be submitted on proper forms. Registration of contracts that imply technology transfer, franchise agreements and the like is a requirement to be enforceable against third parties.

Industrial property rights are transferable *inter vivos* or by inheritance, and the transfer, co-ownership and any liens or charges shall be recorded in the granting document. Transfer *inter vivos* must be made in writing with the signature of the holder notarised, while the assignment of patents and utility models requires a public deed and the transfer of ownership of trade names, insignia, logos and rewards can only occur together with the establishment to which they relate, unless otherwise agreed.

Designations of origin and geographical indications are not transferable.

The patent has a term of 20 years, the utility model a duration of 15 years, and industrial design of five years (renewable for like periods up to 25 years). Trademarks, trade names, insignia and logos have duration of 10 years (renewable indefinitely for like periods), while designations of origin and geographical indications last indefinitely.

Violation of intellectual property rights is punishable by fine under the law.

Aiming at materializing the purpose of reducing the time of conduct of proceedings in the Industrial Property Institute, the current Code gives greater emphasis to the impugnation guarantees, reducing the time for its presentation, which has a useful effect in the periods of concession or refusal , on the one hand and, on the other, gives a greater temporal delay for the presentation of the missing elements that are verified after the submission of the file, going from the previous 15 to 30 days.

The current Code establishes a further guarantee for those interested in protecting industrial property rights, consecrating the remedy, which is the power to challenge against the decisions made in the complaint. This remedy has purely devolution effect to the Minister of guardianship.

About judicial protection, this Code provides the possibility of use extrajudicial mechanisms to settle disputes between private individuals such as arbitration and conciliation.

The Code also allows the revalidation of Industrial Property rights for a period of one year from the date of publication of the notice of forfeiture in the Industrial Property Bulletin.

# 18. MEANS OF DISPUTE RESOLUTION

In Mozambican law, dispute-resolution may be through the courts or out-of-court (by conciliation, mediation or arbitration).

## 18.1 Judicial system

### 18.1.1 Organisation and general rules of jurisdiction

The Mozambican system includes three different categories of courts: judicial, administrative courts, and the Constitutional Council.

According to Courts Act (*Lei de Organização Judiciária*, Act no. 24/2007, of August 20) the judicial courts include the Supreme Court and the provincial and district courts. Their jurisdiction covers both civil and criminal matters and also all matters not assigned to other courts.

This Act has been amended three times, firstly by Act no. 24/2014, of September 23, which mainly extended the district courts competences to give judgement on issues of family and minors law, eliminated the coincidence in territorial terms between judicial division and administrative division, and created a new jurisdictional inspection body. Then, through Decree no. 57/2014, of October 8, the areas of jurisdiction of some district court courts have been redefined so as to temporarily cover the territories of those districts whose courts have not yet begun operations or have not yet been created. Finally, Act no. 11/2018, of October 3, has approved new guidelines regarding the exercise of functions by the judges elected in the various judicial courts, also defining the calendar of the judicial year and vacations, among other changes.

The Administrative Court is now a specialised jurisdiction responsible for reviewing the legality of administrative acts and of the execution of the regulatory norms issued by the Public Administration, as well as of the State's accounts and of public expenditure.

The Constitutional Council is a specialised jurisdiction for constitutional and electoral matters, verifying and controlling the constitutionality of the laws and the legality of normative acts of the Executive, resolving conflicts of jurisdiction between sovereign bodies and assessing in advance the constitutionality of referenda. The Constitutional Council is also responsible for appraising electoral complaints and appeals as final court of review.

### 18.1.2 Recognition of foreign judgements

To be effective in Mozambique, rulings on private rights issued by a foreign court must be reviewed and confirmed before the Supreme Court.

For confirmation of a foreign judgement, it is essential that the content of the decision does not lead to a result which is manifestly incompatible with the principles of public order of the Mozambican State, though the confirmation process does not assess the merits of the decision.

A ruling recognised by the Supreme Court has the effect of *res judicata* and is enforceable within national territory; judgements of foreign courts not reviewed may, however, be invoked in cases pending in Mozambican courts as simple means of evidence subject to appraisal by those judging the cause.

### 18.1.3 International competence of Mozambican courts

The Mozambican courts consider themselves internationally competent when the action has to be brought in Mozambique under the rules of jurisdiction laid down by Mozambican law or where the fact constituting the cause of action or any of the facts forming part thereof have occurred within Mozambican territory, or in cases where the defendant is a foreigner and the claimant is Mozambican, provided that, in the reverse situation, the Mozambican party could be sued in the courts of the State to which the defendant belongs.

The international jurisdiction of the Mozambican courts is, however, mandatory in matters about inalienable rights or if the right in question cannot become effective except by means of an action brought before the Mozambican court, provided that between the proposed action and Mozambique there is a weighty element of personal or real connection (in the case of actions relating to rights *in rem* or personal rights

of fruition of real estate situate in Mozambique), and lastly, if it is a special bankruptcy or insolvency process or one to assess the validity of resolutions of the governing bodies, in relation to corporate persons or companies domiciled in Mozambique.

Apart from these cases, the parties may agree that a particular dispute or disputes which may arise from certain facts be decided by the courts of the country of one of the parties or by international courts, provided that such agreement is in writing and the designation corresponds to a serious interest of the parties or of one of them (provided it does not involve a major inconvenience for the other).

## 18.2 Out-of-court means of dispute resolution

Conflicts arising from commercial legal relations in a broad sense (including relations arising from investments) are generally amenable to resolution by arbitration.

Under the Arbitration, Conciliation and Mediation Act (*Lei de Arbitragem, Conciliação e Mediação*, Act no. 11/99, of July 8), the interested parties may submit the resolution of all or some of their disputes to arbitration, either in advance (through the provision of an arbitration clause in the contractual instruments), or subsequently (by entering into an arbitration agreement), to be done explicitly.

The Mozambique Arbitration Act in many issues embraces the solutions of the United Nations Commission on International Trade Model Law (UNCITRAL).

In trade relations, arbitration may be either domestic or international.

Mozambican law makes a distinction between national arbitration (in which the matter of the dispute within the scope of trade relations is subject to Mozambican national jurisdiction, the formation and working of the arbitral tribunal and the arbitral award being governed by Mozambican arbitration law) and arbitration of an international scope (covering dispute resolutions in which there are international interests).

Furthermore, according to Act no. 7/2014, of February 28, which replaced Act no. 9/2001, of July 7, and regulates administrative procedural litigation, there are special rules for certain arbitrations in relation to certain public legal relations, such as in the matter of public contracts and of non-contractual civil liability of the Public Administration and of the holders of its bodies, officials or agents for damages arising from public acts.

The inclusion of a compromise or arbitration clause in contracts in the country is increasingly frequent.

Arbitral awards are final and enforceable and may be challenged in court only on the basis of formal order and procedural principles laid down in the law, in particular in the case of manifest disregard of procedures with impact on the exercise of the rights of defence.

The law admits recognition and confirmation of foreign arbitral awards in cases heard at the Supreme Court level. The rules of the New York Convention on the recognition and enforcement of foreign arbitral awards, dated 1958, to which Mozambique acceded, subject to reciprocity, on June 10, 1998, apply to the review and confirmation of arbitral awards proffered by foreign courts or arbitrators.

Mozambique also ratified the Washington Convention of 1965 on the Settlement of Investment Disputes between States and Nationals of Others States, in force in Mozambique since 7 July 1995, being party in several Bilateral Investment Treaties (BITs) with other States, including, among others, Portugal, in which are foreseen several guarantees in matter of investment. Through these mentioned agreements, the foreign investment may be structured in order to maximize the protection conferred by the same and to ensure the possibility of recourse to international arbitration, in particular under the Washington Convention and other applicable international treaties.

Independently of the protection conferred by the Washington Convention and by international treaties, the Investment Act expressly foresees a special mechanism for resolution of disputes in relation to certain conflicts between the Mozambican State and foreign investors regarding investments authorized and executed in the country, allowing, in certain circumstances set forth by law and without prejudice agreements to the contrary, that disputes emerging therefrom be resolved by arbitration, by applying, on the basis of a prior expressed agreement of the parties, the following rules on international commercial arbitration:

- rules of the Washington Convention of March 15, 1965, on the Settlement of Investment Disputes between States and Nationals of Other States and of the International Centre for Settlement of Investment Disputes between States and Nationals of Other States (ICSID);

- rules of the Supplementary Mechanism Regulation, approved on 27 September, 1978, by the ISCID Board of Directors, if the foreign company does not fulfil the nationality conditions under Article 25 of the Washington Convention; or

- arbitration rules of the International Chamber of Commerce, based in Paris.

Finally, as an alternative to the competent judicial courts, the possibility of recourse to arbitration is commonly foreseen in the legislation which regulates several sectors of activity in Mozambique (mining, oil and gas, among others).

# 19. COMBATING MONEY LAUNDERING

Since 2001, year in which the United Nations Security Council passed Resolution 1373 – calling on Member States to adopt legal measures for preventing and combating money laundering and financing of terrorism –, Mozambique has made several efforts in this direction, having adopted, in 2002, Act no. 7/2002, of February 2, which established the legal framework for the prevention and suppression of the use of the financial system for laundering money, goods, products or rights arising from criminal activities, which was regulated by Decree no. 37/2004, of September 8. These new framework and regulation have been subject to frequent changes and amendments, including on related matters such as the financing of terrorism and the fight against corruption, as typical situations of the occurrence of money laundering.

In 2007, the Financial Intelligence Office of Mozambique (*Gabinete de Informação Financeira de Moçambique*/GIFiM) was created, its aim being to establish additional mechanisms to ensure timely implementation and effective application of the anti-money laundering law. The assignments and public powers of the GIFiM have also been subject to updates, be it through Law (recently, Act no. 2/2018, of June 19) or Regulation from the Mozambique Bank (specifically, Regulation no. 4/GB/2015).

These new legislative and regulatory developments are also associated with the approval, in 2012, by the Mozambican Government, of a national strategy for preventing and combating money laundering and financing of terrorism, based on four pillars: legislation, organic restructuring of institutions, technical training of personnel and international cooperation.

Within the framework of international co-operation, attention is drawn to the signature, in June 2011, of a memorandum of understanding between Mozambique and South Africa with a view to joint patrol of the channel along the Indian Ocean, to which Tanzania acceded in the meantime.

Act no. 14/2013, of August 12, which repealed Act no. 7/2002, of February 5, and was published to comply with the international normative standards, has established the new legal framework and the measures to prevent and punish the use of the financial system and non-financial entities for the purpose of money laundering and terrorism financing. This framework is regulated under Regulation no. 14/2013, of Agoust 12, approved by Decree no. 66/2014, of October 29.

The following are namely subject to this Act and Regulation, due to their role as "gatekeeprs" of the financial system:

- financial institutions, as credit institutions and financial corporations, microfinance institutions, insurance and reinsurance companies, pension fund management companies, insurance intermediaries and related ones, stock exchange and any other entities that may be considered by law;

- several non-financial entities, such as casinos, payers of gambling or lottery prizes, entities engaged in real-estate agency activities and in buying and reselling real estate or construction companies that engage in direct sales of real estate, dealers in precious metals and stones and traders, sellers and resellers of vehicles; and

- lawyers, notaries, solicitors and other independent legal professionals, independent accountants and auditors, when acting on behalf of the client or in other circumstances in specified matters, such as buying and selling real estate, management of funds, securities and other assets, management of bank and savings accounts, providing services to companies, other corporate persons or centres of collective interest having no legal personality, particularly for the creation, operation or management, and purchase and sale of commercial establishments and entities.

All these and other entities are bound, due to their positioning in the access and operation within the financial system, to fulfil certain obligations, including identification of customers and verification of their identity by valid documentary evidence, whenever they establish a business relationship or make occasional transactions of a value equal or greater than MZN 450,000, or if there is suspicion that the transactions regardless of their value are related to the above crimes or if there are doubts about the accuracy of the client's identification data.

The entities must collect information on the business/operation and verify the identity of the beneficial owner, obtain information on the purpose and intended nature of the business relationship, exercise continuous vigilance on the operation, evaluate risks and refrain from maintaining anonymous accounts or where the identification elements are clearly fictitious. These duties are applicable irrespectively of the nature of the entities involved in the financial operation, including, among others, charities and foundations. Also, Politically Exposed Persons, this is, a person who is holding a high-level public office, are subject to strict duties of identification, control and monitoring.

When the required information is not provided, such situation must be notified to the GIFiM, and so when the entities, when able to gather such information, suspect that funds or assets are associated with criminal activity or there is evidence of their use in terrorism financing, or also whenever they are aware of evidence of money laundering or terrorism financing.

Failure to comply with these duties by the financial institutions or the mentioned non—financial entities, constitutes a transgression punishable by fine and accessory penalties, which vary from revocation or suspension of the authorisation to conduct the activity to the expulsion from the country (if a foreign citizen). Liability may be attached to the entities involved in the operation at hand, as well as to the person responsible for the transgression acting as a manager, director, other legal representatives, employee or collaborator.

Specifically regarding the punishment of laundering acts, Act no. 14/2013, of August 12, created the crimes of money laundering and terrorism financing and identifies various crimes as connected to the first one, such as criminal association, terrorism, tax fraud, kidnapping and forced confinement, trafficking in persons and arms, murder, extortion, robbery and theft, environmental crimes, and all the crimes punishable by imprisonment of more than six months, among others.

# 20. MAJOR SECTORS OF ACTIVITY

Mozambique's economy is diversified, one in which the agriculture, transport, energy, fisheries and tourism sectors are of greater relevance.

The most dynamic sectors are construction, manufacturing, mining, transport, communications, construction and electricity generation.

Together, the services and industry sectors account for the greater part of the GDP, followed by agriculture, and about 80% of the population is engaged in these sectors.

The main products are tobacco, sugar, cotton, rice and sugar cane.

## 20.1 Mining

Under the Constitution of Mozambique, all natural resources located in Mozambican territory, the continental shelf and the exclusive economic zone are property of the State. The use and exploitation of mineral resources, including mineral water, are now governed by the recently published Act 20/2014, of August 18 (new Mining Act/*Lei das Minas*) and by Decree no. 31/2015, of December 31 (Mining Act Regulation/*Regulamento da Lei das Minas*), which revoked Decree no. 62/2006, of December 26, and other regulatory provision which contradict the Mining Act Regulation.

Oil and Gas are specifically excluded from the scope of the Mining Act and are governed by a specific legal framework.

The Mining Act aims to ensure increased competitiveness and transparency, as well as safeguarding national interests and enhancing the State's intervention in this sector.

The safeguard of national interest is evident in several provisions of the new law, including: *(i)* attribution of mining rights, based not only on the priority of the appli-

cation, but also bearing in mind what proposal is more advantageous for the State; *(ii)* reinforcement of the local content rules and priority granted to local good and service providers; *(iii)* reinforcement of protection of the local communities that are affected by mining activities and who are entitled not only to just compensation for relocation, but also for a percentage (as established in the annual State Budget) of revenues derived from mining activities to be channelled to their development; *(iv)* the need for foreign service providers to associate with Mozambican persons or entities; and *(v)* the participation of the State in mining enterprise and the progressive increase of such participation over time.

The Mining Act Regulation defines the regulatory framework applicable to the mining activity and further develops the provisions of the Mining Law. It should be noted that the sale of mineral products through a Trading of Mineral Products License is excluded from the scope of this Regulation.

Under the Mining Act, the right to reconnaissance, prospecting, and exploitation of mining resources is obtained through one of the mining permits and authorizations described in sub-sections below.

Permits to use and enjoy the land are obtained under the land legislation and such permits are granted for a period and area that coincides with those granted under the mining permit or authorization.

The State provides guarantees for investment and, at the outset, guarantees:

- security and legal protection of ownership of assets and rights, including industrial property rights forming part of authorised investments and carried out in mining activity under a mining permit;

- that, once a prospecting licence, mining concession or mining certificate has been granted for a recognised direct foreign or national investment, taxation of mining in force at the time of issue of the permit will not be altered, save for the benefit of the permit holder; and

- the transfer of funds abroad, in accordance with the conditions set out in the legal instruments pertinent to the investment, among which, exportable profits resulting from investments eligible for the export of profits, royalties or

returns on indirect investments associated with the assignment or transfer of technology and repayment and interest on loans taken out on the international financial markets and invested in investment projects in Mozambique.

We shall refer hereunder, in a brief manner, to some of the Mining Titles to be granted pursuant to this legal framework.

### 20.1.1 Prospecting and research licence

A prospecting and research permit may be attributed to legal entities created and registered according to Mozambican law and entitle the permit holder access to the license area and the exclusive right to conduct prospecting and research activities. The permit holder is also entitled to obtain, remove, transport and export samples that do not exceed certain limits and volumes for purposes of laboratory testing, as well as the right to occupy land and erect temporary facilities, camps or buildings necessary for prospecting and research purposes, and to use water, wood and other materials needed for such purpose, provided it acts in compliance with the applicable laws in force.

The request for a Prospecting and research licence shall be submitted before the National Mining Institute and addressed to the Minister of Mineral Resources and Energy. The licence request shall contain various elements, namely the indication of the envisaged mineral resources to include in the licence; the envisaged area and the licencing form, duly filled. The Minister has 90 days to decide with reference to the request for the Prospecting and research licence, counting from the date of its submission.

The validity period of a prospecting and research permit is: *(i)* two years for mineral resources for construction and may be renewed once for an additional two-year period; and *(ii)* five years for all other mineral resources, including mineral water, and may be renewed once for a further three years.

### 20.1.2 Mining concession

A mining concession may be attributed to legal entities created and registered according to Mozambican law for a period of 25 years, which may be renewed for once for a maximum of the same period, never exceeding 50 years.

A mining concession entitles its holder access to the concession area and to carry out, on an exclusive basis, extraction, development and processing of the mineral resources discovered in the prospecting phase. Also being entitled to construct any facilities or infrastructures necessary for the purpose; to use water, wood and other materials required for operating activities; to store, transport and process the necessary mineral resources and contaminating waste; and to sell or otherwise dispose of mineral products resulting from mining operations.

The request for a Mining Concession shall be submitted before the National Mining Institute and addressed to the Minister of Mineral Resources and Energy. The concession request shall contain various elements, namely the data of the prospecting and research licence (if any), indication of the envisaged mineral resources to include in the Mining Concession, the envisaged area and the envisaged duration. The Minister has 180 days to decide with reference to the request for the Mining Concession, counting from the date of its submission.

### 20.1.3 Mining certificate

Smaller scale mining activities can be pursued either under a mining certificate or a mining pass.

A mining certificate may be held by a Mozambican person or entity which complies with the applicable requirements and may be issued for 10 years, renewable for equal periods. A mining certificate holder is entitled to the exclusive right to conduct small-scale mining operations and, for such purpose, to occupy land and construct access ways and the necessary facilities or infrastructure required for mining operations; use water, wood and other materials required for mining operations; store, transport and process mineral resources and sell mineral products resulting from mining operations.

The request for a mining certificate shall be addressed to the Minister of Mineral Resources and Energy; except if for construction, case in which it shall be addressed to the Governor of the Province with jurisdiction over the area. The certificate request shall several elements, like the details of the prospecting and research licence (if any); the mineral resources to include in the mining certificate; the envisaged area and the envisaged duration. The deadline for a decision to be issued is of 60 days counting from the date of the submission of the request.

### 20.1.4 Mining pass

For the benefit of local communities certain areas are designated as mining pass areas and allow for small scale artisanal mining activities. The mining pass may be attributed to a person of Mozambican nationality or to an entity held by Mozambicans and is attributed for a period of up to five years, renewable for equal periods.

The mining pass entitles its holder to carry on artisanal mining activities and to sell the extracted mineral products.

The mining pass request shall be addressed to the Governor of the Province with jurisdiction over the area. The request for the mining pass shall include, among others, the location of the area; the mineral resources to extract from the area and the envisaged duration. The Governor of the Province has 30 days to decide upon the request.

### 20.1.5 Authorisations

In addition, interested parties may also seek authorisations for: *(i)* extraction of mineral resources for construction purposes; *(ii)* treatment and processing of mineral resources; *(iii)* commercialization of mineral products; and for *(iv)* geological and archaeological studies.

## 20.2 Fisheries

Since Mozambique is a country with thousands of kilometres of coastline, the fishing industry naturally is of great importance to the national economy. Commercial fisheries are divided between industrial, semi-industrial and artisanal fishing. Industrial fishing is carried out by fishing companies and ship owners operating motorized fishing vessels, with on board processing and freezing facilities, through ice or other fish preserving means, using mechanical means of fishing involving technologically advanced and autonomous methods for fishing in maritime waters of third States or on the high seas. Semi-industrial fishing is also carried on by fishing companies and ship owners with motorized fishing vessels having on-board conservation facilities, but using longline or hand line gear, bottom gill, trawl, siege and others fishing methods. Lastly, artisanal fishing is one which, in addition to essentially employing family labour, is usually practiced on daily fishing grounds, using fishing gear such as purse seines, gill nets, single trawls, trawling and other with or without fishing vessels,

rowing, sailing, engines with small propulsive power, whether or not using ice for the preservation of fish on board. In terms of number and volume, the latter accounts for the largest share of the fisheries sector, providing a very large number of jobs.

In Mozambique, most of the fish kinds caught, both by production volume and by production value, are shrimp, prawns, *kapenta* (freshwater sardines) and tuna. The latter is industrial fishing undertaken largely by European Union ship owners within the Exclusive Economic Zone relatively far from the coast. This type of fishing is part of the major tuna fisheries of the western Indian Ocean, one of the largest, with an annual catch estimated at 885,000 tonnes.

However, small-scale fishing accounts for the biggest share of production and value, playing a pivotal role in the Mozambican household economy and, consequently, in the social fabric. The significant increase of fuel prices in the international markets has led to a decline in the volume of semi-industrial and industrial fishing, although it has not affected the shrimp-catch quotas for several years.

Exports have been affected by a drop-in demand caused by the effects of the economic and financial crisis which are still being felt in the importing markets, particularly shrimp, which accounts for 70% of the total value of exports. The main export market is the European Union, which absorbs about 90% of export turnover.

In this regard, the Fisheries Act (*Lei das Pescas*, Act no. 22/2013, of November 1), which establishes the legal framework of fishing activities and complementary fishing activities with a view to protection, conservation and sustainable use of biological resources and national water, including the legal framework for fisheries planning and management, implementation of the licensing system, adoption of resource conservation measures and monitoring the quality of fishery products intended for export.

There are countless items of legislation governing fishing activity in all its dimensions, most notably the Regulation of Fishing Rights and Licensing of Fishing (enacted by Decree no. 74/2017, of December 29, amended by Decree no. 60/2018, of October 1), which establishes the criteria, requirements and periods for granting fishing rights for each type of fishery, the norms to be observed in the fishing permit and the fees payable, and shall apply to fishing activities and related fishing operations carried out in Mozambican waters and on the high seas.

Natural or legal persons who fulfil the requirements of the Fisheries Act and the Regulations for the Granting of Fishing Rights and Fishing Licenses may be holders of fishing rights. Fishing rights for foreign operators are granted by means of fisheries agreements and contracts concluded under the Fisheries Law, and fishing rights for subsistence and artisanal fishing are granted only to a national.

The fishing rights to be granted shall comprise:

- the right to engage in fishing, including ownership of the catches, accompanying fauna and their commercialization;
- the right to allocate a fishing quota;
- access to fishing ports;
- the free navigation in the fishing areas foreseen in the concession title, with the exceptions deriving from the law;
- privileged access to a local fishing area, in the case of artisanal fishing;
- access to information on development plans and fisheries management plans.

National or foreign natural or legal person wishing to engage in fishing activities must apply to the Minister supervising the fishing area for the granting of fishing rights by means of an application form approved for that purpose.

## 20.3 Maritime transportation

Just as the Mozambican Commercial Code, approved by Decree-Law no. 2/2005, of December 27, which contains a significant section of maritime trade law, the Sea Act (*Lei do Mar*, Act no. 20/2019, of November 8) defines the jurisdictional rights over the sea strip along the Mozambican coast, imposing to the Mozambican Government the obligation to adopt plans and regulations on the administration of national and international maritime traffic in such waters. In the wake of this policy, Decree no. 35/2007, of August 14, was enacted, approving the Commercial Shipping Transportation Regulation (*Regulamento de Transporte Marítimo Comercial*).

The maritime authority vested with powers for carrying out vessel registration and flagging, registration and certification of seafarers, licensing of cabotage activities and in general monitor compliance with maritime statutes is the Navy National Institute (*Instituto Nacional da Marinha*/INAMAR), a governmental body of the Ministry of Transports and Communications.

### 20.3.1 Commercial shipping transportation and private shipping transportation

Commercial shipping transportation activities are defined as the transportation of cargo and/or passengers for a commercial purpose, through sea, ports and bays or lakes and rivers; whereas private shipping transportation activities are defined as the transportation of cargo and/or passengers by the respective owner, while carrying out its activity (unrelated to the public transportation service). Private shipping transportation does not need to undergo through the licensing requirements that are established for commercial shipping transportation.

Commercial shipping transportation of goods and passengers between national ports (*i.e.*, cabotage) may be carried out by either Mozambican flagged vessels (or chartered by Mozambican nationals or institutions) or by foreign vessels, in compliance with the requirements set out by Decree no. 35/2016, of 31 August. This rule also applies to commercial shipping of long course covering non-national ports.

Exercise of commercial shipping activity requires compliance with the following requirements:

- insurance covering liabilities that may arise related to passengers, third parties and environmental damage;
- a permit from INAMAR, valid for five years, renewable for equal periods;
- payment of fees due, provided by INAMAR's Rates Regulation (*Regulamento de Taxas e Emolumentos do* INAMAR), approved by Ministerial Order no. 218/2013, of December 30, as amended; and
- approval for use of foreign vessels (where applicable).

Pursuant to the Agency Regulation (*Regulamento de Agenciamento de Navios, Mercadorias e Serviços Complementares*), enacted by means of Decree no. 53/2006, of December 26, foreign-flagged vessels at the service of national ship owners (that is, natural or legal persons who, within maritime commercial shipping activity, exploit their own vessels or others from third parties) must appoint a shipping agent, unless this requirement is waived by INAMAR. The shipping agent is responsible for the entry, stay, exit and payments of the fees due of foreign vessels at domestic ports.

### 20.3.2 Shipping recruitment

Decree no. 50/2014, of September 23, governs labour relations emerging out of employment agreements in respect of this sector (Maritime Labour Regulation/*Regulamento do Trabalho Marítimo*). This regulation introduces several concepts. It is important to highlight the figure of the "seafarer" (*marítimo*), which includes all those engaged in activities under the jurisdiction of the Maritime Administration, corresponding to the employee under the general regime of the Labour Act.

The Maritime Labour Regulation requires that for the exercise of maritime labour, the seafarer must hold, in addition to the other requirements set out in the specific legislation, the valid medical certificate attesting that he is able to carry on such activities, and the seaman's book, which is an essential document that allows the seafarer to exercise his activity on board or other activities that may be required.

The Regulation establishes limits for the working schedule: 14 hours in each 24-hour period and 72 hours in each seven-day period.

Mozambique is a party to the International Convention on Standards of Training, Certification and Watch Keeping for Seafarers of 1978, as amended in 1995 (the contents of which were transposed into domestic law by means of the Certification of Competency of Seafarers Regulation, enacted by Decree no. 44/2001, of December 21, as amended by Decree no. 56/2007, of August 14). As a result, seafarers on board Mozambican or foreign flagged vessels within Mozambican waters must hold the relevant certificates of competency. For purposes of assessing compliance, the INAMAR is free to inspect any vessel within Mozambican waters. Violation of rules governing the commercial shipping transport activity, as well as the norms regulating agency activity and complementary services, is punishable with fines, or with suspension and revocation of such licenses, depending on the seriousness of the case, while the violation of the provisions of the Maritime Labour Regulation is penalized in accordance with the Labour Act.

## 20.4 Electricity sector

The generation, transmission, distribution and supply of electrical energy are currently regulated by Act no. 21/97, of October 1 (Electricity Act/*Lei da Electricidade*), as amended by Act no. 15/2011, of August 10.

Electricity Act defines, among other aspects, the founding principles of the supply of electricity in Mozambique, the main characteristics of the concession for the activities which make up the value chain of the electricity sector, the main rights and obligations of the concessionaires. It also typifies crimes and misdemeanours regarding the theft of electricity and damages caused to electrical facilities.

Also relevant for regulation of this sector are:

- Decree no. 8/2000, of April 20, which approves the Regulation which Establishes the Powers and Procedures Regarding the Attribution of Concessions relating to Generation, Transmission, Distribution and Supply of Electricity, as well as its Import and Export (*Regulamento que Estabelece as Competências e os Procedimentos Relativos à Atribuição de Concessões de Produção, Transporte, Distribuição e Comercialização de Energia Eléctrica, bem como a sua Importação e Exportação*);

- Decree no. 42/2005, of November 29, which approves the Regulation which establishes Rules regarding the National Electricity Transmission Network (*Regulamento que Estabelece Normas Referentes à Rede Nacional de Energia Eléctrica*); and

- Decree no. 48/2007, of October 22, which approves the Licensing of Electrical Facilities Regulation (*Regulamento de Licenças para Instalações Eléctricas*), as amended by Decree no. 10/2016, of April 25.

The generation, transmission, distribution, supply, import and export of electricity, as well as the management of the National Electricity Transmission Network (*Rede Nacional de Transporte de Energia Eléctrica*/RNT) are subject to: *(i)* prior granting of a concession; and *(ii)* licensing of the facilities where such activities are undertaken.

The granting of concessions for the electricity sector value chain may also be subject to the statutes which regulate public private partnerships, in case the respective projects meet the thresholds of Act no. 15/2011, of August 10, or of Decree no. 16/2012, of June 4.

### 20.4.1 Granting of concessions

The granting entity of concessions in the electricity sector shall differ according to the installed capacity of the electrical facility. Thus, in general terms:

- the Council of Ministers shall have the power to grant concessions for activities when an associated electrical facility possesses a nominal installed capacity equal or higher than 100 megavolts-amperes (MVA);

- the minister responsible for the energy sector shall have the power to grant concessions for activities when an associated electrical facility has a nominal installed capacity between 1 MVA and 100 MVA; and

- the State local bodies have the power to grant concessions for activities when an associated facility has a nominal installed capacity lower than 1 MVA, as long as such facilities are located solely within its territory and the purpose of the facility is the supply of electricity to consumers in its territory.

As a general rule, concessions are granted through a public tender. The concession grants the right to undertake the activity of generation, transmission, distribution or supply of electricity, as applicable, and subjects the concessionaires to several obligations set out in the Electricity Act and Decree no. 42/2005, of November 29.

Concessions have a minimum term which may vary between 10 and 25 years (extended to 50 years applicable to hydroelectric projects), renewable for additional periods, which must be consistent with the depreciation period of additional investments made within the scope of the concession and with the need to make the resources used otherwise for other ends which may guarantee larger social and economic benefits.

The transfer of the concession or the assets which make up the concession is always subject to the prior authorization of the competent authority.

### 20.4.2 Licensing of electrical facilities

Besides the concession for undertaking activities in the electricity sector, and excluding small electrical facilities used for private use and provisional facilities, the

establishment and operation of electrical facilities are subject to licensing pursuant to the terms of Decree no. 48/2007, of October 22.

An establishment license for electrical facilities is obtained after approval of the respective request for licensing directed at the Ministry of Mineral Resources and Energy. After the license has been issued, the commencement of the construction of the respective electrical facility must be communicated, with at least three days prior notice, to the same ministry. Once the construction works are finished, the concessionaire of the respective activity or the owner of the facility must request an on-site inspection from the Ministry of Mineral Resources and Energy.

If the inspection, subject to the opinion of an inspection official, is approved, the Ministry of Mineral Resources and Energy shall decide if the operation license may be granted. The latter is issued via a certificate sent to the interested party; in the certificate a summary description of the facility, featuring, among others: *(i)* power; *(ii)* tension; *(iii)* purpose; and *(iv)* special conditions, is set out.

The operation license elapses after the end of its term or if revoked by the Ministry of Mineral Resources and Energy, which may occur: *(i)* in case of failure to comply with safety or technical standards; *(ii)* if the licensee does not comply with the schedule presented together with the licensing application; *(iii)* when the electrical facility is not granted within the scope of a concession agreement, whenever its holder stops generating power or consents in the interruption or in providing intermittent power supply in a way which affects the public interest or by abandoning the electrical facility for a period over three months; or *(iv)* or in the event of extinction of the Concession in which it is integrated.

The transfer of establishment licenses requires prior authorization from the Ministry of Mineral Resources and Energy. In its turn, the operation licenses may not be transferred: the change in ownership of the facilities always implies the issue of a new license, except for licenses which paid annually, which may be transmitted under the conditions to be established by the Minister of Energy.

### 20.4.3 Regulated activities and commercial relations

#### MANAGEMENT OF THE NATIONAL ELECTRICITY TRANSMISSION NETWORK

The regulation of the Mozambican electricity system includes both the activities of generation, transmission, distribution and supply of electricity as well as the management of the National Electricity Transmission Network (*Rede Nacional de Transporte de Energia Eléctrica*/RNT).

The RNT encompasses the following facilities:

- facilities of reception of electricity in high and very high voltage;
- facilities of transmission of electricity within the scope of the public supply electricity system;
- facilities allocated to the Dispatch Centre;
- facilities of telecommunications, telemetry and remote control allocated to the transmission of electricity; and
- facilities for the delivery of electricity in high voltage to distributors, holders of concession titles, to large consumers, including those which are exceptionally supplied at very high voltage, and to other private distributors which, for such purpose, have entered into an agreement with RNT.

The purpose of the management of the RNT is the full management, as a public service of the RNT, which is granted by the Government to a public entity in exclusivity. Currently, pursuant to the terms of Decree no. 43/2005, of November 29, the manager of the RNT is EDM – Electricidade de Moçambique, E.P. (EDM).

Management of the RNT grants the following powers to a respective concessionaire:

- coordination of activities undertaken in public facilities and networks, as well as those developed by private operators in their connections with RNT;
- reception of electricity from generation concessionaires in Mozambican territory;

- to ensure, in a non-discriminatory fashion, the supply of electricity to the concessionaires and the monitoring of such supply to consumers; for such purpose, the management of the RNT can ensure the supply of electricity to the distribution concessionaires and consumers which have not secured electricity directly to a generation or supply concessionaire;

- the operation of the interconnection network;

- the shutting down of the corresponding generation facilities, in cases of disturbance or *force majeure*;

- the entering of wheeling agreements or power purchase agreements with other concessionaires; and

- the entering into of other agreements with concessionaires.

In what relates to the commercial relations between the other holders of concessions of activities pertaining to the electricity sector and the RNT manager, the former must enter into an agreement with the latter and abide by its orders, instructions or operational directives. The concessionaires must also, when instructed by a RNT manager, supply additional services and submit technical information or any other documentation required, and are additionally responsible for:

- planning, building and maintaining the necessary equipment to perform the connection to the RNT;

- provide the RNT manager all data and economic and technical features regarding the RNT connection project;

- submit to the approval of the RNT manager the list of staff, who must be adequate and possess appropriate qualifications; and

- comply with the operational proceedings regarding the connection and installation necessary for communication equipment, in accordance with the specifications of the RNT manager.

### ELECTRICITY TRANSMISSION

Decree no. 42/2005, of October 29, states that the transmission concessionaire has the obligation to plan, build and maintain its transmission system with the technical capacity to meet the demand of consumers which are connected to its facilities.

The transmission concessionaire must also enter into an agreement with each concessionaire or consumer who wishes to connect to the former's transmission network in non-discriminatory terms and conditions; such agreements must include the general terms of the services rendered by the concessionaire, as well as the technical and commercial conditions to which such services are subject to.

The law also provides for the obligation of the transmission concessionaire to enter into a wheeling agreement with the RNT manager for the inclusion of its facilities in the RNT, with the purpose of keeping transmission capacity available.

### ELECTRICITY GENERATION

Generation concessionaires must, in accordance with Decree no. 42/2005, of October 29, and notwithstanding the aforementioned agreement entered into with the RNT manager, enter into an agreement with the transmission or distribution to which its facilities shall be connected to.

For the respective concessionaire, the generation activity also implies, before the regulatory authority (the Ministry of Mineral Resources and Energy) and the RNT manager, several ancillary obligations regarding generation and injection capacity. Thus, the concessionaire must:

- whenever instructed by the Ministry of Mineral Resources and Energy, present annually a report on the use of its facilities, estimating future needs in terms of capacity and presenting a proposal regarding such needs;

- immediately notify the Ministry of Mineral Resources and Energy and the RNT manager of any circumstances which may lead to changes in the capacity of the transmission lines and substations which could have a significant negative impact on the services rendered to consumers;

- form the Ministry of Mineral Resources and Energy and the RNT manager of its intention to partially or wholly reduce the capacity of its facilities, at least 12 months before such actions are undertaken.

### ELECTRICITY DISTRIBUTION

In what concerns distribution of electricity, the concessionaire of the respective network has, as its main obligation, the planning, building holding, operating and maintaining an electricity distribution infrastructure in order to secure demand for all consumers in the concession area, maintaining high standards of quality and reliability in providing such services. As in the transmission network, access to the distribution network must be guaranteed to interested parties in a non-discriminatory fashion.

A distribution concessionaire must also build, operate and maintain public lighting systems, as requested by a municipality or another State local body.

The distribution concessionaire must also supply electricity, in the concession area, to all consumers which are able to pay for their connection to the grid, and the former may only refuse to supply electricity in medium voltage or low voltage if the amount of power requested is deemed able to cause damage to the distribution network or if it does not have the technical means to render such services.

If, pursuant to the obligation to connect every potential customer in its concession area, the construction of new lines is indispensable, the obligation to supply is only maintained whenever one or more consumers collectively guarantee, for five years, a minimum annual consumption of 3600 kWh for each hectometre of line to be built. Additionally, where the supply of electricity is dependent on construction of a network in medium voltage or low voltage not included in the distribution network expansion plan, the consumer may co-fund the new lines in an amount calculated via a formula set out in the law.

Lastly, we must point out that a distribution concessionaire must assure that the electricity distribution services it provides are reliable and of good quality, by complying with the quality rules and standards set out in Decree no. 42/2005, of October 29, and other instruments issued by the Ministry of Mineral Resources and Energy and the RNT manager.

**SUPPLY OF ELECTRICITY**

Among the several obligations of the holder of the supply of electricity in its relationship with the final consumer of electrical energy, the former has an obligation to provide information on:

- tariffs, supply conditions and payment procedures;
- causes and procedures for the interruption of supply, including notice periods;
- re-connection procedures; and
- dispute resolution mechanisms, especially in what concerns invoicing.

Decree no. 42/2005, of October 29, also establishes that the agreement for the supply of electricity must abide by its provisions. The electricity supply model between EDM (in its capacity as distributor and currently only supplier of electrical energy in Mozambique) and consumers was approved by an Order of the Ministry of Mineral Resources and Energy, dated December 29, 2006. This template regulates the main obligations of EDM and consumers, grounds for denying connection, grounds for interruption of supply, transfer of rights and obligations, and termination of the agreement.

### 20.4.4 Tariffs

The Electricity Act establishes in Article 22 the general directives for the setting of tariffs for activities which make up the electricity sector value chain. As such, tariffs for the use, consumption and transmission of electricity:

- are fixed in the respective concession agreement;
- must be fair and reasonable; and
- may not be charged to consumers if they have not been stipulated in the concession.

Tariffs for the consumption of electricity are currently set out in Decree no. 29/2003, of June 23, which approves the tariff system for the sale of electricity to be applied by EDM to consumers (in low voltage, including large low voltage consumers, medium voltage and high voltage), as amended by Decree no. 1/2010, of February 17.

Consumption tariffs may be amended due to exchange rate fluctuations and inflation, pursuant to the terms of Article 12 of same decree.

In relation to electricity transmission in the transmission network through third party facilities, the Electricity Act establishes that such transmission is done via the payment of a transmission tariff fixed as a function of the operation cost of said facility, reflecting the load on the network, the length of the grid, as well as other costs. These tariffs, fixed in the concession agreement, are later charged to concessionaires downstream, through fees established in connection agreements.

In relation to the tariffs charged by the RNT manager within the scope of its duties, the RNT manager proposes to the Minister of Energy transmission tariffs (of access to RNT facilities) and supply tariffs to concessionaires and consumers which have not secured the supply of electricity directly from generation concessionaires or suppliers.

### INCENTIVES TO RENEWABLE GENERATION

The Regulation which Establishes the Tariff Regime for New and Renewable Energies (*Regulamento que Estabelece o Regime Tarifário para as Energias Novas e Renováveis*/REFIT) was approved by Decree no. 58/2014, of October 17. This statute sets out feed-in tariffs for the remuneration of electricity generated by: *(i)* biomass power plants; *(ii)* wind farms; *(iii)* mini-hydro power plants; and *(iv)* photovoltaic power plants, with an installed capacity of up to 10 MW and which comply with eligibility requirements defined in the diploma. The minister responsible for the energy sector may, however, authorize this remuneration regime to be applicable to projects with an installed capacity greater than 10MW, which are close to the national grid, are not capable of obstructing the stability of the system and from its implementation significant economies of scale are achieved.

The energy generated through the feed-in-tariff scheme approved by Decree no. 58/20014, is subsequently acquired by EDM, the entity specifically designated for such purpose.

## 20.5 Oil and gas

The Constitution stipulates that all natural resources (including petroleum) located in the Mozambican territory, whether found on the surface, underground, in internal waters, in the territorial sea, in the continental shelf or in the Exclusive Economic Zone, are State property.

The rules governing the allocation of rights to perform upstream petroleum operations (planning, preparation and implementation of appraisal, research, development, production, storage, transportation and shutting down of such activities or infrastructures, including the implementation of the demobilization plan, sale or delivery of crude oil, natural gas or liquefied natural gas at the point of export or at the agreed delivery point, such point being where it is delivered for consumption or use or loaded as merchandise) are defined by Act no. 21/2014, of August 18 (the Petroleum Act/*Lei dos Petróleos*), which is regulated by Decree no. 34/2015, of December 31 (Petroleum Operations Regulation/*Regulamento das Operações Petrolíferas*).

The Petroleum Act aims to ensure increased competitiveness and transparency, as well as safeguarding national interests and enhancing the State's intervention in this sector. The role and participation of the State in the oil sector were reinforced, the national oil company (*Empresa Nacional de Hidrocarbonetos*/ENH, E.P.) representing the State in oil undertakings at any stage of activity. Any investor interested in exploring oil resources in Mozambique must associate with ENH, E.P. The Act also provides that the State must gradually increase its participation in oil and gas undertakings, however, the exact terms in which this shall be done and up to what percentage is still pending further regulation.

The Act also provides for the express inclusion of liquefied natural gas in the legal regime set out by the Act, thereby addressing what had been a gap in the previous regime, and also that the Government must ensure a certain percentage of the revenues generated by oil production, as determined in the State Budget Law, is channelled to the development of local communities and ensure a share of at least 25% of the oil and gas produced within the national territory is destined for the national market.

Additionally, the aforementioned statute also includes a distinctive feature, in comparison with other petroleum regimes, namely, that the rules on transfer of rights and obligations under a concession agreement encompass not only direct transfers to affil-

iated companies and third parties, but also other forms of assignment of participation interests, directly or indirectly, in concession agreements, including the transfer of shares or other forms of participation of the holder of concession rights, which are also expressly subject to prior Governmental approval.

In accordance with the Petroleum Act, petroleum operations are conducted pursuant to a concession contract. A concession contract may be entered into for the following purposes: *(i)* appraisal; *(ii)* exploration and production; *(iii)* construction and operation of pipelines; and *(iv)* construction and operation of infrastructure. According to the Petroleum Operations Regulation, these concession contracts generally arise out of a public tender, however, in exceptional circumstances, when certain conditions are verified, the contracts may also arise out of simultaneous negotiation or direct negotiation procedures.

Mozambican or foreign corporate entities of proven technical competence and financial capacity may be oil operations concessionaires. However, Mozambican corporate persons and foreign corporate persons that join up with Mozambican corporate persons (for this purpose, a Mozambican corporate person is any corporate person incorporated and registered under Mozambican law, having its registered office in Mozambique, in which at least 51% of its share capital belongs to Mozambican citizens or private or public Mozambican companies or institutions), enjoy preferential right to allocation of exploration or production blocks.

### 20.5.1 Appraisal concession contract

An appraisal concession contract entitles the holder to a non-exclusive right to carry out preliminary research and assessment in the area encompassed by such concession, by conducting assessments, including geophysical, geochemical, palaeontological, geological and topographic surveys.

This contract is entered into for a maximum period of two years, non-renewable, and allows for drilling up to a depth of 100 metres below the surface or seabed.

Unless otherwise agreed, the data acquired under this contract remains confidential throughout the term of the contract.

### 20.5.2 Exploration and production concession contract (EPCC)

An exploration and production concession contract assigns the exclusive right to oil exploration and production and the non-exclusive right to build and operate oil and gas pipeline systems from the concession area, unless access is available to an existing oil or gas pipeline system under acceptable business terms and conditions.

The exclusive exploration right is granted for eight years and is subject to area relinquishment rules.

In the event of a discovery, the holder of exploration and production right may maintain the exclusive right to complete the work of assessing the commercial value of the discovery. As for the exclusive right to develop and produce oil, this can be maintained by the holder, according to the approved development plan, and may be renewed for equal or shorter periods, as deemed more convenient for national interest.

### 20.5.3 Oil or gas pipeline concession contract

The oil or gas pipeline concession contract grants the right to establish and operate pipelines for the transportation of crude oil and natural gas where these operations are not covered by an exploration and production concession contract.

The holder of an oil or gas pipeline right (and also the holder of an exploration and production right where the oil or gas pipeline operations are provided for in the exploration and production concession contract) is obliged to transport third-party oil, under commercially acceptable terms, provided there is available capacity and there are no technical problems preventing the transport. In case of incapacity of an oil or gas pipeline system, concessionaires are obliged to increase the capacity of the system so that third party requests for transportation of oil and gas are met on commercially acceptable terms, provided that such increase will not endanger the technical integrity or the safety of the system and that third parties cover the costs of the increase of capacity.

### 20.5.4 Construction and operation of infrastructure concession contract

This concession contract grants the right to construct and operate infrastructure connected to the production of petroleum, such as processing and conversion facilities,

which are not covered by any development plan of another exploration and production concession contract.

In this respect, the Petroleum Operations Regulation provides that the pricing mechanism to be applied to third parties purporting to use such infrastructure is subject to the approval of the Minister of Natural Resources and Energy and should be enshrined in the concession contract, albeit it may also be established by agreement.

### 20.5.5 Public tender

The principle underlying the award of appraisal, exploration and production, oil or gas pipeline and construction and operation of infrastructure concession contracts is that the award is subject to a public tender. Simultaneous negotiation or direct negotiation occurs only in respect of areas already declared available as a result of: *(i)* a prior public tender in which no concession was granted; *(ii)* termination and abandonment; and *(iii)* need to combine adjacent areas to a concession on technical and economic grounds.

The award of appraisal, exploration and production, construction and operation of a pipeline and the construction and operation of infrastructure concessions is initiated by an application submitted to the National Petroleum Institute (NPI) and addressed to the Minister of Natural Resources and Energy, in response to a public tender.

The Government is responsible for approving the award of concession contracts for exploration and production concession contracts, pipeline concession contracts and construction of infrastructure concession contracts. In turn, the Minister of Natural Resources and Energy is responsible for approving the award of appraisal concession contracts.

The tender principle also applies to contracting the services and the acquisition of goods needed to carry out petroleum operations, and in appraising the bids, consideration must be given to the service quality, price, delivery time and guarantees offered.

The Petroleum Operations Regulation provides that the acquisition of goods and services for the purposes of carrying out petroleum operations of an amount equal to or greater than MZN 40 million is subject to a public tender. The NPI directly over-

sees the procedure, further to the Regulation, a copy of the list of bidders selected by the concessionaire is to be sent to the NPI, and, if the NPI deems the adequate procedure was not observed, it may order the concessionaire to reconsider its awarding decision.

When acquiring goods or services, the concessionaires are bound to ensure that foreign entities, when offering to provide goods and services, are doing so in association or partnership with national entities, for the purposes of adding value to goods produced in the country and to services provided by national entities. Furthermore, the concessionaire is to give preference to «local goods and services» when comparable to goods and services available abroad, unless such «local goods and services» are more expensive (by a margin of more than 10%) than the other goods and services. Local goods and services are defined as those, which are, in substance or in relation to their added value, predominantly produced, built or executed in the country.

### 20.5.6 Grounds for termination of concession contracts

Concession contracts terminate in the following circumstances: (*i*) the contract reaches its term; (*ii*) surrender; (*iii*) termination; or (*iv*) abandonment. Up to three months before the termination of the concession contract, the concessionaire of the exploration and production right may surrender the area of the contract, provided it shall have fulfilled the stipulated minimum work and expenditure obligations, except in the case of a development and production area. commercial production has begun, the holder of the exploration and production right may only surrender the development and production area by a notice served at least one year in advance.

Concession contracts may be terminated by the Government in case of breach of the concessionaire. Such termination is subject to a prior notice of 90 days, although the Minister of Natural Resources and Energy may also terminate the contract immediately if, after the notice period has elapsed, the concessionaire has not cured the breach, paid the required compensation, or initiated the applicable judicial or arbitral proceeding. If the latter, the contract will not terminate before a final and non-appealable decision or award.

Abandonment occurs when, without due cause and during a minimum of three months, the concessionaire ceases oil operations in the area.

Upon termination of the concession, all the assets forming part thereof revert to the State at no cost, save contractual provision to the contrary.

### 20.5.7 Documentation and samples

Petroleum operation operators shall provide the PNI with any documentation or sample gathered during such operations, when so requested.

The original documents and samples collected must remain in Mozambique and may only leave the country with the approval of the PNI.

Upon termination of the concession contracts, the original documentation and the collections of samples must be handed over to the PNI.

### 20.5.8 Local content

Besides the aforementioned obligation to give preference to national goods and services, the Mozambican petroleum regime provides for other general local content obligations, without prejudice to any other obligations which may be provided in the respective concession contract, namely:

- contribute to the training of the national workforce and to the training and competence building of public servants and governmental authorities;
- employ nationals, with the required qualifications, in all levels of their organisation; and
- develop social investment programmes.

### 20.5.9 Performance guarantee

The concessionaire must provide the following performance guarantees: (*i*) a bank guarantee an amount corresponding to the minimum work obligations; and (*ii*) an unconditional and irrevocable parent company guarantee covering all obligations of the concessionaire or operator, which is granted in favour of the Government.

### 20.5.10 Gas flaring

Natural gas flaring is allowed, in terms defined by the Government, only if it can be proved that alternative methods are unsafe or environmentally unacceptable.

Flaring for test purposes, verification of infrastructure operation or for safety or emergency reasons is subject to Government authorization.

### 20.5.11 Inspection of petroleum operations and fines

The General Inspection Authority of the Ministry of Mineral Resources and Energy (the *Inspecção-Geral dos Recursos Minerais e Energia*, in accordance with the Statute of the Ministry of Mineral Resources and Energy approved by Resolution no. 14/2015, of 8 July) may inspect the sites, buildings and infrastructure where petroleum operations are conducted. Furthermore, and upon notice, the General Inspection Authority may also observe the execution of petroleum operations as well as inspect all the assets, records and documents held by the operator or the concessionaire. The Ministry may also establish that the costs incurred in such inspections are charged to the operator, in the terms of the applicable concession contract.

According to the Petroleum Operations Regulation, failure to comply with orders and administrative instructions is subject to a fine of a minimum of MZN 500,000 and a maximum of MZN 5 million per day of default. The amount of the fine to be levied by the General Inspection Authority depends on the severity of the offence. A fine is also payable for breach of petroleum legislation or the concession contract, such fine may range from MZN 5 million to MZN 50 million.

### 20.5.12 Disputes

Disputes concerning the interpretation of the Petroleum Act, the Petroleum Operations Regulation and the appraisal, exploration and production, oil or gas pipeline and infrastructure concession contracts that cannot be settled by the parties through negotiations shall be settled by arbitration or by the competent judicial authorities as set out in the concession contract.

### 20.5.13 The Rovuma Project

The LNG Rovuma Project on Areas 1 and 4 of the Rovuma Basin benefits from a special legal and contractual regime provided in Decree-Law no. 2/2014, of December 2. The statute regulates, besides the petroleum operations to be conducted in the Rovuma Basin, matters such as the acquisition of goods and services, the foreign exchange regime applicable to the project, the labour regime, as well as an autonomous legal and contractual stabilization mechanism.

## 20.6 Biofuels

The biofuels policy and strategy in Mozambique were approved by Resolution no. 22/2009, of May 21, and the grounds were the promotion and use of national agro-energy resources, sustainable socio-economic development, reduction of greenhouse gas emissions and reducing the country's dependence on imported fossil fuels and the weight of the import bill on the national economy.

This policy provides for three stages: a pilot stage, which took place from 2009 to 2015, with the start of the purchase of biofuels from domestic producers commences; an operational stage, which initiated in 2015 with the consolidation of the biofuel industry and possible achievement of higher blend level; and an expansion stage, beginning in 2021, involving the development of separate and parallel distribution networks for fuels with higher percentages of ethanol and pure biodiesel.

Decree no. 58/2011, of November 11, enacted the regulation on biofuels and their blends with fossil fuels (*Regulamento de Biocombustíveis*/Biofuels Regulation), which defines the production, processing, marketing and distribution of biofuels and their blends.

In accordance with the Biofuels Regulation, these activities must be undertaken in compliance with a respective licence. A licence for the production, storage, export and transportation of biofuels must be applied for by natural or legal persons at the ministry that oversees the energy area. The licensing of production activities is entrusted to the Council of Ministers, for production greater than 12 million litres per year, and to the minister who oversees the energy area for production up to 12 million litres per year. The production of up to 5,000 litres per year for own use does not require a licence. Any licences issued are valid indefinitely and licensed activities

must begin within two years of the date of issue of the licence. Licences terminate on surrender or revocation.

It should be noted that raw materials for the production of biofuels must be delivered solely to holders of biofuel production, storage and distribution licences for subsequent marketing on the domestic blended-product market. Production of these raw materials is promoted and supervised by the ministry that oversees agriculture. Supervision and inspection of industrial facilities for the production, processing, storage, distribution and marketing of biofuels is carried out by a multi-sectoral team of technicians of the ministries that oversee the energy, agriculture, industry and commerce, health, and environment areas.

Biofuel producers must report the quantities of biofuels produced and marketed as well as the identity of their buyers. Exports are allowed only after the minimum amounts required for blending with fossil fuels for consumption in the country have been met. The ministers who oversee energy and finance are responsible for approving the pricing structure for pure biofuels for the purpose of blends within the country.

Breach of legal obligations relating to the production, processing, marketing and distribution of biofuels is subject to fines, cancellation, forfeiture, seizure and revocation of the licence.

# 21. FACTS AND FIGURES REGARDING THE REPUBLIC OF MOZAMBIQUE

**Capital:** City of Maputo.

**Population:** approximately 28 million.

**Area and location:** 801,590 km$^2$, eastern coast of southern Africa, bordered by Tanzania to the north, Malawi and Zambia to the northwest, Zimbabwe to the west and Swaziland and South Africa to the south and west.

**Provinces:** Cabo Delgado, Gaza, Inhambane, Maputo, City of Maputo, Manica, Nampula, Niassa, Sofala, Tete and Zambézia.

**Major cities:** Maputo, Beira, Nampula, Nacala, Chimoio and Quelimane.

**Major ports:** Maputo, Nacala and Beira.

**Major airports:** Maputo, Beira, Nampula, Nacala, Pemba and Vilanculos.

**Languages:** Portuguese (official language); Xitsonga, Xichope, Xitonga, Xisena, Xishona, Cinyungwe, Echuwabo, Emacua, Ekoti, Elomwe, Cinyanja, Ciyao, Ximaconde, among others.

**Form and system of government:** presidential republic.

**Legal system:** Roman-Germanic matrix.

**International organisations:**United Nations (UN), the Community of Portuguese Speaking Countries (CPLP), Portuguese-Speaking Countries of Africa (PALOP), Southern African Development Community (SADC), the Latin Union, the Islamic

Conference Organisation and the International Monetary Fund (IMF), among others.

**Currency:** Metical (MZN), in March 2020, the reference exchange rate of the Metical against the United States Dollar (USD) was 64,60.

**Time zone:** CAT (UTC+2).

## Public bodies and other entities having an Internet website

**Bank of Mozambique (*Banco de Moçambique*)**
http://www.bancomoc.mz/

**Financial Intelligence Office of Mozambique**
**(Gabinete de Informação Financeira de Moçambique)**
http://www.gifim.gov.mz/

**Functional Unit for Procurement Supervision**
**(*Unidade Funcional de Supervisão das Aquisições*)**
http://www.ufsa.gov.mz/

**Government of Mozambique (*Governo de Moçambique*)**
http://www.portaldogoverno.gov.mz/

**Industrial Property Institute (*Instituto da Propriedade Industrial*)**
http://www.sislog.com/ipi/

**Ministry of Agriculture and Food Safety**
**(*Ministério da Agricultura e Segurança Alimentar*)**
http://www.masa.gov.mz/

**Ministry of Economy and Finance (*Ministério da Economia e Finanças*)**
http://www.mef.gov.mz/

**Ministry of Environmental Action Co-ordination**
**(*Ministério para a Coordenação da Acção Ambiental*)**
http://www.micoa.gov.mz/

**Ministry of Sea, Interior Waters and Fisheries**
**(*Ministério do Mar, Águas Interiores e Pescas*)**
http://www.mozpesca.gov.mz/

**Mozambique Stock Exchange (*Bolsa de Valores de Moçambique*)**
http://www.bvm.co.mz/

**National Institute of Social Security (*Instituto Nacional de Segurança Social*)**
http://www.inss.gov.mz/

**National Petroleum Institute (*Instituto Nacional de Petróleo*)**
http://www.inp-mz.com/

**Presidency of the Republic (*Presidência da República*)**
https://www.presidencia.gov.mz/

**Tax Authority (*Autoridade Tributária de Moçambique*)**
http://www.at.gov.mz/

MORAIS LEITÃO
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Morais Leitão Legal Circle was created by Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão), a leading Portuguese law firm, to address the needs of its clients throughout the world, particularly in Portuguese-speaking countries. It is an international network based upon shared values and common principles of action with the purpose of establishing a platform that delivers high quality legal services to clients around the world. It encompasses a select set of jurisdictions including Portugal, Angola and Mozambique.

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